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# A BILL FOR AN ACT

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

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

1           SECTION 1. The purpose of this Act is to preserve  
2 administrative resources by ensuring that only qualified  
3 contractors and subcontractors are awarded capital improvement  
4 projects based on past experiences, quality craftwork, efficient  
5 operation, and safety. The timely completion of projects is not  
6 necessarily ensured by awarding a capital improvement project  
7 solely on the basis of the low bid.

8           This Act enhances government's ability to identify the  
9 lowest "responsible bidder" on all capital improvement projects  
10 by instituting more comprehensive submission requirements.

11           The State of Hawaii and its counties have a compelling  
12 proprietary interest in awarding contracts for capital  
13 improvement projects in a manner that will yield successful  
14 project delivery in terms of work that is performed safely at  
15 the lowest responsible cost and in accordance with the highest  
16 possible standards of quality and efficiency.



1           Securing successful delivery of capital improvement  
2 projects presents significant challenges due to the complex,  
3 unpredictable, and inherently dangerous nature of the  
4 construction industry, where errors in project planning or  
5 execution, including those caused by inexperienced or  
6 unqualified craft labor personnel, can result in serious safety  
7 risks, excessive cost overruns, flawed or inferior project  
8 quality, and disruptions in project schedules that may delay the  
9 use of critical government functions or facilities.

10           SECTION 2. Section 103D-104, Hawaii Revised Statutes, is  
11 amended by amending the definition of "past performance" to read  
12 as follows:

13           ""Past performance" means available recent and relevant  
14 performance of a contractor, including positive, negative, or  
15 lack of previous experience, [~~on contracts that shall~~] by the  
16 contractor on State, federal, or private contracts to be  
17 considered [~~in~~] as a responsibility determination within the  
18 relevance of the current solicitation, including the  
19 considerations of section 103D-702(b)."

20           SECTION 3. Section 103D-310, Hawaii Revised Statutes, is  
21 amended to read as follows:



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1           "§103D-310 Responsibility of offerors. (a) Unless the  
2 policy board, by rules, specifies otherwise, before submitting  
3 an offer, a prospective offeror, not less than ten calendar days  
4 prior to the day designated for opening offers, shall give  
5 written notice of the intention to submit an offer to the  
6 procurement officer responsible for that particular procurement.

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



1 written determination of nonresponsibility of an offeror shall  
2 be made by the head of the purchasing agency, in accordance with  
3 rules adopted by the policy board. The unreasonable failure of  
4 an 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 offeror.  
7 The decision of the head of the purchasing agency shall be final  
8 unless the offeror applies for administrative review pursuant to  
9 section 103D-709.

10 The standard form questionnaire shall include the  
11 following:

- 12 (1) Evidence of compliance with all provisions of chapter  
13 104 for the past five years or, if the offeror has  
14 been operating for less than five years, the amount of  
15 time the offeror has been in operation;
- 16 (2) Record of any complaints that required corrective  
17 action during the course of a project;
- 18 (3) Evidence of participation in applicable apprenticeship  
19 programs; and
- 20 (4) Safety and health information:
- 21 (A) Written safety policy;



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- 1           (B) Copies of OSHA 300 log required by title 29 Code
- 2           of Federal Regulations part 1904;
- 3           (C) Contractor safety and health questionnaire;
- 4           (D) Verification that individuals are properly
- 5           classified as employees or independent
- 6           contractors; and
- 7           (E) Statements of past performance for five years,
- 8           including:
  - 9           (i) Original price and final price of projects;
  - 10           and
  - 11           (ii) Violations or pending violations within the
  - 12           past five years.

13           The procurement officer shall consider all available recent  
14 and relevant past performance of the offeror.

15           (c) All offerors, upon award of contract, shall comply  
16 with all laws governing entities doing business in the State,  
17 including chapters 237, 383, 386, 392, and 393. Offerors shall  
18 ~~[produce documents to the procuring officer to demonstrate~~  
19 ~~compliance with this subsection.]~~ submit the required standard  
20 form questionnaire on an annual basis to be prequalified as  
21 "responsible" for projects, by the procurement office. Any



1 offeror making a false affirmation or certification under this  
2 subsection shall be suspended from further offerings or awards  
3 pursuant to section 103D-702. The procuring officer shall  
4 verify compliance with this subsection for all contracts awarded  
5 pursuant to sections 103D-302, 103D-303, 103D-304, and 103D-306,  
6 and for contracts and procurements of \$2,500 or more awarded  
7 pursuant to section 103D-305; provided that the attorney general  
8 may waive the requirements of this subsection for contracts for  
9 legal services if the attorney general certifies in writing that  
10 comparable legal services are not available in this State.

11 (d) Information furnished by an offeror pursuant to this  
12 section, on the standard form questionnaire, shall ~~[not be~~  
13 ~~disclosed to any person except to law enforcement agencies]~~ be  
14 available for public inspection or duplication as provided by  
15 chapter 92F."

16 SECTION 4. Statutory material to be repealed is bracketed  
17 and stricken. New statutory material is underscored.



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1 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: 

By Request

**JAN 17 2023**



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**Report Title:**

Maui County Council Package; Procurement; Past Performance;  
Contractors; Responsibilities of Offerors

**Description:**

Requires procurement officers, when assessing an offeror's responsibility, to require the offeror to submit answers to questions contained in a standard questionnaire. Establishes certain questions that must be included in the questionnaire. Requires offerors to submit the questionnaire on an annual basis to be prequalified as responsible for projects by the procurement office. Provides that the information furnished in response to the questionnaire shall be available for public inspection and duplication.

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

