

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  
FINANCE**  
Thursday, February 20, 2020, 12:00 P.M.

**HB 2020, HD1  
RELATING TO PROCUREMENT**

Chair Luke, Vice Chair Cullen, and members of the committee, thank you for the opportunity to submit testimony on HB 2020, HD1. The State Procurement Office (SPO) appreciates the intent of this bill and offers the following comments and recommendations.

**Comments:**

The State finds that, per its adoption of the ABA Model Procurement Code, that past performance is already allowable inside of the procurement statute. What is missing is the guidance that is found as supplemental Rules. Thus, on May 28<sup>th</sup>, 2019, Procurement Policy Board voted to approve to development of past performance Rules.

In 2019, the State Procurement Office contracted the services of a consultant to review the Comptroller Construction Task Force Report of 2015, analyze the current environment, assist in the development of past performance rules, and make recommendations for the creation of a database. The SPO is currently reviewing the consultant's report and recommendations, along with feedback from CPO jurisdictions and the contractor community, to determine how best to incorporate the information when amending the Rules.

The Rules will cover how to incorporate past performance criteria in a bid or offer, how to evaluate past performance, how to evaluate performance post-award, and how to collect and share that information across siloed agencies through the use of a central state-wide database.

**Recommendation:**

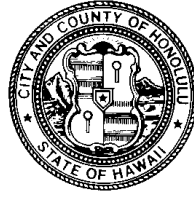
Creating the tools and infrastructure for buyers to adopt a new policy is essential for successful implementation. In order to continue this work, the SPO is requesting one-time funding of \$144,370, and annual maintenance funding of \$13,500 to develop the following tools:

	Delivery	\$
1	Past Performance Guide	14,665
	Prepare a past performance implementation guide that provides information for Hawaii contracting officers with more user-friendly detailed instructions on how to effectively implement the Administrative Rules into practice. The implementation guide will include detailed explanations on how to evaluate past performance, examples of quality past performance narratives, and explanations regarding recording negative performance without using the past performance evaluation as a punitive tool outside of due process.	
2	Past Performance Database Functional Requirements Document	29,705
	Prepare a Past Performance Database Functional Requirements Document (FRD). The FRD will describe the Database's functional requirements. Our FRD will explain the objectives of the Past Performance Database, the forms and data to be entered, work flow of a performance evaluation, users and roles, system outputs, and applicable regulatory requirements, etc. An FRD is solution independent. It is a statement of what the database is to do - not how it functions technically. The FRD does not commit the Database developers to a design. The SPO will be able to include the FRD in a solicitation for design and delivery of the Past Performance Database.	
3	Create Past Performance Database	50,000
4	Preparation and Publication of Rules	5,000
	Rules must be prepared, surveys sent, facilitated discussions and the publication fee	
5	Training	45,000
	<b>Total One-Time Funding</b>	<b>144,370</b>
6	Annual Database Maintenance (est at 27% of cost)	13,500
	<b>Total Funding Recurring Annually</b>	<b>13,500</b>

Therefore, SPO recommends removing Section 2, pages 2 and 3, in its entirety, as efforts have already begun to address past performance in competitive sealed bidding in the HAR 3-122, Subchapter 5.

Thank you.

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 FINANCE  
February 20, 2020, 12:00 PM, House Conference Room 308

Position: IN OPPOSITION OF HOUSE BILL 2020, HD1, RELATING TO PROCUREMENT

TO: The Honorable Sylvia Luke, Chair  
and Members of the Committee on Finance

The Department of Budget and Fiscal Services, City and County of Honolulu, **opposes** House Bill No. 2020, HD1, Relating to Procurement.

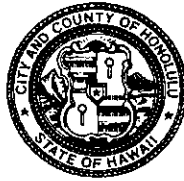
Consideration of past performance in every contract award determination should be done at the discretion of each Chief Procurement Officer of the County or State. The City already considers past performance on most of its contract award determinations. However, it is unnecessary to mandate the consideration of past performance since the State's procurement code already allows Procurement Officers to consider past performance in its award determinations under Hawaii Revised Statutes ("HRS") §103D-310 Responsibility of Offerors. Further, should a database be created for past performance, the City recommends that its use be optional rather than required as a part of evaluating past performance in contract award determinations.

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](mailto:bfspurchasing@honolulu.gov).

DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL  
MAYOR



MARK YONAMINE, P.E.  
DIRECTOR

HAKU MILLES, P.E.  
DEPUTY DIRECTOR

February 18, 2020

The Honorable Sylvia Luke, Chair  
The Honorable Ty J.K. Cullen, Vice-Chair  
and Members of the Committee on Finance  
The House  
State Capitol, Room 308  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Luke, Vice-Chair Cullen, and Members:

SUBJECT: House Bill No. 2020 HD1  
Relating to the Procurement

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 2020 HD1. The purpose of the bill is to "(1) Require the past performance of contractors' positive, negative, or lack of previous experience to be considered in bid selection of a contractor; (2) Require departments to consider available assessments of previous performance on relevant and recent government and private contracts when making contract awards; and (3) Require the state procurement office to implement a past performance database."

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 improve the existing procurement process.

The proposed legislation would burden procurement and contract administration procedures with requirements that consume additional resources and potentially increase bid protests and contracting delays without commensurate benefits. DDC has implemented 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

The Honorable Sylvia Luke, Chair  
and Members of the Committee on Finance  
February 18, 2020  
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with the additional administrative effort that would be mandated by this bill and the potential for additional protests and delays that would need to be addressed.

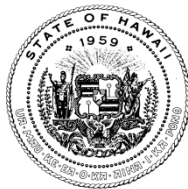
Based on the above consideration, DDC respectfully **opposes** House Bill No. 2020 HD1.

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

Sincerely,

A handwritten signature in black ink, appearing to read "M. Yonamine".

Mark Yonamine, P.E.  
Director



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

Deputy Directors  
LYNN A.S. ARAKI-REGAN  
DEREK J. CHOW  
ROSS M. HIGASHI  
EDWIN H. SNIFFEN

**LATE**

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 20, 2020  
12:00 P.M.  
State Capitol, Room 308

**H.B. 2020, H.D. 1**  
**RELATING TO PROCUREMENT**

House Committee on Finance

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The Department of Transportation (DOT) **supports** the bill which requires the State Procurement Office (SPO) establish and implement a past performance database; requires past performance of contractors' positive, negative, or lack of previous experience be considered in bid selection of a contractor; and requires consideration of available assessments of previous performance on relevant and recent government and private contracts when making contract awards.

The implementation of a past performance database would provide consistent and valuable information for procurement stakeholders statewide in determining and evaluating, not only the responsiveness factor of a bid or offer, but the responsibility component of a bidder or offeror during selection and award. Past performance, as another level of consideration and diligence in evaluating responsibility, will provide additional insight to positively impact the award selection to optimally support increased accountability, enhanced quality performance, and efficient and effective utilization of taxpayer dollars in respect to contract awards and the respective deliverables.

Thank you for the opportunity to provide testimony.