

JAN 23 2015

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 invitation for bid process without regard
8 to poor past performance, which may result in repeated
9 inefficiencies and substandard work, and be considered qualified
10 despite poor performance on state contracts in the past.

11 The purpose of this Act is to:

12 (1) Require past performance to be considered in future
13 bid selection of a contractor including a review of
14 delays, number of contract change orders, contract
15 extensions, cost overruns, and corrective actions; and



1 (2) Require departments to consider available assessments
2 of previous performance on relevant and recent
3 government contracts when making contract awards.

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

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

8 "Past performance" means available recent and relevant
9 performance by the contractor on state, federal, or private
10 contracts to be considered as a responsibility determination
11 within the relevance of the current solicitation."

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[7] as possible, such as discounts,
8 transportation costs, [~~and~~] total or life cycle costs[~~-~~], and
9 the bidder's past performance on projects of similar scope for
10 public agencies, including delays, number of contract change
11 orders, contract extensions, cost overruns, corrective actions,
12 responses to notices of deficiencies, 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 projects of similar scope for
3 public agencies, including delays, number of contract change
4 orders, contract extensions, cost overruns, corrective actions,
5 responses to notices of deficiencies, 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-304, Hawaii Revised Statutes, is
11 amended by amending subsection (e) to read as follows:

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

14 (1) Experience and professional qualifications relevant to
15 the project type;

16 (2) Past performance on projects of similar scope for
17 public agencies or private industry, including
18 corrective actions [~~and other~~], responses to notices
19 of deficiencies[+], and assessments of prior work;

20 (3) Capacity to accomplish the work in the required time;
21 and



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

6 SECTION 6. Section 103D-306, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

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

19 SECTION 7. Section 103D-310, Hawaii Revised Statutes, is
20 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 responsibility determination, the procurement
8 officer shall possess or obtain available information sufficient
9 to be satisfied that a prospective offeror meets the applicable
10 standards set forth by the policy board. The procurement
11 officer shall consider past performance of the offeror as it
12 applies to a responsibility determination for the current
13 solicitation. The officer, in the officer's discretion, may
14 also require any prospective offeror to submit answers, under
15 oath, to questions contained in a standard form of questionnaire
16 to be prepared by the policy board. Whenever it appears from
17 answers to the questionnaire or otherwise, that the prospective
18 offeror is not fully qualified and able to perform the intended
19 work, a written determination of nonresponsibility of an offeror
20 shall be made by the head of the purchasing agency, in
21 accordance with rules adopted by the policy board. The



1 unreasonable failure of an offeror to promptly supply
2 information in connection with an inquiry with respect to
3 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 8. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$500,000 or so much
10 thereof as may be necessary for fiscal year 2015-2016 and the
11 same sum or so much thereof as may be necessary for fiscal year
12 2016-2017 for the purposes of implementing this Act.

13 The sums appropriated shall be expended by the state
14 procurement office for the purposes of this Act.

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

18 SECTION 10. If any provision of this Act, or the
19 application thereof to any person or circumstance, is held
20 invalid, the invalidity does not affect other provisions or
21 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions
2 of this Act are severable.

3 SECTION 11. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 12. This Act shall take effect on January 1, 2016;
6 provided that section 8 shall take effect on July 1, 2015.

7

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S.B. NO. 495

Report Title:

Procurement; Past Performance; Criteria; Sole Source;
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. Appropriates funds. Takes effect on 1/1/2016.

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