

____.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 by adding a new definition to be appropriately
9 inserted and to read as follows:

10 "Clarification communication" means a limited written
11 exchange of clarifying information between a purchasing agency
12 and offerors that may occur without entering into discussions."

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

15 "**§103D-303 Competitive sealed proposals.** (a) Competitive
16 sealed proposals may be used to procure goods, services, or

1 construction that are either not practicable or not advantageous
2 to the State to procure by competitive sealed bidding.

3 (b) Proposals shall be solicited through a request for
4 proposals.

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

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

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

13 (f) Clarification communications may be conducted to
14 clarify specific apparent mistakes in a proposal for
15 responsibility or responsiveness determination, pursuant to
16 rules adopted by the policy board.

17 [~~f~~] (g) Discussions may be conducted with responsible
18 offerors who submit proposals determined to be reasonably likely
19 to be selected for a contract award for the purpose of
20 clarification to assure full understanding of, and
21 responsiveness to, the solicitation requirements. Offerors
22 shall be accorded fair and equal treatment with respect to any
23 opportunity for discussion and revision of proposals, and

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1 revisions may be permitted after submissions and prior to award
2 for the purpose of obtaining best and final offers. In
3 conducting discussions, there shall be no disclosure of any
4 information derived from proposals submitted by competing
5 offerors.

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

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

22 [~~i~~] (j) In addition to any other provisions of this
23 section, construction projects may be solicited through a

1 request for proposals to use the design-build method; provided
2 that:

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

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

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

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

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

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INTRODUCED BY: _____

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BY REQUEST

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.

JUSTIFICATION SHEET

REVISED DATE: November 26, 2014
1st DRAFT DATE: September 16, 2014

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-303, 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 bill addresses the problem of offerors 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.