

JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services.

TITLE: A BILL FOR AN ACT RELATING TO RESPONSIBILITY UNDER THE STATE PROCUREMENT CODE

PURPOSE: To increase accountability and transparency in state procurement by clarifying the due diligence requirement for contractor responsibility determination to be made prior to awarding any government contract under Chapter 103D, Hawaii Revised Statutes. Establishes a past performance definition. Requires recent and relevant past performance to be considered in all contractor responsibility determinations of capability, integrity, and reliability to perform contract requirements in good faith.

MEANS: Amend sections 103D-104 and 103D-310, Hawaii Revised Statutes.

JUSTIFICATION: Clarifies that past performance is part of responsibility and a procurement officer must consider relevant and recent contractor past performance prior to an award for any state contract. Provides a legislative mandate for the Procurement Policy Board to adopt administrative rules to implement past performance accountability measurements and clarify appropriate applications of past performance information.

Impact on the public: Increases accountability on contractors by clarifying that past performance shall be considered as a responsibility determination for all state contracts. Increases transparency and accountability of government responsibility determinations when awarding public contracts to responsible contractors.

Impact on the department and other agencies:  
Increases due diligence requirement on procuring agencies to possess or obtain information sufficient to be satisfied that a prospective bidder or offeror meets applicable standards adopted by the procurement policy board.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: All agencies procuring goods and services pursuant to Chapter 103D, Hawaii Revised Statutes.

EFFECTIVE DATE: Upon approval.

DRAFT

\_\_\_\_.B. NO.\_\_\_\_\_

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## A BILL FOR AN ACT

RELATING TO RESPONSIBILITY UNDER THE STATE PROCUREMENT CODE.

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

1           SECTION 1. The purpose of this act is to enhance  
2    accountability and transparency in state procurement by  
3    clarifying the requirement for and a definition of responsible  
4    contractor determination that requires government due diligence  
5    and contractor responsibility determinations be made prior to  
6    awarding any government contract under Chapter 103D, Hawaii  
7    Revised Statutes. The legislature finds that recent and  
8    relevant past performance shall be a consideration factor in all  
9    contractor responsibility determinations of capability,  
10   integrity, and reliability to perform contract requirements in  
11   good faith.

12           SECTION 2. Section 103D-104, Hawaii Revised Statutes, is  
13   amended as follows:

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

1        "Past Performance" means recent and relevant performance  
2 by the contractor on state, federal, or private contracts to be  
3 considered as a responsibility determination within the  
4 relevance of the current solicitation."

5        2. By amending the definition of "Responsible bidder or  
6        offeror" to read:

7        "Responsible bidder or offeror" means a ~~person~~  
8 contractor who has the capability in all respects to perform  
9 fully the contract requirements, and the integrity and  
10 reliability which will assure good faith performance, pursuant  
11 to the responsibility determination standards adopted by the  
12 policy board."

13        SECTION 3. Section 103D-310, Hawaii Revised Statutes, is  
14 amended by amending subsection (b) to read as follows:

15        "(a) Unless the policy board, by rules, specifies  
16 otherwise, before submitting an offer, a prospective offeror,  
17 not less than ten calendar days prior to the day designated for  
18 opening offers, shall give written notice of the intention to  
19 submit an offer to the procurement officer responsible for that  
20 particular procurement.

21        (b) Whether or not an intention to bid is required, the  
22 procurement officer shall ~~determine~~ make a determination of  
23 responsibility for any awardee, pursuant to rules adopted by the

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

1 offeror applies for administrative review pursuant to section  
2 103D-709.

3 (c) All offerors, upon award of contract, shall comply  
4 with all laws governing entities doing business in the State,  
5 including chapters 237, 383, 386, 392, and 393. Offerors shall  
6 produce documents to the procuring officer to demonstrate  
7 compliance with this subsection. Any offeror making a false  
8 affirmation or certification under this subsection shall be  
9 suspended from further offerings or awards pursuant to section  
10 103D-702. The procuring officer shall verify compliance with  
11 this subsection for all contracts awarded pursuant to sections  
12 103D-302, 103D-303, 103D-304, and 103D-306, and for contracts  
13 and procurements of \$2,500 or more awarded pursuant to section  
14 103D-305; provided that the attorney general may waive the  
15 requirements of this subsection for contracts for legal services  
16 if the attorney general certifies in writing that comparable  
17 legal services are not available in this State.

18 (d) Information furnished by an offeror pursuant to this  
19 section shall not be disclosed to any person except to law  
20 enforcement agencies as provided by chapter 92F."

21 SECTION 4. This Act does not affect the rights and duties  
22 that matured, penalties that were incurred, and proceedings that  
23 were begun before its effective date.

1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act, upon its approval, shall take effect  
4 upon approval.

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INTRODUCED BY: \_\_\_\_\_

7

BY REQUEST

DRAFT

**Report Title:**

Procurement Code; Responsibility Determination; Past Performance

**Description:**

Includes recent and relevant past performance information as a responsibility determination for all government procurement. Effective upon approval.

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

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