

---

---

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



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

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

6           "(f) Bids shall be evaluated based on the requirements set  
7 forth in the invitation for bids. These requirements may  
8 include criteria to determine acceptability such as inspection,  
9 testing, quality, workmanship, delivery, and suitability for a  
10 particular purpose. Those criteria that will affect the bid  
11 price and be considered in evaluation for award shall be  
12 objectively measurable, such as discounts, transportation costs,  
13 and total or life cycle costs. Past performance shall be  
14 evaluated in all bids expected to meet or exceed the small  
15 purchase threshold. The invitation for bids shall set forth the  
16 evaluation criteria to be used. No criteria may be used in bid  
17 evaluation that are not set forth in the invitation for bids."

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



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

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

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

18           SECTION 5. Section 103D-310, Hawaii Revised Statutes, is  
19 amended to read as follows:



1           "§103D-310 Responsibility of offerors. (a) Purchases  
2 shall be made from, and contracts shall be awarded to,  
3 responsible prospective contractors only.

4           (b) Unless the policy board, by rules, specifies  
5 otherwise, before submitting an offer, a prospective offeror,  
6 not less than ten calendar days prior to the day designated for  
7 opening offers, shall give written notice of the intention to  
8 submit an offer to the procurement officer responsible for that  
9 particular procurement.

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



1 nonresponsibility of an offeror shall be made by the head of the  
2 purchasing agency, in accordance with rules adopted by the  
3 policy board. The unreasonable failure of an offeror to  
4 promptly supply information in connection with an inquiry with  
5 respect to responsibility may be grounds for a determination of  
6 nonresponsibility with respect to [~~such~~] the offeror. The  
7 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 [~~e~~] (d) All offerors, upon award of contract, shall  
11 comply with all laws governing entities doing business in the  
12 State, including chapters 237, 383, 386, 392, and 393. Offerors  
13 shall produce documents to the procuring officer to demonstrate  
14 compliance with this subsection. Any offeror making a false  
15 affirmation or certification under this subsection shall be  
16 suspended from further offerings or awards pursuant to section  
17 103D-702. The procuring officer shall verify compliance with  
18 this subsection for all contracts awarded pursuant to sections  
19 103D-302, 103D-303, 103D-304, and 103D-306, and for contracts  
20 and procurements of \$2,500 or more awarded pursuant to section



1 103D-305; provided that the attorney general may waive the  
 2 requirements of this subsection for contracts for legal services  
 3 if the attorney general certifies in writing that comparable  
 4 legal services are not available in this State.

5 [~~d~~] (e) Information furnished by an offeror pursuant to  
 6 this section shall not be disclosed to any person except to law  
 7 enforcement agencies as provided by chapter 92F."

8 SECTION 6. There is appropriated out of the general  
 9 revenues of the State of Hawaii the sum of \$ or so much  
 10 thereof as may be necessary for fiscal year 2019-2020 for the  
 11 purposes of implementing this Act for executive branch  
 12 departments and agencies.

13 The sum appropriated shall be expended by the state  
 14 procurement office for the purposes of this Act.

15 SECTION 7. This Act does not affect rights and duties that  
 16 matured, penalties that were incurred, and proceedings that were  
 17 begun before its effective date.

18 SECTION 8. If any provision of this Act, or the  
 19 application thereof to any person or circumstance, is held  
 20 invalid, the invalidity does not affect other provisions or



# H.B. NO. 1146

1 applications of the Act that can be given effect without the  
 2 invalid provision or application, and to this end the provisions  
 3 of this Act are severable.

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, 2019.

7

INTRODUCED BY:

Jim Mathis

10aB

Christy Quinn

Mark G. Lee

Amy Pender

Calvin M. Ray

Stanley M. Mc

[Signature]

Rebecca

Tim Witzgen

Sen. Ail

Dan Carnes

Guthrie Threlton

[Signature]



# H.B. NO. 1146

**Report Title:**

Procurement; Past Performance; Appropriation

**Description:**

Requires past performance be considered in future bid selection of contractors for sole source contracts and any competitive sealed bid or proposal contracts that exceed the small purchase threshold. Requires procurement officers to consider specific factors, including past performance, when making a determination of offeror responsibility.

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

