

# Resolution

No. 22-202

APPROVING FOR INCLUSION IN THE 2023  
MAUI COUNTY COUNCIL LEGISLATIVE  
PACKAGE A STATE BILL RELATING TO THE  
HAWAII PUBLIC PROCUREMENT CODE

WHEREAS, the Council finds State law should be amended to preserve public resources by ensuring that only the most highly qualified contractors and subcontractors are awarded capital improvement projects—based on past experiences, quality craftwork, efficient operation, and safety, as documented by comprehensive submission requirements; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit “A,” relating to the Hawaii Public Procurement Code, is approved for inclusion in the 2023 Maui County Council Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Mayor.

INTRODUCED BY:

*Tamara A. M. Paltin*

TAMARA PALTIN

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# A BILL FOR AN ACT

RELATING TO THE HAWAII PUBLIC PROCUREMENT CODE.

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

1           SECTION 1. The purpose of this Act is to preserve  
2 administrative resources by ensuring that only qualified  
3 contractors and subcontractors are awarded capital improvement  
4 projects based on past experiences, quality craftwork, efficient  
5 operation, and safety. The timely completion of projects are not  
6 necessarily ensured by awarding a capital improvement project  
7 solely on the basis of the low bid.

8           This Act enhances government's ability to identify the  
9 lowest "responsible bidder" on all capital improvement projects  
10 by instituting more comprehensive submission requirements.

11           The State of Hawaii and its counties have a compelling  
12 proprietary interest in awarding contracts for capital  
13 improvement projects in a manner that will yield successful  
14 project delivery in terms of work that is performed safely at  
15 the lowest responsible cost and in accordance with the highest  
16 possible standards of quality and efficiency.

17           Securing successful delivery of capital improvement  
18 projects presents significant challenges due to the complex,

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1 unpredictable, and inherently dangerous nature of the  
2 construction industry, where errors in project planning or  
3 execution, including those caused by inexperienced or  
4 unqualified craft labor personnel, can result in serious safety  
5 risks, excessive cost overruns, flawed or inferior project  
6 quality, and disruptions in project schedules that may delay the  
7 use of critical government functions or facilities.

8 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is  
9 amended by amending the definition of "past performance" to read  
10 as follows:

11 "Past performance" means available recent and relevant  
12 performance of a contractor, including positive, negative, or  
13 lack of previous experience, [~~on contracts that shall~~] by the  
14 contractor on State, federal, or private contracts to be  
15 considered [~~is~~] as a responsibility determination within the  
16 relevance of the current solicitation, including the  
17 considerations of section 103D-702(B)."

18 SECTION 3. Section 103D-310, Hawaii Revised Statutes, is  
19 amended to read as follows:

20 "§ 103D-310 **Responsibility of offerors.** (a) Unless the  
21 policy board, by rules, specifies otherwise, before submitting  
22 an offer, a prospective offeror, not less than ten calendar days

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1 prior to the day designated for opening offers, shall give  
2 written notice of the intention to submit an offer to the  
3 procurement officer responsible for that particular procurement.

4 (b) Whether or not an intention to bid is required, the  
5 procurement officer shall [~~determine~~] make a determination of  
6 responsibility for all prospective offerors, including whether  
7 the prospective offeror has the financial ability, resources,  
8 skills, capability, and business integrity necessary to perform  
9 the work. For the purpose of making a responsibility  
10 determination, the procurement officer shall [~~possess or obtain~~  
11 ~~available information, including past performance, sufficient to~~  
12 ~~be satisfied that a prospective offeror meets the applicable~~  
13 ~~standards. The officer, in the officer's discretion, may]~~  
14 require any prospective offeror to submit answers, under oath,  
15 to questions contained in a standard form of questionnaire to be  
16 prepared by the policy board. Whenever it appears from answers  
17 to the questionnaire or otherwise, that the prospective offeror  
18 is not fully qualified and able to perform the intended work, a  
19 written determination of nonresponsibility of an offeror shall  
20 be made by the head of the purchasing agency, in accordance with  
21 rules adopted by the policy board. The unreasonable failure of  
22 an offeror to promptly supply information in connection with an

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1 inquiry with respect to responsibility may be grounds for a  
2 determination of nonresponsibility with respect to such offeror.  
3 The decision of the head of the purchasing agency shall be final  
4 unless the offeror applies for administrative review pursuant to  
5 section 103D-709.

6 (i) The standard form questionnaire shall include the  
7 following:

8 (a) Evidence of compliance with all provisions of  
9 chapter 104 for the past five years or, if they have been  
10 operating for less than five years, the amount of time they  
11 have been in operation.

12 (b) Record of any complaints that required corrective  
13 action during the course of a project.

14 (c) Evidence of participation in applicable  
15 apprenticeship programs.

16 (d) Safety and health Information:

17 (i) Written safety policy.

18 (ii) Copies of the OSHA 300 log required by title  
19 29 Code of Federal Regulations part 1904.

20 (iii) Contractor safety and health questionnaire.

21 (iv) Verification that individuals are properly  
22 classified as employees or independent contractors.

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1                   (v) Statements of past performance for five  
2                   years.

3                   (a) To include original price and final price of  
4                   projects.

5                   (b) To include violations or pending violations within  
6                   the past five years. The procurement officer shall consider  
7                   all available recent and relevant past performance of the  
8                   offeror.

9                   (c) All offerors, upon award of contract, shall comply  
10                  with all laws governing entities doing business in the  
11                  State, including chapters 237, 383, 386, 392, and 393.  
12                  Offerors shall [~~produce documents to the procuring officer~~  
13                  ~~to demonstrate compliance with this subsection~~] submit the  
14                  required standard form questionnaire on an annual basis to  
15                  be prequalified as "responsible" for projects, by the  
16                  procurement office. Any offeror making a false affirmation  
17                  or certification under this subsection shall be suspended  
18                  from further offerings or awards pursuant to section 103D-  
19                  702. The procuring officer shall verify compliance with  
20                  this subsection for all contracts awarded pursuant to  
21                  sections 103D-302, 103D-303, 103D-304, and 103D-306, and  
22                  for contracts and procurements of \$2,500 or more awarded

