
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 PART I

2 SECTION 1. The legislature finds that House Resolution
3 No. 142, adopted during the regular session of 2016, requested
4 the state procurement office to review Hawaii's procurement
5 process in comparison with the federal government's procurement
6 process. The purpose of the review was to examine ways that the
7 State could improve its procurement process by better
8 understanding the efficient and effective ways in which the
9 federal government conducts procurement.

10 The state procurement office contracted with an independent
11 third party to conduct the requested review, which was submitted
12 to the legislature in January 2020. In conducting the review,
13 the independent contractor completed a detailed document review,
14 interviewed a diverse group of stakeholders, and conducted a
15 thorough analysis of the data collected. The report identified
16 sixteen recommendations to closer align the state procurement
17 process to the federal procurement process.



1 SECTION 3. Chapter 103D, Hawaii Revised Statutes, is
2 amended by adding a new section to part III to be appropriately
3 designated and to read as follows:

4 "§103D- Past performance database. (a) The state
5 procurement office shall implement and administer a past
6 performance database with regard to state contractors.

7 (b) The state procurement office shall adopt rules
8 pursuant to chapter 91 to establish:

9 (1) Information required to be included in the past
10 performance database; provided that the information
11 shall include:

12 (A) The name of the state contractor;

13 (B) The date of the project;

14 (C) The size of the project;

15 (D) A brief description of the project;

16 (E) The responsible managing employees for the
17 project;

18 (F) Whether the project was timely completed or not;

19 (G) The project's authorized budget; and



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 4. 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 relevance 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:



1 ""Responsible bidder or offeror" means a person who has the
2 capability in all respects to perform fully the contract
3 requirements, and the integrity and reliability [~~which~~] that
4 will assure good faith performance[~~+~~], pursuant to the
5 responsibility determination standards adopted by the policy
6 board."

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

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



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

3 SECTION 6. 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
6 proposal is determined in writing to be the most advantageous,
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,
10 including but not limited to notices of deficiencies and failure
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 7. 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



1 written determination is posted in the manner described in rules
2 adopted by the policy board, a review of past performance has
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 8. Section 103D-310, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 "(b) Whether or not an intention to bid is required, the
10 procurement officer shall determine whether the prospective
11 offeror has the financial ability, resources, skills,
12 capability, and business integrity necessary to perform the
13 work. For [~~this~~] the purpose[~~, the~~] of making a responsibility
14 determination, the procurement officer shall possess or obtain
15 available information sufficient to be satisfied that a
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



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

14 PART III

15 SECTION 9. The legislature finds that the State allows for
16 price negotiations only when all bids exceed available funds and
17 a re-solicitation with revised scope is not possible. In
18 contrast, the Federal government has a broader scope for price
19 negotiations. Specifically, the federal process allows
20 negotiations to occur for construction bids when the winning bid



1 is higher than the price the government believes it should be
2 based on its internal estimate.

3 The purpose of this part is to implement recommendation
4 II-3 of the state procurement office's review of Hawaii
5 procurement laws by giving the head of a purchasing agency the
6 option to negotiate an adjustment of an otherwise successful bid
7 for construction procurements to closer align with an internal
8 project price estimation.

9 SECTION 10. Section 103D-302, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (a) to read:

12 "(a) Contracts shall be awarded by competitive sealed
13 bidding except as otherwise provided in section 103D-301.
14 Awards of contracts by competitive sealed bidding may be made
15 after single or multi-step bidding. Competitive sealed bidding
16 does not include negotiations with bidders after the receipt and
17 opening of bids[-], except for construction procurement that
18 meets the criteria in subsection (h) (2). Award is based on the
19 criteria set forth in the invitation for bids."



1 2. By amending subsection (h) to read:

2 "(h) The contract shall be awarded with reasonable
3 promptness by written notice to the lowest responsible and
4 responsive bidder whose bid meets the requirements and criteria
5 set forth in the invitation for bids [~~— In the event all~~];
6 provided that if:

7 (1) All bids exceed available funds as certified by the
8 appropriate fiscal officer, the head of the purchasing
9 agency responsible for the procurement in question is
10 authorized in situations where time or economic
11 considerations preclude resolicitation of work of a
12 reduced scope to negotiate an adjustment of the bid
13 price, including changes in the bid requirements, with
14 the low responsible and responsive bidder, in order to
15 bring the bid within the amount of available funds [~~—~~];
16 and

17 (2) The lowest responsive and responsible bid for a
18 construction procurement significantly differs from
19 the amount estimated by the State for that project,
20 and the estimated amount was developed prior to the
21 opening of any bids for that project, the head of the



1 purchasing agency may engage in negotiations with the
2 low bidder to ensure the bid amount is reasonable and
3 realistic for the scope of the construction project.
4 The negotiations may include the reduction of the bid
5 amount or an increase in the bid amount to align with
6 the State's estimate; provided that the bid does not
7 raise the low bidders' bid to an amount that makes it
8 no longer the low bid. If the negotiation with the
9 low bidder does not result in any change to the bid
10 amount, the original bid amount shall continue to be
11 used."

PART IV

13 SECTION 11. The state procurement office shall submit a
14 report to the legislature no later than twenty days prior to the
15 convening of the regular session of 2022 regarding the progress
16 it has made toward addressing recommendations from parts I, II,
17 and III of the procurement policy review conducted pursuant to
18 House Resolution No. 142, Regular Session of 2016, and include
19 any proposed legislation necessary to implement those
20 recommendations.



1 PART V

2 SECTION 12. This Act does not affect rights and duties
3 that matured, penalties that were incurred, and proceedings that
4 were begun before its effective date.

5 SECTION 13. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 14. This Act shall take effect on July 1, 2112.



H.B. NO. 1385
H.D. 1

Report Title:

Procurement; State Procurement Office; Construction Procurement Policy Review

Description:

Implements certain recommendations of the procurement policy review conducted pursuant to House Resolution No. 142, Regular Session of 2016. Requires the state procurement office to submit a report to the legislature regarding its progress in implementing the procurement policy review recommendations. Effective 7/1/2112. (HD1)

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