
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 contracts in the
10 past, which may result in repeated inefficiencies and
11 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
17 government contracts when making contract awards.



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

3 1. By adding a new definition to be appropriately inserted
4 and to read:

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

10 2. By amending the definition of "responsible bidder or
11 offeror" to read:

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

18 SECTION 3. Section 103D-302, Hawaii Revised Statutes, is
19 amended by amending subsection (f) to read as follows:

20 "(f) Bids shall be evaluated based on the requirements set
21 forth in the invitation for bids. These requirements may



1 include criteria to determine acceptability such as inspection,
2 testing, quality, workmanship, delivery, and suitability for a
3 particular purpose. Those criteria that will affect the bid
4 price and be considered in evaluation for award shall be as
5 objectively measurable[-] as possible, such as discounts,
6 transportation costs, [~~and~~] total or life cycle costs[-], and
7 the bidder's past performance on projects of similar scope for
8 public agencies, including but not limited to notices of
9 deficiencies, legal actions, failure to complete a procurement
10 contract, and assessments of the bidder's prior work. The
11 invitation for bids shall set forth the evaluation criteria to
12 be used. No criteria may be used in bid evaluation that are not
13 set forth in the invitation for bids."

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

16 "(g) Award shall be made to the responsible offeror whose
17 proposal is determined in writing to be the most advantageous,
18 taking into consideration price and the evaluation factors set
19 forth in the request for proposals[-], which shall include the
20 offeror's past performance on projects of similar scope for
21 public agencies, including but not limited to notices of



1 deficiencies, legal actions, failure to complete a procurement
2 contract, and assessments of the offeror's prior work. No
3 [~~other factors or~~] criteria [~~shall~~] may be used in the
4 evaluation[-] that are not set forth in the request for
5 proposals. The contract file shall contain the basis on which
6 the award is made."

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

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

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



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



1 policy board. The unreasonable failure of an offeror to
2 promptly supply information in connection with an inquiry with
3 respect to responsibility may be grounds for a determination of
4 nonresponsibility with respect to such offeror. The decision of
5 the head of the purchasing agency shall be final unless the
6 offeror applies for administrative review pursuant to section
7 103D-709."

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

10 "[+]§103D-320[+] Retention of procurement records[-];
11 evaluations. All procurement records shall be retained and
12 disposed of in accordance with chapter 94 and records retention
13 guidelines and schedules approved by the comptroller[-];
14 provided that upon completion of a procurement contract, the
15 department that issued the request for proposals shall evaluate
16 the work and performance of the respective contractors and
17 maintain the evaluations in the department's files."

18 SECTION 8. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$500,000 or so much
20 thereof as may be necessary for fiscal year 2016-2017 for the
21 purposes of implementing this Act.



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

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

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

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

14 SECTION 12. This Act shall take effect on January 1, 2017;
15 provided that section 8 shall take effect on July 1, 2016.

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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. Effective January 1, 2017. (SD1)

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