
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 clear legislative direction to award state
3 contracts to responsible bidders or offerors through the state
4 procurement process, to increase accountability with performance
5 on state contracts, and to more efficiently utilize taxpayer
6 dollars. Some state contracts may currently be awarded to the
7 lowest bidder through the invitation for bid process without
8 regard to poor past performance. Such bidders may be considered
9 qualified despite poor performance on state, federal or private
10 contracts in the past, which may result in repeated
11 inefficiencies and substandard work.

12 The purpose of this Act is to:

- 13 (1) Require past performance to be considered in future
14 bid selection of a contractor; and
15 (2) Require departments to consider available assessments
16 of previous performance on relevant and recent



1 government and private contracts when making contract
2 awards.

3 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding a new definition to be appropriately inserted
6 and to read:

7 "Past performance" means available recent and relevant
8 performance of a contractor on state, federal, or private
9 contracts that shall be considered in a responsibility
10 determination within the relevance of the current solicitation,
11 including but not limited to legal action."

12 2. By amending the definition of "responsible bidder or
13 offeror" to read:

14 "Responsible bidder or offeror" means a person who has the
15 capability in all respects to perform fully the contract
16 requirements, and the integrity and reliability [which] that
17 will assure good faith performance[-], pursuant to the
18 responsibility determination standards adopted by the policy
19 board."

20 SECTION 3. Section 103D-302, Hawaii Revised Statutes, is
21 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 as
7 objectively measurable[-] as possible, such as discounts,
8 transportation costs, [~~and~~] total or life cycle costs[-], and
9 the bidder's past performance on state, federal, or private
10 contracts of similar scope for public agencies, including but
11 not limited to notices of deficiencies, legal actions, failure
12 to complete a procurement contract, and assessments of the
13 bidder's prior work. The invitation for bids shall set forth
14 the evaluation criteria to be used. No criteria may be used in
15 bid evaluation that are not set forth in the invitation for
16 bids."

17 SECTION 4. Section 103D-303, Hawaii Revised Statutes, is
18 amended by amending subsection (g) to read as follows:

19 "(g) Award shall be made to the responsible offeror whose
20 proposal is determined in writing to be the most advantageous,
21 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 state, federal, or private
 3 contracts of similar scope for public agencies, including but
 4 not limited to notices of deficiencies, legal actions, failure
 5 to complete a procurement contract, and assessments of the
 6 offeror's prior work. No ~~[other factors or]~~ criteria ~~[shall]~~
 7 may be used in the evaluation[-] that are not set forth in the
 8 request for proposals. The contract file shall contain the
 9 basis on which the award is made."

10 SECTION 5. Section 103D-306, Hawaii Revised Statutes, is
 11 amended by amending subsection (a) to read as follows:

12 "(a) A contract may be awarded for goods, services, or
 13 construction without competition when the head of a purchasing
 14 agency determines in writing that there is only one source for
 15 the required good, service, or construction, the determination
 16 is reviewed and approved by the chief procurement officer, the
 17 written determination is posted in the manner described in rules
 18 adopted by the policy board, a review of past performance has
 19 been conducted, and no objection is outstanding. The written
 20 determination, any objection, past performance evaluations



1 relied upon, and a written summary of the disposition of any
2 objection shall be included in the contract file."

3 SECTION 6. Section 103D-310, Hawaii Revised Statutes, is
4 amended by amending subsection (b) to read as follows:

5 "(b) Whether or not an intention to bid is required, the
6 procurement officer shall ~~[determine]~~ make a responsibility
7 determination for any awardee, pursuant to rules adopted by the
8 policy board, including whether the prospective offeror has the
9 financial ability, resources, skills, capability, and business
10 integrity necessary to perform the work. For ~~[this]~~ the
11 purpose ~~[, the]~~ of making a responsibility determination, the
12 procurement officer shall possess or obtain available
13 information sufficient to be satisfied that a prospective
14 offeror meets the applicable standards set forth by the policy
15 board. The procurement officer shall consider past performance
16 of the offeror as it applies to a responsibility determination
17 for the current solicitation. The officer, in the officer's
18 discretion, may also require any prospective offeror to submit
19 answers, under oath, to questions contained in a standard form
20 of questionnaire to be prepared by the policy board. Whenever
21 it appears from answers to the questionnaire or otherwise, that



1 the prospective offeror is not fully qualified and able to
 2 perform the intended work, a written determination of
 3 nonresponsibility of an offeror shall be made by the head of the
 4 purchasing agency, in accordance with rules adopted by the
 5 policy board. The unreasonable failure of an offeror to
 6 promptly supply information in connection with an inquiry with
 7 respect to responsibility may be grounds for a determination of
 8 nonresponsibility with respect to such offeror. The decision of
 9 the head of the purchasing agency shall be final unless the
 10 offeror applies for administrative review pursuant to section
 11 103D-709."

12 SECTION 7. Section 103D-320, Hawaii Revised Statutes, is
 13 amended to read as follows:

14 "[+]§103D-320[+] Retention of procurement records[-];
 15 evaluations. All procurement records shall be retained and
 16 disposed of in accordance with chapter 94 and records retention
 17 guidelines and schedules approved by the comptroller[-];
 18 provided that upon completion of a procurement contract, the
 19 department that issued the request for proposals shall evaluate
 20 the work and performance of the respective contractors and
 21 maintain the evaluations in the department's files."



1 SECTION 8. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$ or so much
3 thereof as may be necessary for fiscal year 2016-2017 for the
4 purposes of implementing this Act.

5 The sum appropriated shall be expended by the state
6 procurement office for the purposes of this Act.

7 SECTION 9. 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 10. 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 11. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 12. This Act shall take effect on February 19,
19 2022.



Report Title:

Procurement; Past Performance; Criteria; Sole Source;
Evaluation; Appropriation

Description:

Requires past performance to be factored into future bid selection of a contractor. Defines past performance. Requires past performance to be considered in sole source procurement. Requires that upon completion of a procurement contract, the department that issued the request for proposal shall evaluate the work and performance of the respective contractors and maintain the evaluations in the department's files. Appropriates funds. (SB2501 HD1)

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