

DAVID Y. IGE  
GOVERNOR



RODERICK K. BECKER  
Comptroller

AUDREY HIDANO  
Deputy Comptroller

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF  
RODERICK K. BECKER, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
ON  
TUESDAY, FEBRUARY 13, 2018  
2:55 P.M.  
CONFERENCE ROOM 224

S.B. 2601

RELATING TO PROCUREMENT.

Chair Kim, Vice Chair Ruderman, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 2601.

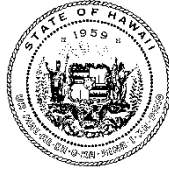
The Department of Accounting and General Services (DAGS) appreciates the intent of the proposed changes to the Procurement Code but has significant concerns for the following reasons:

1. The existing Procurement Code contains a mechanism for consideration of past performance. On projects for which a Department determines past performance should be a selection factor, construction services can be procured using the Competitive Sealed Proposals method of procurement.
2. As proposed, this bill would reduce the transparency and objectivity of the procurement processes, including those for small purchases, and would introduce subjectivity to those processes for the following reasons:
  - a. Lack of objective criteria

- b. Lack of uniformity in rating systems
  - c. Lack of uniformity in the data used to make decision on responsibility of a bidder, and
  - d. Inherent subjectivity in the guidelines regarding which data to consider when determining responsibility of a bidder (i.e., in determining what information should be considered “recent and relevant”).
3. It is likely the introduction of subjectivity will result in an increase in the volume and frequency of bid protests.
4. There are existing mechanisms in place to address poor performance in construction contracts.
- a. While projects are under construction, Departments can provide feedback to contractors, assess liquidated damages, enforce the terms of the contract documents, limit the number of change orders issued, and document facts related to poor performance.
  - b. With sufficient documentation, filings can be made for suspension or debarment of poor-performing contractors.
  - c. The Department of Labor and Industrial Relations publishes a list of contractors who are suspended or debarred for violation of Hawaii Revised Statutes Chapter 104.

Thank you for the opportunity to testify on this matter.

DAVID Y. IGE  
GOVERNOR



SARAH ALLEN  
ADMINISTRATOR  
MARA SMITH  
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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TESTIMONY  
OF  
SARAH ALLEN, ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATAION  
February 13, 2018, 2:55 PM

SENATE BILL 2601  
RELATING TO PROCUREMENT

Chair Kim, Vice Chair ruderman, and members of the committee, thank you for the opportunity to submit testimony on SB2601. The State Procurement Office (SPO) supports this bill and provides the comments on Section Eight.

To implement the purpose of the Act, the state procurement office requires an electronic procurement system, including a contract management component, which will also serve as central depository/database for all contract performance reviews, accessible by all executive department procuring agencies. The electronic procurement system would initially only be required for executive branch departments/agencies to allow the SPO time to develop policies and procedures to implement this Act. An initial investment of \$4,500,000 is required for an electronic procurement system. Attachment I explains what an eprocurement system is made up of and why it is important, along with our Return on Investment of 160%.

Therefore, Section 8, page 7, lines 1-4 is revised to read:

SECTION 8. There is appropriated out of the general revenues of the State of Hawaii the sum of \$4,500,000, or so much thereof as may be necessary for fiscal year 2018-2019 for the purposes of implementing this Act for executive branch departments/agencies.

No continuing funds will be required as this system will be procured through a self-funding model that allows the state to leverage buying power to maintain the system, similar to how we already procure for certain goods and services. This creates a very positive return on investment, allows for transparency, consistency and clarity in procurement, as well as accurate spend data analysis to enhance decision-making and improve the effectiveness of the procurement process across the board, ultimately creating valuable cost-savings and successfully performed contracts.

Thank you.

**DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU**

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HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



ROBERT J. KRONING, P.E.  
DIRECTOR

MARK YONAMINE, P.E.  
DEPUTY DIRECTOR

February 6, 2018

The Honorable Donna Mercado Kim, Chair  
and Members  
Senate Committee on Government Operations  
State Capitol, Room 224  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Kim and Members:

**SUBJECT: Senate Bill No. 2601, Relating to Procurement**

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill No. 2601, which "(1) Requires past performance to be considered in future bid selection of a contractor; and (2) Requires departments to consider available assessments of previous performance on relevant and recent government and private contracts when making contract awards."

DDC primarily administers professional services and construction contracts. Existing law allows past performance to be considered prior to award for these types of contracts, so the proposed legislation would not create new opportunities in the existing procurement process.

Consideration of past performance in the selection of construction contractors by competitive sealed bidding is allowable under HRS 103D-302. DDC has developed and is continuing to refine procedures that incorporate past performance into qualification of bidders for construction contracts. Also, DDC's standard procedures include completing performance evaluations of construction contractors.

The proposed legislation will burden procurement procedures with requirements that consume additional resources and result in additional bid protests and contracting delays without commensurate benefits.

The Honorable Donna Mercado Kim, Chair  
and Members  
February 6, 2018  
Page 2

Based on the above considerations, DDC respectfully **opposes** Senate Bill  
No. 2601.

Thank you for the opportunity to express our concerns.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Kroning". The signature is fluid and cursive, with a large initial "R" and "K".

Robert J. Kroning, P.E.  
Director

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 13, 2018

TO: HONORABLE DONNA MERCADO KIM, CHAIR, HONORABLE RUSSELL RUDERMAN, VICE CHAIR AND MEMBERS OF THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **COMMENTS REGARDING S.B. 2601, RELATING TO PROCUREMENT.**  
Requires past performance to be factored into future bid selection of a contractor. Defines past performance. Requires past performance to be considered in sole source procurement. Requires that upon completion of a procurement contract, the department that issued the request for proposal shall evaluate the work and performance of the respective contractors and maintain the evaluations in the department's files. Appropriates funds.

HEARING

DATE: Tuesday, February 13, 2018  
TIME: 2:55 p.m.  
PLACE: Capitol Room 229

Dear Chair Mercado Kim and Vice Chair Ruderman and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The GCA's mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

S.B. 2601, Relating to Procurement, proposes to require that past performance of a contractor be factored into future low bid selection and for sole source procurement. **GCA's comments are limited to how this measure relates to construction contracts only as it appears the areas of concern in construction include: (1) being on budget; (2) being on time; and (3) the delivery of good quality work.**

**This measure may be premature as state and county agencies along with stakeholders have made initial steps in addressing possible solutions, thus may be able to provide better guidance in addressing how past performance can be used to evaluate contractors. Instead of mandating past performance be factored into all public works projects, the better option may be to get feedback from agencies that have initiated a pilot project where they have been able test select projects and may have initiated the administration of past performance requirements on select projects. It is necessary to identify the best approach to factor in past performance to ensure a fair and objective assessment of a contractor's performance and use information for future projects in a precise manner.**

### **2013-2015 History of Past Performance Discussions and Task Forces**

From 2013 through part of 2015 the Procurement Task Force was initiated pursuant to [Senate Concurrent Resolution 92 \(2013\)](#) which has been meeting since 2013 through the early part of 2015, and one of the issues discussed included how to address bad performing contractors. Additionally, in 2014 this body passed [House Concurrent Resolution 176 \(2014\)](#), which required a study of past performance of government contractors. These Task Forces together with participating government agencies and private industry stakeholders agreed that this issue needs further discussion before dictating an approach with potential unintended consequences. In 2015, pursuant to [Act 182 \(2015\)](#) the legislature extended the Procurement Task Force to specifically identify and propose amendments, if any, to the procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, specifically regarding statewide past performance standards and procedures. Unfortunately, the Act 182 (2015) Task Force never met to discuss these matters as directed by the legislature and there has not been any follow up since.

