

Resolution

No. 22-197

APPROVING FOR INCLUSION IN THE 2023
HAWAII STATE ASSOCIATION OF COUNTIES
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 Hawaii State Association of Counties Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

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 [~~in~~] 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

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1 pursuant to section 103D-305; provided that the attorney
2 general may waive the requirements of this subsection for
3 contracts for legal services if the attorney general
4 certifies in writing that comparable legal services are not
5 available in this State.

6 (d) Information furnished by an offeror pursuant to
7 this section, on the standard form questionnaire, shall
8 ~~[not be disclosed to any person except to law enforcement~~
9 ~~agencies]~~ be available for public inspection or duplication
10 as provided by chapter 92F."

11 SECTION 4. Statutory material to be deleted is bracketed
12 and in strikethrough. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.

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15 INTRODUCED BY: _____