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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 strengthens contractors' access to valuable government  
3 contracts with a procurement system that strives to promote  
4 efficiency, effectiveness, and impartiality in procurement for  
5 State and county government. However, the legislature also  
6 finds that systematic abuses of performance loop-holes and the  
7 costliness of remedial measures wastes taxpayers dollars and  
8 allows for contracts to continually be awarded to contractors  
9 with a history of poor past performance. The legislature  
10 further finds that establishing a final performance evaluation  
11 during contract file closeout and providing contractor  
12 evaluation information during source selection will provide  
13 procurement officers with critical information about past  
14 performance for consideration in selection.

15           The legislature also finds that Hawaii Compliance Express  
16 is an effective electronic system that allows vendors doing  
17 business with state or county agencies to quickly and easily  
18 obtain proof that they are compliant with applicable laws,



1 expediting a vendor's ability to furnish proof of compliance  
2 with the requirements of section 103D-310, Hawaii Revised  
3 Statutes, by purchasing a "Certificate of Vendor Compliance" for  
4 the business industry at a nominal cost. The legislature  
5 further finds that requiring proof of current compliance with  
6 applicable laws upon submitting a bid will create efficiencies  
7 in source selection, increase contractor accountability, and  
8 increase procurement transparency.

9       The purpose of this Act is to provide for greater  
10 transparency and accountability in the procurement process, by  
11 emphasizing consideration of past performance during the  
12 procurement officer's source selection process, as well as  
13 requiring all offerors to verify compliance with applicable laws  
14 - all at a nominal cost to bidders, the purchasing agency, and  
15 the taxpayers of the State.

16       SECTION 2. Section 103D-310, Hawaii Revised Statutes, is  
17 amended to read as follows:

18       "**§103D-310 Responsibility of offerors.** (a) Unless the  
19 policy board, by rules, specifies otherwise, before submitting  
20 an offer, a prospective offeror, not less than ten calendar days  
21 prior to the day designated for opening offers, shall give



1 written notice of the intention to submit an offer to the  
2 procurement officer responsible for that particular procurement.

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



1 offeror applies for administrative review pursuant to section  
2 103D-709.

3 (c) All offerors, upon [~~award of contract,~~] submission of  
4 bid, shall comply with all laws governing entities doing  
5 business in the State, including chapters 237, 383, 386, 392,  
6 and 393. Offerors shall produce documents to the procuring  
7 officer to demonstrate compliance with this subsection. Any  
8 offeror making a false affirmation or certification under this  
9 subsection shall be suspended from further offerings or awards  
10 pursuant to section 103D-702. The procuring officer shall  
11 verify compliance with this subsection for all contracts awarded  
12 pursuant to sections 103D-302, 103D-303, 103D-304, and 103D-306,  
13 and for contracts and procurements of \$2,500 or more awarded  
14 pursuant to section 103D-305; provided that the attorney general  
15 may waive the requirements of this subsection for contracts for  
16 legal services if the attorney general certifies in writing that  
17 comparable legal services are not available in this State.

18 (d) Information furnished by an offeror pursuant to this  
19 section shall not be disclosed to any person except to law  
20 enforcement agencies as provided by chapter 92F."

21 SECTION 3. The state procurement office and office of the  
22 attorney general shall modify corresponding administrative



1 rules, procedures, and contracts in conformity with the  
2 statutory amendments above, pursuant to chapter 91.

3 SECTION 4. This act shall not be applied so as to impair  
4 any contract existing as of the effective date of this Act in a  
5 manner violative of either the Hawaii State Constitution or  
6 Article I, section 10, of the United States Constitution.

7 SECTION 5. This Act shall not be applied so as to impair  
8 any contract existing as of the effective date of this Act in a  
9 manner violative of either the Hawaii State Constitution or  
10 Article I, section 10, of the United States Constitution.

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

13 SECTION 7. This Act shall take effect on July 1, 2014.  
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INTRODUCED BY:

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# H.B. NO. 2623

**Report Title:**

Procurement; Accountability; Past Performance

**Description:**

Requires all offerors of procurement solicitations to provide a Certificate of Vendor Compliance at the start of a procurement bidding process and emphasizes consideration of past performance in source selection.

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

