

JAN 24 2013

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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, as contractors may  
6 artificially lower bids to gain a contract, in spite of a lack  
7 of qualification, or worse yet, poor performance in the past.

8           The purpose, therefore, of this Act is to:

9           (1) Allow past performance to be factored into future bid  
10 selection of a contractor including a review of  
11 delays, cost overruns, and compliance with project  
12 requirements; and

13           (2) Include in each bid evaluation a review of assessments  
14 from past work from a potential contractor, and allow  
15 departments to consider the assessments when making  
16 contract awards.

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



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

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

18           "(g) Award shall be made to the responsible offeror whose  
19 proposal is determined in writing to be the most advantageous,  
20 taking into consideration price and the evaluation factors set  
21 forth in the request for proposals[-], which shall include the  
22 offeror's past performance on projects of similar scope for



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

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

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

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



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

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

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

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

16 SECTION 9. This Act shall take effect on July 1, 2013.

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INTRODUCED BY:

*James Mercedes K.*



# S.B. NO. 1380

**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, and compliance with project requirements.

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

