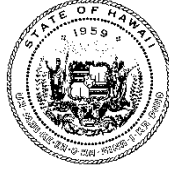


DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON WAYS AND MEANS
ON
FEBRUARY 19, 2019, 9:30 AM
CONFERENCE ROOM 211, STATE CAPITOL

S.B. 1333 S.D. 1
RELATING TO PROCUREMENT

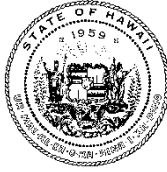
Chair Dela Cruz, Vice Chair Keith-Agaran, and Members of the Committee, thank you for the opportunity to submit testimony on S.B. 1333 S.D. 1.

The Department of Accounting and General Services (DAGS) supports with comments:

1. The existing Procurement Code contains a mechanism for the 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, the recommended working group shall to review the criteria and uniformity to increase transparency and strengthen the objectivity of the procurement process. for the following reasons:

- a. Strengthen objective criteria; and
 - b. Strengthen uniformity in rating systems; and
 - c. Strengthen uniformity in the data used to make decisions on the responsibility of a bidder; and
 - d. Review what information should be considered (i.e. recent, relevant, etc.).
3. As stated above, the existing procurement code does address poor performance in construction contracts. The following points should be noted:
- a. While projects are under construction, Departments can provide feedback to contractors, assess liquidated damages, enforce the terms of the contract documents, evaluate the need for change orders, 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 which is referenced prior to making award.

Thank you for the opportunity to submit testimony on this matter.



**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
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**TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE
ON
WAYS AND MEANS
February 19, 2019, 9:30 A.M.**

**SB1333 SD 1
RELATING TO PROCUREMENT**

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on SB1333 SD1. The State Procurement Office (SPO) supports this bill and amendments made in SD1 and offers the following comments:

1. What are the benefits of a past performance state-wide system?
 - It gives those contractors who are performing well, a historic reference record, which will support future work across that State
 - It gives those same contractors accumulated past performance to submit for Federal contracts.
 - It gives the government buyer confidence the contractor will offer successful services, thereby safeguarding taxpayers' monies
 - It creates a requirement for adequate, documented, government oversight and encourages a more robust post-award contract management

2. Will it stop "Change Order Artists" – contractors that submit low bids with the expectation that they'll make it up with change orders?
No it will not, specifically.

Just because a contract has multiple change orders, does not, in of itself, equate to a contractor that is manipulating the system. There are many reasons for change orders, many of which, are often from new government decisions and new information that has entered into the equation.

If we are looking to avoid those contractors that are really playing the system, and I suspect that is a minority statistic, the best way to do this is to mandate adequate, documented, government oversight and encourage a more robust post-award contract management. Documentation of disputed changes orders may or may not be acknowledged as poor performance, and that is why it is important to understand that this might continue to be an issue with or without a past performance program.

Establishing a work group to study past performance is possibly a best first step. The most challenging area of past performance evaluation is the competitive sealed bid procurement method. It has the requirement to include only objective criteria. SPO recommends including a requirement for the work group to develop a recommendation prior to the sunrise of the mandate to implement past performance evaluations for competitive sealed bidding.

Thank you.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 5, 2019

Testimony To: Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1333, SD 1 – RELATNG TO PROCUREMENT.

Chair Dela Cruz and Members of the Committee:

I am Tim Lyons, President of the Subcontractors Association of Hawaii. The SAH represents the following nine separate and distinct contracting trade organizations.

HAWAII FLOORING ASSOCIATION

ROOFING CONTRACTORS ASSOCIATION OF HAWAII

HAWAII WALL AND CEILING INDUSTRIES ASSOCIATION

ELECTRICAL CONTRACTORS ASSOCIATION OF HAWAII

TILE CONTRACTORS PROMOTIONAL PROGRAM

PLUMBING AND MECHANICAL CONTRACTORS ASSOCIATION OF HAWAII

SHEETMETAL CONTRACTORS ASSOCIATION OF HAWAII

PAINTING AND DECORATING CONTRACTORS ASSOCIATION

PACIFIC INSULATION CONTRACTORS ASSOCIATION

We are in general support of this bill.

The subject of using past performance in consideration of awarding contracts for State jobs has been discussed in prior legislatures. We are in favor of the concept.

In the past our only reservation has been what the specific criteria might be for determining past performance; whether that is the annual evaluation or a specific job evaluation. As an example, we are concerned as to whether contracting officers will have sufficient staff and time in order to determine if a particular phase of a project was not completed on time, if it was a result of a contractor not performing properly or if it was a result of a supplier not delivering material on time or, if it was a result of a manufacturer not completing the manufacturing process on time and, therefore, the supplier not being able to deliver those products on time. Therefore the contractor was not able to complete his project on time. In other words, there are always a variety of factors involved in non-performance and we just want to be sure that past performance, including good and bad performance, is properly evaluated and we know that is going to take the proper staff and resources to do so.

Past performance however, is a concept that we wholeheartedly embrace and based on that we do support the bill.

Thank you.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
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LATE

KIRK CALDWELL
MAYOR



ROBERT J. KRONING, P.E.
DIRECTOR

MARK YONAMINE, P.E.
DEPUTY DIRECTOR

February 15, 2019

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice Chair
and Members
Committee on Ways and Means

The Senate
State Capitol, Room 211
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Dela Cruz, Vice Chair Keith-Agaran and Members:

SUBJECT: Senate Bill No. 1333 SD1, Relating to Procurement

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill No. 1333 SD1, the purpose of which is to "(1) Require that past performance be considered in future bid selection of contractors for sole source contracts and any competitive sealed bid or proposal contracts that exceeds the small purchase threshold; (2) Require procurement officers to consider specific factors, including past performance, when making a determination of offeror responsibility; (3) Require procurement officers to conduct past performance evaluations to be conducted at least annually and at the time the work under a contract or order is completed, and maintained in the department's files."

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.

DDC's standard procedures include completing performance evaluations for both professional services and construction contracts. Past performance is considered in all selections of professional services contractors, as required by Section 103D-304, Hawaii Revised Statutes.

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.

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.

Section 4 (a) of the bill appears to limit an agency's ability to award a sole source contract when the sole source contractor has no past performance evaluations. This section states that, "A contract may be awarded for goods, services, or construction without competition when the head of a purchasing agency determines in writing that there is only one source for the required good, service, or construction, the determination is reviewed and approved by the chief procurement officer, the written determination is posted in the manner described in rules adopted by the policy board, a review of past performance has been conducted, and no objection is outstanding. The written determination, any objection, past performance evaluations relied upon, and a written summary of the disposition of any objection shall be included in the contract file."

The large majority of competitive sealed contracts administered by DDC result in satisfactory or better performance and would not benefit from consideration of contractor past performance. As indicated above, DDC has implemented and is continuing to improve procedures that incorporate past performance into qualification of bidders for construction contracts. DDC uses these procedures for bid solicitations that are expected to be of interest to contractors that have recently exhibited poor performance on DDC contracts. By doing this, DDC is able to realize the benefits of considering past performance on an as-needed basis without burdening the majority of our solicitations with the excessive additional administrative effort mandated by this bill and the additional protests that would need to be addressed.

The Honorable Donovan M. Dela Cruz, Chair
and Members
February 15, 2019
Page 3

Based on the above considerations, DDC respectfully **opposes** Senate Bill
No. 1333 SD1.

Thank you for the opportunity to express our opposition to this bill.

Very truly yours,

A handwritten signature in black ink, appearing to read "Robert J. Kroning". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Robert J. Kroning, P.E.
Director