
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 allow past
10 performance to be factored into the future bid selection of a
11 contractor, including a review of delays, cost overruns, and
12 compliance with project requirements.

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

15 "(f) Bids shall be evaluated based on the requirements set
16 forth in the invitation for bids. These requirements may
17 include criteria to determine acceptability such as inspection,
18 testing, quality, workmanship, delivery, and suitability for a



1 particular purpose. Those criteria that will affect the bid
2 price and be considered in evaluation for award shall be
3 objectively measurable, such as discounts, transportation costs,
4 ~~[and]~~ total or life cycle costs[-], and the bidder's past
5 performance on projects of similar scope for public agencies,
6 including delays, cost overruns, corrective actions, responses
7 to notices of deficiencies, and assessments of the bidder's
8 prior work, as applicable. The invitation for bids shall set
9 forth the evaluation criteria to be used. No criteria may be
10 used in bid evaluation that are not set forth in the invitation
11 for bids."

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

14 "(g) Award shall be made to the responsible offeror whose
15 proposal is determined in writing to be the most advantageous,
16 taking into consideration price and the evaluation factors set
17 forth in the request for proposals[-], which may include the
18 offeror's past performance on projects of similar scope for
19 public agencies, including delays, cost overruns, corrective
20 actions, responses to notices of deficiencies, and assessments
21 of the offeror's prior work, as applicable. No ~~[other factors~~
22 ~~or]~~ criteria ~~[shall]~~ may be used in the evaluation[-] that are



1 not set forth in the request for proposals. The contract file
2 shall contain the basis on which the award is made."

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

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

7 (1) Experience and professional qualifications relevant to
8 the project type;

9 (2) Past performance on projects of similar scope for
10 public agencies or private industry, including delays,
11 corrective actions, [~~and other~~] responses to notices
12 of deficiencies[+], and assessments of prior work;

13 (3) Capacity to accomplish the work in the required time;
14 and

15 (4) Any additional criteria determined in writing by the
16 selection committee to be relevant to the purchasing
17 agency's needs or necessary and appropriate to ensure
18 full, open, and fair competition for professional
19 services contracts."

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 6. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 7. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 8. 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 1/1/2020. (SD1)

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

