



**STATE OF HAWAII
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TESTIMONY
OF
AARON S. FUJIOKA
ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE
HOUSE COMMITTEE
ON
ECONOMIC DEVELOPMENT & BUSINESS

February 8, 2013

9:00 a.m.

HB 1374

RELATING TO PROCUREMENT.

Chair Tsuji, Vice Chair Ward, and committee members, thank you for the opportunity to testify on HB1374. This bill proposes to factor a contractor's past performance in competitive sealed bidding, competitive sealed proposals and professional services methods of procurement.

The Hawaii Public Procurement Code (Code) provides various methods of procurement to allow a Procurement Officer (PO) to determine the appropriate method for the particular need or requirement. Each method has its purpose, and past performance may be used as a qualification or evaluation factor, such as past project delays, cost overruns, work deficiencies. The PO has the responsibility to select the best method of procurement to utilize in conducting the procurements.

The competitive sealed bidding (CSB) method of procurement is based on the requirements set forth in the invitation for bids (IFB); and award is made to the lowest responsive, responsible bidder meeting the IFB qualification criteria, such as years of experience or references from prior projects within the past x years, as evidence of past performance. The integrity of the CSB process is maintained because objectively measurable qualification criteria and low price is basis for award.

The competitive sealed proposals (CSP) method of procurement requires evaluation of proposals based on criteria set forth in the request for proposals (RFP); and award is made to the responsible offeror whose proposal is the most advantageous based on the evaluation criteria. In the CSP process, evaluation criteria may include analysis of past performance, for example the number of delays, any prior project cost overruns, history of corrective actions and notices of deficiencies, which the RFP evaluation committee will consider and scored accordingly.

In the professional services method of procurement, applicants are qualified and ranked on specific criteria based on submitted statements of qualifications. The PO negotiates the scope of work and cost with highest rank provider; and award is made to the highest ranked qualified respondent meeting the determined selection criteria. Similar to CSP, selection criteria may include analysis of past performance such as number of delays, history of corrective actions and notices of deficiencies, assessment of prior professional work, which the selection committee will consider and scored accordingly.

The changes proposed in this bill are not necessary because criteria such as past performance may already be used in the various methods of procurement. The State Procurement Office recommends that the bill be held.

Thank you.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/08/2013

Committee: House Economic Development
& Business

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 1374 RELATING TO PROCUREMENT.

Purpose of Bill: Allows past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, and compliance with project requirements.

Department's Position:

The Department of Education, (DOE) supports this bill. However, the DOE believes that the best avenue of improving the procurement system without jeopardizing existing protections is to remove the preference for the bid source selection method in HRS § 103D-301. This would remove the preference for the low bid process in the state procurement code and would achieve the intent of this bill without incurring problems of subjectivity.

Allowing purchasing agencies to use competitive sealed proposals and other options already in the procurement code equally without requiring justification to deviate from the preferred method of low bid would effectuate this.

Another option would be to establish an evaluation process as proposed in this legislation within HRS § 103D-310 Responsibility of Offerors which would expressly allow the procuring agency to disqualify a potential bidder based on poor past performance, would better achieve the intent of this bill.

Thank you for this opportunity to provide testimony.



Testimony of Ryan Kobayashi
The Pacific Resource Partnership

House Committee on Economic Development and Business
Representative Clift Tsuji, Chair
Representative Gene Ward, Vice Chair

HB 1374 – Relating to Procurement
Friday, February 8, 2013
9:00 am
Conference Room 312

Aloha Chair Tsuji, Vice Chair Ward and Members of the Committee:

The Pacific Resource Partnership (PRP) is a labor-management consortium representing over 240 signatory contractors and the Hawaii Regional Council of Carpenters.

PRP **strongly supports** HB 1374, Relating to Procurement, which allows past performance to be factored into future bid selection of a contractor including a review of delays, cost overruns, and compliance with project requirements. This measure would also include in each bid evaluation a review of assessments from past work from a potential contractor, and allow departments to consider the assessments when making contract awards.

PRP applauds the efforts of the legislature fulfill its fiduciary duty to the taxpayer as stewards of taxpayer money to make sure that the State, and the taxpayer get what they pay for by addressing the selection of qualified public works contractors.

PRP in its capacity as construction industry “watch dogs” have monitored multiple private as well as public works projects over the recent years. We feel that is a great “first step”, the “weeding out” of unqualified contractors helps to ensure the probability that the right contractor is chosen for public works contracts, but legislation such as this only makes it less likely that a the wrong contractor is chosen. There are many other issues that need to be addressed before the State can fully ensure that the taxpayers gets exactly what they pay for when awarding a public works contract.

We look forward to more proactive legislation such as this in the future regarding other issues regarding pertaining to the execution of public works contracts by contractors.

For these reasons, we respectfully ask for your support on HB 1374. Thank you for the opportunity to share our views on this important initiative with you.

House of Representatives
The Twenty-Seventh Legislature
Committee on Economic Development and Business
February 8, 2013, 9:00 a.m.
Conference Room 312

Statement of the Hawaii Regional Council of Carpenters on HB 1374

The evaluation of the Carpenters Union of HB 1374 is that it provides needed and positive requirements for more efficient use of taxpayer dollars. Currently, construction contractors with a record of delays, overruns and violations on public works may secure further public works awards with no consideration of that record.

While needed requirements are in the Bill, it allows for flexibility as to how a company's record, positive or negative, is to be weighed by the procurement agency, in proportion to other factors such as bid amount. Therefore, it is not so arbitrary as to eliminate a contractor for a single mistake.

The form of evaluation at the completion of a public work may warrant more consideration, to avoid resource-draining disputes over an evaluation. The more the evaluation is an objective statement based on the requirements, the better. Perhaps a statement of disagreement or explanation of mitigating circumstances, or listing positive outcomes, can be allowed on record along with the evaluation.

HB 1374 should be passed on for further legislative consideration.

edbtestimony

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 1:19 PM
To: edbtestimony
Cc: brianalan2003@yahoo.com
Subject: Submitted testimony for HB1374 on Feb 8, 2013 09:00AM

HB1374

Submitted on: 2/5/2013

Testimony for EDB on Feb 8, 2013 09:00AM in Conference Room 312

Submitted By	Organization	Testifier Position	Present at Hearing
Brian Gibson	Individual	Support	No

Comments: As someone who routinely procures professional services using the State process, I strongly support the inclusion of past performance as an evaluation criterion.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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