It is important to note that consideration of past performance in procurement is already permitted under 103D-302(f) under the invitation for bid process, what is commonly known as low bid, however for various reasons agencies choose not to use it. Under Section 103D-302(f), HRS an invitation for bid may set the requirements to determine qualifications and criteria for a project. In other words, the agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance, recent project history and any other qualifications an agency may find necessary. The reason for this reluctance on the part of the state agencies to use this section may be due to difficulty to quantify, evaluate, and administer past performance.

**The consideration of past performance for low bid contracts raises a number of concerns for GCA, including but not limited to: ensuring objective administration and evaluation processes for agencies in determining qualified past performance criteria, including how the state or county would receive information about private projects; inability for a new contractor to bid public work due to lack of past performance qualifications; agency's lack of resources, including staff and funding for implementation and administration of past performance for low bid contracts; procedural due process concerns and appeal procedures; and ensuring efficiency, integrity and transparency in the procurement process of public works construction projects.**

In construction, a number of evaluation factors must be taken into consideration, including licensing, subcontractor performance, less than stellar designs, unforeseen conditions, inclement weather, inadequate administration and oversight, untimely and disruptive owner requested change orders, unforeseen hazardous condition discoveries, the need to accommodate user activities that limit noise (such as exam week) or odorous, sometimes toxic activities, that may be reasons why the project does not come in satisfying the 3 noted criteria: (1) On budget; (2) On time; and (3) numerous changes to the original design.

Thank you for considering our comments on this measure and we respectfully request further discussion be had with agencies who may already in the process of implanting past performance criteria in assessing contractors. Furthermore, stakeholder feedback would ensure that a past performance program could be successfully implemented. At this time, we respectfully request that this measure be deferred to allow further discussion on this matter.

Testimony of  
Christopher Delaunay, Government Relations Manager  
Pacific Resource Partnership

THE SENATE  
THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2018

Committee on Government Operations  
Senator Donna Mercado Kim, Chair  
Senator Russell E. Ruderman, Vice Chair

SB 2601 – Relating to Procurement

Tuesday, February 13, 2018  
2:55 P.M.  
State Capitol – Room 224

Aloha Chair Kim, Vice Chair Ruderman and members of the Committee:

Pacific Resource Partnership **supports** SB 2601 which provides clear legislative direction to award state contracts to responsible bidders or offerors through the state procurement process.

It is appropriate and relevant that state departments consider a contractor's past performance as an indicator that he or she will successfully perform a contract awarded through the state procurement process. Currently, the law does not require past performance to be considered in the bid selection of a contractor. Instead, it provides unqualified contractors, with a record of poor performance on state, federal or private contracts, who submit the lowest bids with opportunities to be awarded state contracts.

This measure will require state departments to evaluate bidder or offeror's past performance prior to awarding state contracts. This requirement will help procurement officers detect and prevent irresponsible or unscrupulous contractors from winning state contracts while providing them with the tools to ensure that responsible and law-abiding contractors are awarded these contracts. As such, the state and its taxpayers will benefit from this requirement which will improve the overall quality of work and services on state projects and at state facilities.

Thank you for allowing us to share our view and we respectfully ask for your **support** on SB 2601.





(Continued From Page 1)

About PRP

*Pacific Resource Partnership (PRP) is a not-for-profit organization that represents the Hawaii Regional Council of Carpenters, the largest construction union in the state, and more than 240 of Hawaii's top contractors. Through this unique partnership, PRP has become an influential voice for responsible construction and an advocate for creating a stronger, more sustainable Hawaii in a way that promotes a vibrant economy, creates jobs and enhances the quality of life for all residents.*

**SB-2601**

Submitted on: 2/5/2018 12:27:23 PM

Testimony for GVO on 2/13/2018 2:55:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Louise Storm		Support	No

Comments:

Can this apply to projects where state funds are involved, but the state is not the primary agent, e.g. the Honolulu rail project?

Louise Storm