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# A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

PART I

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 poor past performance. Such bidders may be considered qualified despite poor performance on state, federal, or private contracts in the past, which may result in repeated inefficiencies and substandard work.

The purpose of this part 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 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 at least annually and at the  
6           time the work under a contract or order is completed,  
7           and maintain the evaluations 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. The  
19 past performance evaluations shall be maintained in the  
20 department's procurement files and in the statewide past  
21 performance database."



1 PART II

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

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

8 (1) Identify issues relating to existing procurement  
9 methods and collect data to determine the magnitude of  
10 the problem;

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

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

20 (4) Identify shortfalls, needs, gaps, or challenges in  
21 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; and
- 12 (6) Recommend specific objective criteria to be used to  
13 evaluate the past performance of bidders in a  
14 competitive sealed bid procurement.
- 15 (b) The initial procurement working group will consist of  
16 the following members or their designees:
- 17 (1) State procurement administrator, who shall serve as  
18 chair;
- 19 (2) Comptroller;
- 20 (3) Attorney General;
- 21 (4) Chief information officer;



- 1 (5) University of Hawaii chief procurement officer;
- 2 (6) Department of education chief procurement officer;
- 3 (7) Director of transportation;
- 4 (8) County of Hawaii chief procurement officer;
- 5 (9) County of Maui chief procurement officer;
- 6 (10) County of 'Kauai chief procurement officer; and
- 7 (11) City and county of Honolulu chief procurement officer.

8 (c) The initial procurement working group shall submit a  
9 report of its findings and recommendations, including any  
10 proposed legislation, to the legislature no later than  
11 November 1, 2020; provided that the working group shall bring  
12 together leaders and organizations from the construction and  
13 information technology industry to review and discuss any gaps  
14 or problems with the proposed recommendations prior to  
15 finalization of the working group's recommendations to the  
16 legislature.

17 PART III

18 SECTION 9. There is appropriated out of the general  
19 revenues of the State of Hawaii the sum of \$250,000 or so much  
20 thereof as may be necessary for fiscal year 2019-2020 and the  
21 same sum or so much thereof as may be necessary for fiscal year





1 2020-2021 for the purposes of implementing this Act; provided  
2 that the sums shall be allocated as follows:

- 3 (1) \$50,000 to develop and create a statewide past  
4 performance database; and
- 5 (2) \$200,000 for the outsourcing of two full-time  
6 equivalent (2.0 FTE) positions to assist with  
7 developing rules, including facilitating community and  
8 government meetings, and benchmarking analysis in  
9 determining the most fair, objective, and descriptive  
10 procedures for the State.

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

13 PART IV

14 SECTION 10. This Act does not affect rights and duties  
15 that matured, penalties that were incurred, and proceedings that  
16 were begun before its effective date.

17 SECTION 11. If any provision of this Act, or the  
18 application thereof to any person or circumstance, is held  
19 invalid, the invalidity does not affect other provisions or  
20 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 12. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 13. This Act shall take effect on July 1, 2050;  
6 provided that sections 2, 3, and 4 shall take effect on  
7 January 1, 2050.



**Report Title:**

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

**Description:**

Requires procurement officers to complete past performance evaluations of contractors. 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. Effective 7/1/2050. Requires consideration of past performance evaluations in certain procurements beginning 1/1/2050. (SD2)

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

