
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 PART I

2 SECTION 1. The legislature finds that the procurement
3 process is in need of clear legislative direction to award state
4 contracts to responsible bidders or offerors through the state
5 procurement process, increase accountability with performance on
6 state contracts, and more efficiently utilize taxpayer dollars.
7 Some state contracts may currently be awarded to the lowest
8 bidder through the invitation for bid process without regard to
9 poor past performance. Such bidders may be considered qualified
10 despite poor performance on state, federal, or private contracts
11 in the past, which may result in repeated inefficiencies and
12 substandard work.

13 The purpose of this part is to:

14 (1) Require that past performance be considered in future
15 bid selection of contractors for sole source contracts
16 and any competitive sealed bid or proposal contracts
17 that exceeds the small purchase threshold;



- 1 (2) Require procurement officers to consider specific
- 2 factors, including past performance, when making a
- 3 determination of offeror responsibility; and
- 4 (3) Require procurement officers to conduct past
- 5 performance evaluations to be conducted at least
- 6 annually and at the time the work under a contract or
- 7 order is completed, and maintained in the department's
- 8 files.

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

11 "(f) Bids shall be evaluated based on the requirements set
12 forth in the invitation for bids. These requirements may
13 include criteria to determine acceptability such as inspection,
14 testing, quality, workmanship, delivery, and suitability for a
15 particular purpose. Those criteria that will affect the bid
16 price and be considered in evaluation for award shall be
17 objectively measurable, such as discounts, transportation costs,
18 and total or life cycle costs. Past performance shall be
19 evaluated in all bids expected to meet or exceed the small
20 purchase threshold. The invitation for bids shall set forth the



1 evaluation criteria to be used. No criteria may be used in bid
2 evaluation that are not set forth in the invitation for bids."

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

5 "(e) The request for proposals shall state the relative
6 importance of price and other evaluation factors. Past
7 performance shall be evaluated in all solicitations expected to
8 meet or exceed the small purchase threshold."

9 SECTION 4. Section 103D-306, Hawaii Revised Statutes, is
10 amended by amending subsection (a) to read as follows:

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



1 SECTION 5. Section 103D-310, Hawaii Revised Statutes, is
2 amended by amending subsections (a) and (b) to read as follows:

3 " (a) [~~Unless the policy board, by rules, specifies~~
4 ~~otherwise, before submitting an offer, a prospective offeror,~~
5 ~~not less than ten calendar days prior to the day designated for~~
6 ~~opening offers, shall give written notice of the intention to~~
7 ~~submit an offer to the procurement officer responsible for that~~
8 ~~particular procurement.~~] Purchases shall be made from, and
9 contracts shall be awarded to, responsible prospective
10 contractors only.

11 (b) [~~Whether or not an intention to bid is required, the]~~
12 The procurement officer shall determine whether the prospective
13 offeror has the financial ability, satisfactory past
14 performance, resources, skills, capability, and business
15 integrity necessary to perform the work. For this purpose, the
16 officer, in the officer's discretion, may require any
17 prospective offeror to submit answers, under oath, to questions
18 contained in a standard form of questionnaire to be prepared by
19 the policy board. Whenever it appears from answers to the
20 questionnaire or otherwise, that the prospective offeror is not
21 fully qualified and able to perform the intended work, a written



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

10 SECTION 6. Section 103D-320, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "[+]§103D-320[+] Retention of procurement records[-];
13 evaluations. All procurement records shall be retained and
14 disposed of in accordance with chapter 94 and records retention
15 guidelines and schedules approved by the comptroller. Written
16 past performance evaluations for all procurements over the small
17 purchase threshold shall be conducted at least annually and at
18 the time the work under a contract or order is completed,
19 maintained in the department's procurement files, and in the
20 statewide past performance database."

21 PART II



1 SECTION 7. The purpose of this part is to form an initial
2 procurement working group.

3 SECTION 8. (a) There is established the initial
4 procurement working group, which shall be made up of procurement
5 representatives from the state and county. The working group
6 shall:

7 (1) Collect data to determine the magnitude of the
8 problem;

9 (2) Document existing practices and processes, including
10 but not limited to procurement methods; preparation of
11 solicitation documents; evaluation and basis of award,
12 including the consideration of past performance when
13 deemed appropriate; post award contract
14 administration; suspension; and debarment;

15 (3) Identify lessons learned from case studies of projects
16 identified as having bad contractors or
17 subcontractors;

18 (4) Identify shortfalls, needs, gaps, or challenges in
19 laws and rules, processes, knowledge, and resources;



- 1 (5) Find potential methods or mechanisms available to
2 address the problems identified, including but not
3 limited to the use of a past performance database, by:
- 4 (A) Examining the pros and cons of each potential
5 method or mechanism;
- 6 (B) Determining the most promising methods or
7 mechanisms to determine requirements for
8 implementation, including but not limited to
9 time, costs, and resources;
- 10 (C) Obtaining industry feedback; and
- 11 (D) Prioritizing for purposes of recommendations.
- 12 (b) The initial procurement working group will consist of
13 the following members or their designees:
- 14 (1) State procurement administrator;
- 15 (2) Comptroller;
- 16 (3) Attorney General;
- 17 (4) Chief information officer;
- 18 (5) University of Hawaii chief procurement officer;
- 19 (6) Department of education chief procurement officer;
- 20 (7) Department of transportation head of procurement
21 authority;



- 1 (8) County of Hawaii chief procurement officer;
2 (9) County of Maui chief procurement officer;
3 (10) County of Kauai chief procurement officer; and
4 (11) City and County of Honolulu chief procurement officer.

5 (c) The initial procurement working group shall bring
6 together the construction and information technology industry
7 leaders and organizations to review and discuss any gaps or
8 problems with the proposed recommendations prior to finalization
9 of the working group's recommendations to the legislature.

10 SECTION 9. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$250,000 or so much
12 thereof as may be necessary for fiscal year 2019-2020 and the
13 same sum or so much thereof as may be necessary for fiscal year
14 2020-2021 for the purposes of implementing this Act; provided
15 that the sums shall be allocated as follows:

- 16 (1) \$50,000 to develop and create a statewide past
17 performance database; and
18 (2) \$200,000 for the outsourcing of two full-time
19 equivalent (2.0 FTE) positions to assist with
20 developing rules, including facilitating community and
21 government meetings and benchmarking analysis in



1 determining the most fair, objective, and descriptive
2 procedures for the State.

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

5 PART III

6 SECTION 10. This Act does not affect rights and duties
7 that matured, penalties that were incurred, and proceedings that
8 were begun before its effective date.

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

15 SECTION 12. Statutory material to be repealed is bracketed
16 and stricken. New statutory material is underscored.

17 SECTION 13. This Act shall take effect on July 1, 2019;
18 provided that the timetable for the incorporation of past
19 performance evaluations for all procurements over the small
20 purchase threshold shall be initiated by January 1, 2021.



Report Title:

Procurement; Past Performance; Criteria; Source Selection; Evaluation; Initial Procurement Working Group; Appropriation

Description:

Requires procurement officers to complete periodic performance evaluations of certain contractors. Establishes factors to be included in any evaluation, consideration, or review of past performance, and ratings standards for those factors. Requires past performance to be factored into future bid selection of contractors for certain contracts. Requires past performance to be considered in all sole source procurement and any competitive contracts that exceeds the small purchase threshold. Requires the development and implementation of a statewide past performance database. Requires the establishment of an initial procurement working group that will evaluate and make recommendations to the legislature about the effectiveness of existing procurement methods. Appropriates funds. (SD1)

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

