

JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services.

TITLE: A BILL FOR AN ACT RELATING TO COMMUNICATIONS DURING PROCUREMENT.

PURPOSE: To provide a method for clarification communications between a purchasing agency and an offeror, to increase effectiveness and efficiency in the state procurement process during competitive sealed proposals by increasing the potentially acceptable list of responsible offerors.

MEANS: Amend sections 103D-104 and 103D-313, Hawaii Revised Statutes.

JUSTIFICATION: Provides a mechanism for limited exchanges of information through clarification communications during initial stages of source selection pursuant to section 103D-303, Hawaii Revised Statutes, competitive sealed proposals. Currently there is no mechanism for a procurement officer to communicate with any offeror submitting a competitive sealed proposal until after a determination of responsibility and likelihood of proposal award is completed, and a pool of likely awardees is identified to proceed with "discussions." This act addresses the problem of contractors being left out of the pool of potential awardees because of situations such as an apparent clerical error or unclear relevancy of information provided by an offeror, which currently prevents the offeror from progressing into the pool of responsible offerors eligible to proceed with "discussions."

Impact on the public: Creates an opportunity for clarification of apparent inadvertent mistakes made in procurement

proposals. Increases opportunities for offerors to be included into the potentially acceptable pool of submitted proposals eligible to progress into discussions.

Impact on the department and other agencies:
Increases communication ability to increase efficiency of procurement during initial responsibility or responsiveness determinations for competitive sealed proposal procurements.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: All agencies procuring goods and services pursuant to Chapter 103D, Hawaii Revised Statutes.

EFFECTIVE DATE: Upon approval.

DRAFT

____.B. NO._____

A BILL FOR AN ACT

RELATING TO COMMUNICATIONS DURING PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this act is to provide a method
2 for clarification communications between a purchasing agency and
3 an offeror, to increase effectiveness and efficiency in the
4 state procurement process during competitive sealed proposals by
5 increasing the potentially acceptable pool of submitted
6 proposals eligible to progress into discussions.

7 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is
8 amended as follows:

9 1. By adding a new definition to be appropriately
10 inserted and to read:

11 "Clarification Communication" means a limited exchange of
12 information between a purchasing agency and offerors that may
13 occur without entering into discussions."

14 SECTION 3. Section 103D-303, Hawaii Revised Statutes, is
15 amended to read as follows:

1 **§103D-303 Competitive sealed proposals.** (a) Competitive
2 sealed proposals may be used to procure goods, services, or
3 construction that are either not practicable or not advantageous
4 to the State to procure by competitive sealed bidding.

5 (b) Proposals shall be solicited through a request for
6 proposals.

7 (c) Notice of the request for proposals shall be given in
8 the same manner as provided in section 103D-302(c).

9 (d) Proposals shall be opened so as to avoid disclosure of
10 contents to competing offerors during the process of
11 evaluation. A register of proposals shall be prepared and shall
12 be open for public inspection after contract award.

13 (e) The request for proposals shall state the relative
14 importance of price and other evaluation factors.

15 (f) Clarification communications may be conducted to
16 clarify certain specific aspects of a bid or proposal for
17 responsibility or responsiveness determination, pursuant to
18 rules adopted by the policy board.

19 ([f]g) Discussions may be conducted with responsible
20 offerors who submit proposals determined to be reasonably likely
21 to be selected for a contract award for the purpose of
22 clarification to assure full understanding of, and
23 responsiveness to, the solicitation requirements. Offerors

1 shall be accorded fair and equal treatment with respect to any
2 opportunity for discussion and revision of proposals, and
3 revisions may be permitted after submissions and prior to award
4 for the purpose of obtaining best and final offers. In
5 conducting discussions, there shall be no disclosure of any
6 information derived from proposals submitted by competing
7 offerors.

8 (~~g~~h) Award shall be made to the responsible offeror
9 whose proposal is determined in writing to be the most
10 advantageous, taking into consideration price and the evaluation
11 factors set forth in the request for proposals. No other
12 factors or criteria shall be used in the evaluation. The
13 contract file shall contain the basis on which the award is
14 made.

15 (~~h~~i) In cases of awards made under this section, non-
16 selected offerors may submit a written request for debriefing to
17 the procurement officer within three working days after the
18 posting of the award of the contract. Thereafter, the
19 procurement officer shall provide the non-selected offeror a
20 prompt debriefing. Any protest by the non-selected offeror
21 pursuant to section 103D-701 following debriefing shall be filed
22 in writing with the procurement officer within five working days
23 after the date upon which the debriefing is completed.

1 (1) In addition to any other provisions of this
2 section, construction projects may be solicited through a
3 request for proposals to use the design-build method; provided
4 that:

5 (1) A request for proposals is issued to prequalify
6 offerors to select a short list of no more than three
7 responsible offerors, prior to the submittal of proposals;
8 provided that the number of offerors to be selected for the
9 short list shall be stated in the request for proposals and
10 prompt notice is given to all offerors as to which offerors have
11 been short-listed;

12 (2) A conceptual design fee may be paid to non-selected
13 offerors that submit a technically responsive proposal; provided
14 that the cost of the entire project is greater than \$1,000,000;
15 and

16 (3) The criteria for pre-qualification of offerors, design
17 requirements, development documents, proposal evaluation
18 criteria, terms of the payment of a conceptual design fee, or
19 any other pertinent information shall be stated in the request
20 for proposals.

21 SECTION 4. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

1 SECTION 5. This Act, upon its approval, shall take effect
2 upon approval.

3

4

INTRODUCED BY: _____

5

BY REQUEST

DRAFT

Report Title:

Communications During Procurement; Competitive Sealed Proposal

Description:

Allows for clarification communications during initial stages of competitive sealed proposal procurement process. Effective upon approval.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

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