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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1           SECTION 1. The legislature finds that the procurement  
2 process is in need of reform so that taxpayers dollars are not  
3 wasted. Remedial measures can cost taxpayers more money in the  
4 long term. The usual principle of awarding contracts to the  
5 lowest bidder may lead to substandard work, because contractors  
6 may artificially lower bids to gain a contract, in spite of a  
7 lack of qualifications or worse a record of poor performance in  
8 the past.

9           Therefore the purpose of this Act is to:

- 10           (1) Allow past performance to be factored into the future  
11 bid selection of a contractor, including a review of  
12 delays, cost overruns, and compliance with project  
13 requirements; and
- 14           (2) Include in each bid evaluation a review of assessments  
15 from past work from a potential contractor and allow a  
16 consideration of assessments of prior work in the  
17 awarding of contracts.



1 SECTION 2. Section 103D-302, Hawaii Revised Statutes, is  
2 amended by amending subsection (f) to read as follows:

3 "(f) Bids shall be evaluated based on the requirements set  
4 forth in the invitation for bids. These requirements may  
5 include criteria to determine acceptability such as inspection,  
6 testing, quality, workmanship, delivery, and suitability for a  
7 particular purpose. Those criteria that will affect the bid  
8 price and be considered in evaluation for award shall be  
9 ~~[objectively measurable,]~~ fair in the eyes of a reasonably  
10 objective taxpayer, such as discounts, transportation costs,  
11 ~~[and]~~ total or life cycle costs[-], and the bidder's past  
12 performance on projects of similar scope for public agencies,  
13 including delays, cost overruns, corrective actions, responses  
14 to notices of deficiencies, and assessments of the bidder's  
15 prior work. The invitation for bids shall set forth the  
16 evaluation criteria to be used. No criteria may be used in bid  
17 evaluation that are not set forth in the invitation for bids."

18 SECTION 3. Section 103D-303, Hawaii Revised Statutes, is  
19 amended by amending subsection (g) to read as follows:

20 "(g) Award shall be made to the responsible offeror whose  
21 proposal is determined in writing to be the most advantageous,  
22 taking into consideration price and the evaluation factors set



1 forth in the request for proposals[~~+~~], which shall include the  
2 offeror's past performance on projects of similar scope for  
3 public agencies, including delays, cost overruns, corrective  
4 actions, responses to notices of deficiencies, and assessments  
5 of the offeror's prior work. No [~~other factors or~~] criteria  
6 [~~shall~~] may be used in the evaluation[~~+~~] that are not set forth  
7 in the request for proposals. The contract file shall contain  
8 the basis on which the award is made."

9 SECTION 4. Section 103D-304, Hawaii Revised Statutes, is  
10 amended by amending subsection (e) to read as follows:

11 "(e) The selection criteria employed in descending order  
12 of importance shall be:

- 13 (1) Experience and professional qualifications relevant to  
14 the project type;
- 15 (2) Past performance on projects of similar scope for  
16 public agencies or private industry, including delays,  
17 corrective actions, [~~and other~~] responses to notices  
18 of deficiencies[~~+~~], and assessments of prior work;
- 19 (3) Capacity to accomplish the work in the required time;  
20 and
- 21 (4) Any additional criteria determined in writing by the  
22 selection committee to be relevant to the purchasing



1           agency's needs or necessary and appropriate to ensure  
2           full, open, and fair competition for professional  
3           services contracts."

4           SECTION 5. Section 103D-310, Hawaii Revised Statutes, is  
5 amended by amending subsection (b) to read as follows:

6           "(b) Whether or not an intention to bid is required, the  
7 procurement officer shall determine whether the prospective  
8 offeror has the financial ability, resources, skills,  
9 capability, and business integrity necessary to perform the  
10 work. For this purpose, the officer, in the officer's  
11 discretion, may require any prospective offeror to submit  
12 answers, under oath, to questions contained in a standard form  
13 of questionnaire to be prepared by the policy board. Whenever  
14 it appears from answers to the questionnaire or otherwise, that  
15 the prospective offeror is not fully qualified and able to  
16 perform the intended work, a written determination of  
17 nonresponsibility of an offeror shall be made by the head of the  
18 purchasing agency, in accordance with rules adopted by the  
19 policy board. The offeror shall be required to submit  
20 information, including information on and assessments of prior  
21 work of similar scope for public agencies. The unreasonable  
22 failure of an offeror to promptly supply information in



1 connection with an inquiry with respect to responsibility may be  
2 grounds for a determination of nonresponsibility with respect to  
3 such offeror. The decision of the head of the purchasing agency  
4 shall be final unless the offeror applies for administrative  
5 review pursuant to section 103D-709."

6 SECTION 6. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 7. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11 SECTION 8. If any provision of this Act, or the  
12 application thereof to any person or circumstance, is held  
13 invalid, the invalidity does not affect other provisions or  
14 applications of the Act that can be given effect without the  
15 invalid provision or application, and to this end the provisions  
16 of this Act are severable.

17 SECTION 9. This Act shall take effect on January 1, 2020.



**Report Title:**

Procurement; Past Performance; Criteria

**Description:**

Allows past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, corrective actions, and responses to notices of deficiencies. Effective January 1, 2020. (HB1374 HD1)

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

