
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 State's
2 procurement process requires clear legislative direction to
3 award contracts to responsible bidders or offerors in order to
4 increase accountability, enhance performance, and utilize
5 taxpayer dollars more efficiently. Currently, some state
6 contracts may be awarded to the lowest bidder without regard to
7 that bidder's poor past performance. Specifically, these
8 bidders may be considered qualified despite their poor past
9 performance on state contracts, which may result in repeated
10 inefficiencies and substandard work.

11 Accordingly, the purpose of this Act is to:

- 12 (1) Require the past performance of contractors' positive,
13 negative, or lack of previous experience to be
14 considered in bid selection of a contractor; and
15 (2) Require departments to consider available assessments
16 of previous performance on relevant and recent



1 government and private contracts when making contract
2 awards.

3 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding a new definition to be appropriately inserted
6 and to read:

7 "Past performance" means available recent and relevant
8 performance of a contractor on state contracts that shall be
9 considered in a responsibility determination within the
10 relevance of the current solicitation, including the
11 considerations of section 103D-702(b)."

12 2. By amending the definition of "responsible bidder or
13 offeror" to read:

14 "Responsible bidder or offeror" means a person who has the
15 capability in all respects to perform fully the contract
16 requirements, and the integrity and reliability [~~which~~] that
17 will assure good faith performance[-], pursuant to the
18 responsibility determination standards adopted by the policy
19 board."

20 SECTION 3. Section 103D-302, Hawaii Revised Statutes, is
21 amended by amending subsection (f) to read as follows:



1 "(f) Bids shall be evaluated based on the requirements set
2 forth in the invitation for bids. These requirements may
3 include criteria to determine acceptability such as inspection,
4 testing, quality, workmanship, delivery, and suitability for a
5 particular purpose. Those criteria that will affect the bid
6 price and be considered in evaluation for award shall be as
7 objectively measurable[~~7~~] as possible, such as discounts,
8 transportation costs, [~~and~~] total or life cycle costs[~~7~~], and
9 the bidder's past performance on state contracts of similar
10 scope, including but not limited to notices of deficiencies and
11 failure to complete a procurement contract. The invitation for
12 bids shall set forth the evaluation criteria to be used. No
13 criteria may be used in bid evaluation that are not set forth in
14 the invitation for bids."

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

17 "(g) Award shall be made to the responsible offeror whose
18 proposal is determined in writing to be the most advantageous,
19 taking into consideration price and the evaluation factors set
20 forth in the request for proposals[~~7~~], which shall include the
21 offeror's past performance on state contracts of similar scope,



1 including but not limited to notices of deficiencies and failure
 2 to complete a procurement contract. No [~~other factors or~~]
 3 criteria [~~shall~~] may be used in the evaluation[+] that are not
 4 set forth in the request for proposals. The contract file shall
 5 contain the basis on which the award is made."

6 SECTION 5. Section 103D-306, Hawaii Revised Statutes, is
 7 amended by amending subsection (a) to read as follows:

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

19 SECTION 6. Section 103D-310, Hawaii Revised Statutes, is
 20 amended by amending subsection (b) to read as follows:



1 "(b) Whether or not an intention to bid is required, the
2 procurement officer shall determine whether the prospective
3 offeror has the financial ability, resources, skills,
4 capability, and business integrity necessary to perform the
5 work. For [~~this~~] the purpose[,—the] of making a responsibility
6 determination, the procurement officer shall possess or obtain
7 available information sufficient to be satisfied that a
8 prospective offeror meets the applicable standards. The
9 procurement officer shall consider past performance of the
10 offeror as it applies to a responsibility determination for the
11 current solicitation. The officer, in the officer's discretion,
12 may require any prospective offeror to submit answers, under
13 oath, to questions contained in a standard form of questionnaire
14 to be prepared by the policy board. Whenever it appears from
15 answers to the questionnaire or otherwise, that the prospective
16 offeror is not fully qualified and able to perform the intended
17 work, a written determination of nonresponsibility of an offeror
18 shall be made by the head of the purchasing agency, in
19 accordance with rules adopted by the policy board. The
20 unreasonable failure of an offeror to promptly supply
21 information in connection with an inquiry with respect to



1 responsibility may be grounds for a determination of
2 nonresponsibility with respect to such offeror. The decision of
3 the head of the purchasing agency shall be final unless the
4 offeror applies for administrative review pursuant to section
5 103D-709."

6 SECTION 7. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so
8 much thereof as may be necessary for fiscal year 2021-2022 and
9 the same sum or so much thereof as may be necessary for fiscal
10 year 2022-2023 to develop and implement the guidance and related
11 implementation training for the following tools:

- 12 (1) A past performance guide;
- 13 (2) A past performance database functional requirements
14 document;
- 15 (3) The creation of a past performance database;
- 16 (4) The preparation and publication of rules, including
17 sending of surveys, discussions, and publication fees;
- 18 (5) Training; and
- 19 (6) Annual database maintenance.

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



1 SECTION 8. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 9. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 10. This Act shall take effect on July 1, 2112.



Report Title:

Procurement; Past Performance; Contractors; State Procurement Office; Appropriation

Description:

Requires the past performance of contractors' positive, negative, or lack of previous experience to be considered in bid selection of a contractor. Requires departments to consider available assessments of previous performance on relevant and recent government and private contracts when making contract awards. Appropriates funds. Effective 7/1/2112. (HD1)

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

