

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

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

The purpose of this Act is to:

- (1) Require that past performance be considered in future bid selection of contractors for sole source contracts and any competitive sealed bid or proposal contracts that meet or exceed the small purchase threshold;



(2) Require procurement officers to consider specific factors, including past performance, when making a determination of offeror responsibility; and

(3) Require procurement officers to conduct past performance evaluations, at least annually and at the time the work under a contract or order is completed, and maintain the evaluations in the department's files.

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

"(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. Those criteria that will affect the bid price and be considered in evaluation for award shall be objectively measurable, such as discounts, transportation costs, and total or life cycle costs. Past performance shall be evaluated in all bids expected to meet or exceed the small 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. The request  
7 for proposals shall further state that past performance shall be  
8 evaluated in all solicitations expected to meet or exceed the  
9 small purchase threshold."

10 SECTION 4. 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 5. Section 103D-310, Hawaii Revised Statutes, is  
4 amended by amending subsections (a) and (b) to read as follows:

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

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



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

12 SECTION 6. 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. Written  
18 past performance evaluations for all procurements over the small  
19 purchase threshold shall be conducted at least annually and at  
20 the time the work under a contract or order is completed. The  
21 past performance evaluations shall be maintained in the



1 department's procurement files and in the statewide past  
2 performance database."

3 SECTION 7. 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 8. 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 9. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 10. This Act shall take effect upon its approval.

15  
INTRODUCED BY: 



# S.B. NO. 788

**Report Title:**

Procurement; Past Performance; Criteria; Source Selection;  
Evaluation

**Description:**

Requires that past performance be considered in the bid selection of contractors for certain contracts. Requires procurement officers to consider past performance and conduct past performance evaluations and maintain the record of the evaluations.

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

