
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) Establish factors to be included in any evaluation,
14 consideration, or review of past performance required
15 under part II of chapter 103D, Hawaii Revised
16 Statutes, and ratings standards for those factors;



- 1 (2) Require past performance to be considered in future
2 bid selection of a contractor; and
- 3 (3) Require departments to consider available assessments
4 of previous performance on relevant and recent
5 government and private contracts when making contract
6 awards.

7 SECTION 2. Chapter 103D, Hawaii Revised Statutes, is
8 amended by adding a new section to part II to be appropriately
9 designated and to read as follows:

10 "§103D- Evaluation, consideration, or review of past
11 performance. (a) Any evaluation, consideration, or review of
12 past performance required under this part shall include a clear,
13 non-technical description of the principal purpose of the
14 contract or order subject to the evaluation, reflect how the
15 contractor performed, include clear relevant information that
16 accurately depicts the contractor's performance, and be based on
17 objective facts supported by program and contract or order
18 performance data. The evaluations or reviews shall be tailored
19 to the contract type, size, content, and complexity of the
20 contractual requirements.



1 (b) Each evaluation, consideration, or review of past
2 performance pursuant to subsection (a) shall be based on but not
3 necessarily limited to the following applicable factors:

4 (1) Quality of the product or service supplied;
5 (2) Efforts to control cost;
6 (3) Timeliness and compliance with schedules;
7 (4) Conduct of management or business relations;
8 (5) Performance in small business subcontracting; and
9 (6) Other factors, including but not limited to late or
10 nonpayment to subcontractors, human trafficking
11 violations, tax delinquency, failure to report in
12 accordance with contract terms and conditions,
13 defective cost or pricing data, terminations, and
14 suspension and debarments;
15 provided that each factor may contain sub-factors.

16 (c) Each factor or sub-factor under subsection (b) used in
17 an evaluation, consideration, or review of past performance
18 shall be evaluated and a supporting narrative provided. Each
19 evaluation factor or sub-factor under subsection (b) shall be
20 rated in accordance with a five scale rating system as



1 exceptional, very good, satisfactory, marginal, or
2 unsatisfactory.

3 (d) For purposes of this section:

4 "Exceptional" means performance meets contractual
5 requirements and exceeds many to the government's benefit. The
6 contractual performance of the factor or sub-factor being
7 evaluated was accomplished with few minor problems for which
8 corrective actions taken by the contractor were highly
9 effective.

10 "Marginal" means performance does not meet some contractual
11 requirements. The contractual performance of the factor or sub-
12 factor being evaluated reflects a serious problem for which the
13 contractor has not yet identified corrective actions. The
14 contractor's proposed actions appear only marginally effective
15 or were not fully implemented.

16 "Satisfactory" means performance meets contractual
17 requirements. The contractual performance of the factor or sub-
18 factor contains some minor problems for which corrective actions
19 taken by the contractor appear or were satisfactory.

20 "Unsatisfactory" means performance does not meet most
21 contractual requirements and recovery is not likely in a timely



1 manner. The contractual performance of the factor or sub-factor
2 contains a serious problem for which the contractor's corrective
3 actions appear or were ineffective.

4 "Very good" means performance meets contractual
5 requirements and exceeds some to the government's benefit. The
6 contractual performance of the factor or sub-factor being
7 evaluated was accomplished with some minor problems for which
8 corrective actions taken by the contractor were effective."

9 SECTION 3. Section 103D-104, Hawaii Revised Statutes, is
10 amended as follows by amending the definition of "responsible
11 bidder or offeror" to read:

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

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

20 "(f) Bids shall be evaluated based on the requirements set
21 forth in the invitation for bids. These requirements may



1 include criteria to determine acceptability such as inspection,
2 testing, quality, workmanship, delivery, and suitability for a
3 particular purpose. Those criteria that will affect the bid
4 price and be considered in evaluation for award shall be
5 objectively measurable~~[7]~~ as possible, such as discounts,
6 transportation costs, ~~[and]~~ total or life cycle costs~~[-]~~, and
7 the bidder's past performance on state, federal, or private
8 contracts of similar scope for public agencies. The invitation
9 for bids shall set forth the evaluation criteria to be used. No
10 criteria may be used in bid evaluation that are not set forth in
11 the invitation for bids."

12 SECTION 5. Section 103D-303, Hawaii Revised Statutes, is
13 amended by amending subsection (g) to read as follows:

14 "(g) Award shall be made to the responsible offeror whose
15 proposal is determined in writing to be the most advantageous,
16 taking into consideration price and the evaluation factors set
17 forth in the request for proposals~~[-]~~, which shall include the
18 offeror's past performance on state, federal, or private
19 contracts of similar scope for public agencies. No ~~[other~~
20 ~~factors or]~~ criteria ~~[shall]~~ may be used in the evaluation~~[-]~~
21 that are not set forth in the request for proposals. The



1 contract file shall contain the basis on which the award is
2 made."

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

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

16 SECTION 7. Section 103D-310, Hawaii Revised Statutes, is
17 amended by amending subsection (b) to read as follows:

18 "(b) Whether or not an intention to bid is required, the
19 procurement officer shall [~~determine~~] make a responsibility
20 determination for any awardee, pursuant to rules adopted by the
21 policy board, including whether the prospective offeror has the



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



1 the head of the purchasing agency shall be final unless the
2 offeror applies for administrative review pursuant to section
3 103D-709."

4 SECTION 8. Section 103D-320, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "[~~§~~103D-320~~§~~] Retention of procurement records~~[-]~~;
7 evaluations. All procurement records shall be retained and
8 disposed of in accordance with chapter 94 and records retention
9 guidelines and schedules approved by the comptroller~~[-]~~;
10 provided that upon completion of a procurement contract, the
11 department that issued the request for proposals shall evaluate
12 the work and performance of the respective contractors and
13 maintain the evaluations in the department's files."

14 SECTION 9. There is appropriated out of the general
15 revenues of the State of Hawaii the sum of \$ or so
16 much thereof as may be necessary for fiscal year 2018-2019 for
17 the purposes of implementing this Act.

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



1 SECTION 10. This Act does not affect rights and duties
2 that matured, penalties that were incurred, and proceedings that
3 were begun before its effective date.

4 SECTION 11. If any provision of this Act, or the
5 application thereof to any person or circumstance, is held
6 invalid, the invalidity does not affect other provisions or
7 applications of the Act that can be given effect without the
8 invalid provision or application, and to this end the provisions
9 of this Act are severable.

10 SECTION 12. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 13. This Act shall take effect upon its approval;
13 provided that section 9 shall take effect on July 1, 2018.

14



Report Title:

Procurement; Past Performance; Criteria; Sole Source;
Evaluation; Appropriation

Description:

Requires past performance to be factored into future bid selection of a contractor. Establishes factors to be included in any evaluation, consideration, or review of past performance required pursuant to part II of chapter 103D, Hawaii Revised Statutes, and ratings standards for those factors. Requires past performance to be considered in sole source procurement. Requires that upon completion of a procurement contract, the department that issued the request for proposal shall evaluate the work and performance of the respective contractors and maintain the evaluations in the department's files. Appropriates funds. (SD1)

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

