

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
BONNIE KAHAKUI
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
LABOR & PUBLIC EMPLOYMENT
February 12, 2019, 10:00 AM

HB1146
RELATING TO PROCUREMENT

Chair Dela Johanson, Vice Chair Eli, and members of the committee, thank you for the opportunity to submit testimony on HB1146. The State Procurement Office (SPO) supports the intent of the bill and provides the following comments.

The development of an organized system to collect and evaluate contractor performance information, will offer several benefits:

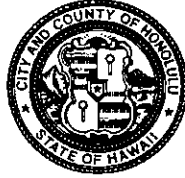
- Collecting past performance information, and mandating evaluation of this information is a message to the contractor community that we value good performance and that through this program encourage good partnering with government and excellence in performance.
- Reduce the likelihood that poor performers continue to be able to propose without any consequence.
- Allow a historical contractor performance log to develop, essentially creating a historical log of all contractor work across the State.

Thank you

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
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ROBERT J. KRONING, P.E.
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MARK YONAMINE, P.E.
DEPUTY DIRECTOR

February 11, 2019

The Honorable Aaron Ling Johanson, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
and Members of the Committee on Labor & Public Employment

House
State Capitol, Room 309
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Johanson, Vice Chair Eli, and Members:

SUBJECT: House Bill No. 1146, Relating to Procurement

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 1146, 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."

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 Honorable Aaron Ling Johanson, Chair
and Members
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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.

Based on the above considerations, DDC respectfully **opposes** House Bill No. 1146.

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

Very truly yours,


Robert J. Kroning, P.E.
Director

SAH - Subcontractors Association of Hawaii

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February 12, 2019

Testimony To: House Committee on Labor & Public Employment
Representative Aaron Ling Johanson, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1146 – RELATNG TO PROCUREMENT.

Chair Johanson 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.

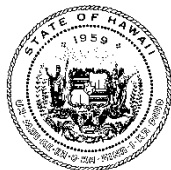
The subject of using past performance in consideration of awarding contracts for State jobs has been discussed in prior legislatures. We are in favor of the concept.

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.

DAVID Y. IGE
GOVERNOR



LATE

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
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
ON
FEBRUARY 12, 2019, 10:00 A.M.
CONFERENCE ROOM 309, STATE CAPITOL

H.B. 1146
RELATING TO PROCUREMENT

Chair Johanson, Vice Chair Eli, and Members of the Committee, thank you for the opportunity to submit testimony on H.B. 1146.

The Department of Accounting and General Services (DAGS) appreciates the intent of the proposed changes to the Procurement Code, but opposes this for the following reasons:

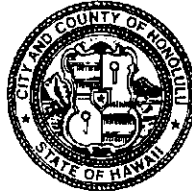
1. The existing Procurement Code contains a mechanism for the consideration of past performance. On projects for which a Department determines past performance should be a selection factor, construction services can be procured using the Competitive Sealed Proposals method of Procurement.
2. As proposed,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

- c. Lack of uniformity in the data used to make decisions on the responsibility of a bidder; and
 - d. Inherent subjectivity when determining what information should be considered (i.e. recent, relevant, etc).
- 3. It is likely the introduction of subjectivity will result in an increase in the volume and frequency of 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, 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.

LATE

KIRK CALDWELL
MAYOR



NELSON H. KOYANAGI, JR.
DIRECTOR

MANUEL T. VALBUENA
DEPUTY DIRECTOR

TESTIMONY OF NELSON H. KOYANAGI, JR.
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
February 12, 2019, 10:00 AM, Conference Room 309

TO: The Honorable Aaron Ling Johanson, Chair
and Members of the Committee on Labor & Public Employment

RE: OPPOSITION OF HOUSE BILL 1146, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **opposes** House Bill No. 1146, Relating To Procurement.

Current procurement law allows entities to consider past performance as an evaluating criterion to determine an offeror's responsibility. Requiring past performance for every project exceeding the small purchase threshold will cause delays in the overall procurement process. Delays would stem from the evaluation process and protests due to determinations made by the evaluation. The delays thus mean increases to costs associated procurement.

For the reasons stated above, the City respectfully requests that this bill be opposed.

Mahalo for the opportunity to testify on this bill. Should you have any questions or concerns, please feel free to contact the Department of Budget & Fiscal Services' Division of Purchasing at 808-768-5535 or bfspurchasing@honolulu.gov.

LATE

HB-1146

Submitted on: 2/11/2019 9:47:28 PM

Testimony for LAB on 2/12/2019 10:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Banner Fanene	Individual	Support	No

Comments: