

JAN 24 2019

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, increase accountability with performance on
5 state contracts, and more efficiently utilize taxpayer dollars.
6 Some state contracts may currently be awarded to the lowest
7 bidder through the invitation for bid process without regard to
8 poor past performance. Such bidders may be considered qualified
9 despite poor performance on state, federal, or private contracts
10 in the past, which may result in repeated inefficiencies and
11 substandard work.

12 The purpose of this Act is to:

13 (1) Require that past performance be considered in future
14 bid selection of contractors for sole source contracts
15 and any competitive sealed bid or proposal contracts
16 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;
- 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; and
- 9 (4) Develop and implement a statewide past performance
- 10 database that collects past performance evaluations to
- 11 be used as a resource when evaluating past performance
- 12 in future procurements.

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

15 "(f) Bids shall be evaluated based on the requirements set
16 forth in the invitation for bids. These requirements may
17 include criteria to determine acceptability such as inspection,
18 testing, quality, workmanship, delivery, and suitability for a
19 particular purpose. Those criteria that will affect the bid
20 price and be considered in evaluation for award shall be
21 objectively measurable, such as discounts, transportation costs,



1 and total or life cycle costs. Past performance shall be
2 evaluated in all bids expected to meet or exceed the small
3 purchase threshold. The invitation for bids shall set forth the
4 evaluation criteria to be used. No criteria may be used in bid
5 evaluation that are not set forth in the invitation for bids."

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

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

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

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



1 determination, any objection, past performance evaluations
2 relied upon, and a written summary of the disposition of any
3 objection shall be included in the contract file."

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

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

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



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

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

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



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

3 SECTION 7. (a) The state procurement office shall develop
4 and implement the use of a statewide past performance database
5 that collects past performance evaluations to be used as a
6 resource when evaluating past performance in future
7 procurements.

8 (b) The state procurement office shall adopt rules in
9 accordance with chapter 91, Hawaii Revised Statutes, to
10 implement this Act.

11 (c) The state procurement office shall submit a report on
12 the progress of the administrative rules and development of the
13 statewide past performance database to the legislature no later
14 than twenty days prior to the convening of the regular session
15 of 2020.

16 SECTION 8. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$292,000 or so much
18 thereof as may be necessary for fiscal year 2019-2020 and the
19 same sum or so much thereof as may be necessary for fiscal year
20 2020-2021 for the purposes of implementing this Act; provided
21 that the sums shall be allocated as follows:



- 1 (1) \$50,000 to develop and create a statewide past
- 2 performance database;
- 3 (2) \$50,000 for training; and
- 4 (3) \$192,000 for the outsourcing of two full-time
- 5 equivalent (2.0 FTE) positions to assist with
- 6 developing rules, including facilitating community and
- 7 government meetings and benchmarking analysis in
- 8 determining the most fair, objective, and descriptive
- 9 procedures for the State.

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

12 SECTION 9. This Act does not affect rights and duties that
13 matured, penalties that were incurred, and proceedings that were
14 begun before its effective date.

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



1 SECTION 11. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 12. This Act shall take effect on July 1, 2019;
4 provided that the timetable for the incorporation of past
5 performance evaluations for all procurements over the small
6 purchase threshold shall be initiated by January 1, 2021.

7

INTRODUCED BY:

Stamatis
Joraine L. George



S.B. NO. 1333

Report Title:

Procurement; Past Performance; Criteria; Source Selection; Evaluation; 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. Appropriates funds.

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