

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-3109(b), Hawaii Revised Statutes.

JUSTIFICATION: Clarifies that past performance is part of responsibility determination 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 as follows:

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

5       (2) By amending the definition of "responsible bidder or  
6 offeror" to read as follows:

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

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

15       "(b) Whether or not an intention to bid is required, the  
16 procurement officer shall [~~determine~~] make a determination of  
17 responsibility for any awardee, pursuant to rules adopted by the  
18 policy board, including whether the prospective offeror has the  
19 financial ability, resources, skills, capability, and business  
20 integrity necessary to perform the work. For [this] the  
21 purpose[,-the] of responsibility determination, the procurement  
22 officer shall possess or obtain available information sufficient  
23 to be satisfied that a prospective offeror meets the applicable

1 standards set forth by the policy board. The procurement  
2 officer shall consider available recent and relevant past  
3 performance of the contractor as it applies to a responsibility  
4 determination for the current solicitation. The officer, in the  
5 officer's discretion, may also require any prospective offeror  
6 to submit answers, under oath, to questions contained in a  
7 standard form of questionnaire to be prepared by the policy  
8 board. Whenever it appears from answers to the questionnaire or  
9 otherwise, that the prospective offeror is not fully qualified  
10 and able to perform the intended work, a written determination  
11 of nonresponsibility of an offeror shall be made by the head of  
12 the purchasing agency, in accordance with rules adopted by the  
13 policy board. The unreasonable failure of an offeror to  
14 promptly supply information in connection with an inquiry with  
15 respect to responsibility may be grounds for a determination of  
16 nonresponsibility with respect to such offeror. The decision of  
17 the head of the purchasing agency shall be final unless the  
18 offeror applies for administrative review pursuant to section  
19 103D-709."

20 SECTION 4. This Act does not affect the rights and duties  
21 that matured, penalties that were incurred, and proceedings that  
22 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 shall take effect upon approval.

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

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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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