
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 a 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;
- 15 (2) Require departments to consider available assessments
16 of previous performance on relevant and recent



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1 government and private contracts when making contract
2 awards; and

3 (3) Require the state procurement office to implement a
4 past performance database.

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

8 "§103D- Past performance database. (a) The state
9 procurement office shall implement and administer a past
10 performance database with regard to state contractors.

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

13 (1) Information required to be included in the past
14 performance database; provided that the information
15 shall include:

16 (A) The name of the state contractor;

17 (B) The date of the project;

18 (C) The size of the project;

19 (D) A brief description of the project;

20 (E) The responsible managing employees for the
21 project;



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- 1 (F) Whether the project was timely completed or not;
- 2 (G) The project's authorized budget; and
- 3 (H) The positive or negative difference between the
- 4 final cost of the project and the project's
- 5 authorized budget, if any;
- 6 (2) Procedures to inform a contractor of the information
- 7 contained in the past performance database about that
- 8 contractor; and
- 9 (3) Procedures for a contractor to contest the information
- 10 contained in the past performance database about that
- 11 contractor."

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

14 1. By adding a new definition to be appropriately inserted
15 and to read:

16 "Past performance" means available recent and relevant
17 performance of a contractor on state contracts that shall be
18 considered in a responsibility determination within the
19 relevance of the current solicitation, including the
20 considerations of section 103D-702(b)."



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

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

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

11 "(f) Bids shall be evaluated based on the requirements set
12 forth in the invitation for bids. These requirements may
13 include criteria to determine acceptability such as inspection,
14 testing, quality, workmanship, delivery, and suitability for a
15 particular purpose. Those criteria that will affect the bid
16 price and be considered in evaluation for award shall be as
17 objectively measurable[~~-~~] as possible, such as discounts,
18 transportation costs, [~~and~~] total or life cycle costs[~~-~~], and
19 the bidder's past performance on state contracts of similar
20 scope, including but not limited to notices of deficiencies and
21 failure to complete a procurement contract. The invitation for



1 bids shall set forth the evaluation criteria to be used. No
2 criteria may be used in bid evaluation that are not set forth in
3 the invitation for bids."

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

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

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

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



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1 is reviewed and approved by the chief procurement officer, the
2 written determination is posted in the manner described in rules
3 adopted by the policy board, a review of past performance has
4 been conducted, and no objection is outstanding. The written
5 determination, any objection, past performance evaluations
6 relied upon, and a written summary of the disposition of any
7 objection shall be included in the contract file."

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

10 "(b) Whether or not an intention to bid is required, the
11 procurement officer shall determine whether the prospective
12 offeror has the financial ability, resources, skills,
13 capability, and business integrity necessary to perform the
14 work. For ~~[this]~~ the purpose~~[, the]~~ of making a responsibility
15 determination, the procurement officer shall possess or obtain
16 available information sufficient to be satisfied that a
17 prospective offeror meets the applicable standards. The
18 procurement officer shall consider past performance of the
19 offeror as it applies to a responsibility determination for the
20 current solicitation. The officer, in the officer's discretion,
21 may require any prospective offeror to submit answers, under



1 oath, to questions contained in a standard form of questionnaire
2 to be prepared by the policy board. Whenever it appears from
3 answers to the questionnaire or otherwise, that the prospective
4 offeror is not fully qualified and able to perform the intended
5 work, a written determination of nonresponsibility of an offeror
6 shall be made by the head of the purchasing agency, in
7 accordance with rules adopted by the policy board. The
8 unreasonable failure of an offeror to promptly supply
9 information in connection with an inquiry with respect to
10 responsibility may be grounds for a determination of
11 nonresponsibility with respect to such offeror. The decision of
12 the head of the purchasing agency shall be final unless the
13 offeror applies for administrative review pursuant to section
14 103D-709."

15 SECTION 8. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$ or so much
17 thereof as may be necessary for fiscal year 2021-2022 and the
18 same sum or so much thereof as may be necessary for fiscal year
19 2022-2023 for design and implementation of a past performance
20 database, including consultations with experts, outreach, and
21 information gathering.



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

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

6 SECTION 10. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 11. This Act shall take effect on July 1, 2021.

9

INTRODUCED BY:



JAN 22 2021



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Report Title:

Procurement; Past Performance; Contractors; Appropriations

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.

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