A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1	SECT	ION 1. The legislature finds that the State's	
2	procureme	nt process requires a clear legislative direction to	
3	award con	tracts to responsible bidders or offerors to increase	
4	accountab	ility and enhance performance and to more efficiently	
5	utilize t	axpayer dollars. Some state contracts may currently be	
6	awarded t	o the lowest bidder without regard to poor past	
7	performan	ce. These bidders may be considered qualified despite	
8	poor past performance on state contracts, which may result in		
9	repeated inefficiencies and substandard work.		
10	Ассо	rdingly, the purpose of this Act is to:	
11	(1)	Require the past performance of contractors' positive,	
12		negative, or lack of previous experience to be	
13		considered in bid selection of a contractor;	
14	(2)	Require departments to consider available assessments	
15		of previous performance on relevant and recent	
16		government and private contracts when making contract	
17		awards; and	



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1	(3) Requ	ire the state procurement office to implement a			
2	past	performance database.			
3	SECTION 2	. Chapter 103D, Hawaii Revised Statutes, is			
4	amended by add	ing a new section to part III to be appropriately			
5	designated and to read as follows:				
6	" <u>§103D-</u>	Past performance database. (a) The state			
7	procurement of	fice shall implement and administer a past			
8	performance da	tabase with regard to state contractors.			
9	(b) The	state procurement office shall adopt rules			
10	pursuant to ch	apter 91 to establish:			
11	(1) Info	rmation required to be included in the past			
12	perf	ormance database; provided that the information			
13	shal	l include:			
14	<u>(A)</u>	The name of the state contractor;			
15	(B)	The date of the project;			
16	(C)	The size of the project;			
17	(D)	A brief description of the project;			
18	<u>(E)</u>	The responsible managing employees for the			
19		project;			
20	<u>(F)</u>	Whether the project was timely completed or not;			
21	<u>(</u> G)	The project's authorized budget; and			



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1	(H) The positive or negative difference between the		
2	final cost of the project and the project's		
3	authorized budget, if any;		
4	(2) Procedures to inform a contractor of the information		
5	contained in the past performance database about that		
6	contractor; and		
7	(3) Procedures for a contractor to contest the information		
8	contained in the past performance database about that		
9	contractor."		
10	SECTION 3. Section 103D-104, Hawaii Revised Statutes, is		
11	amended as follows:		
12	1. By adding a new definition to be appropriately inserted		
13	and to read:		
14	""Past performance" means available recent and relevant		
15	performance of a contractor on state contracts that shall be		
16	considered in a responsibility determination within the		
17	elevance of the current solicitation, including the		
18	considerations of section 103D-702(b)."		
19	2. By amending the definition of "responsible bidder or		
20	offeror" to read:		



"Responsible bidder or offeror" means a person who has the 1 capability in all respects to perform fully the contract 2 3 requirements, and the integrity and reliability [which] that 4 will assure good faith performance [-,], pursuant to the responsibility determination standards adopted by the policy 5 6 board." 7 SECTION 4. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows: 8 9 "(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may 10 11 include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a 12 particular purpose. Those criteria that will affect the bid 13 14 price and be considered in evaluation for award shall be as objectively measurable [7] as possible, such as discounts, 15 transportation costs, [and] total or life cycle costs[-], and 16 the bidder's past performance on state contracts of similar 17 scope, including but not limited to notices of deficiencies and 18 19 failure to complete a procurement contract. The invitation for bids shall set forth the evaluation criteria to be used. 20 No



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criteria may be used in bid evaluation that are not set forth in
 the invitation for bids."

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

5 "(g) Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous, 6 7 taking into consideration price and the evaluation factors set 8 forth in the request for proposals [-], which shall include the 9 offeror's past performance on state contracts of similar scope, including but not limited to notices of deficiencies and failure 10 11 to complete a procurement contract. No [other factors or] 12 criteria [shall] may be used in the evaluation [-] that are not 13 set forth in the request for proposals. The contract file shall 14 contain the basis on which the award is made."

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

17 "(a) A contract may be awarded for goods, services, or 18 construction without competition when the head of a purchasing 19 agency determines in writing that there is only one source for 20 the required good, service, or construction, the determination 21 is reviewed and approved by the chief procurement officer, the



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1 written determination is posted in the manner described in rules adopted by the policy board, a review of past performance has 2 3 been conducted, and no objection is outstanding. The written 4 determination, any objection, past performance evaluations 5 relied upon, and a written summary of the disposition of any 6 objection shall be included in the contract file." 7 SECTION 7. Section 103D-310, Hawaii Revised Statutes, is 8 amended by amending subsection (b) to read as follows: "(b) Whether or not an intention to bid is required, the 9 10 procurement officer shall determine whether the prospective 11 offeror has the financial ability, resources, skills, capability, and business integrity necessary to perform the 12 13 work. For [this] the purpose [, the] of making a responsibility 14 determination, the procurement officer shall possess or obtain available information sufficient to be satisfied that a 15 16 prospective offeror meets the applicable standards. The 17 procurement officer shall consider past performance of the 18 offeror as it applies to a responsibility determination for the 19 current solicitation. The officer, in the officer's discretion, 20 may require any prospective offeror to submit answers, under 21 oath, to questions contained in a standard form of questionnaire

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to be prepared by the policy board. Whenever it appears from 1 answers to the questionnaire or otherwise, that the prospective 2 offeror is not fully qualified and able to perform the intended 3 4 work, a written determination of nonresponsibility of an offeror 5 shall be made by the head of the purchasing agency, in accordance with rules adopted by the policy board. 6 The 7 unreasonable failure of an offeror to promptly supply 8 information in connection with an inquiry with respect to 9 responsibility may be grounds for a determination of nonresponsibility with respect to such offeror. The decision of 10 the head of the purchasing agency shall be final unless the 11 12 offeror applies for administrative review pursuant to section 13 103D-709."

14 SECTION 8. There is appropriated out of the general 15 revenues of the State of Hawaii the sum of \$ or so much 16 thereof as may be necessary for fiscal year 2020-2021 for design and implementation of a past performance database, including 17 18 consultations with experts, outreach, and information gathering. 19 The sum appropriated shall be expended by the state 20

procurement office for the purposes of this Act.

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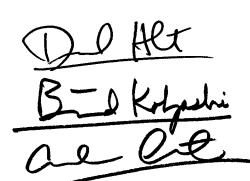
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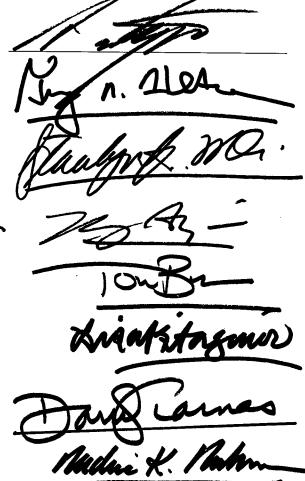
SECTION 9. This Act does not affect rights and duties that
 matured, penalties that were incurred, and proceedings that were
 begun before its effective date.

4 SECTION 10. Statutory material to be repealed is bracketed
5 and stricken. New statutory material is underscored.

6 SECTION 11. This Act shall take effect on July 1, 2020.

INTRODUCED BY:





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Report Title:

Procurement; Past Performance; Contractors; Appropriation

Description:

Requires the state procurement office to establish a past performance database. Requires that the determination of certain contract awards through the procurement process consider a contractor's past performance. Appropriates funds.

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

