



The Judiciary, State of Hawai‘i

Testimony to the Senate Committee on Government Operations

Senator Laura H. Thielen, Chair
Senator Lorraine R. Inouye, Vice Chair

Tuesday, March 10, 2020, 2:45 p.m.
State Capitol, Conference Room 225

by
Rodney A. Maile
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 2020, HD1, Relating to Procurement.

Purpose: Requires the State Procurement Office to establish a past performance database. Requires that the determination of certain contract awards through the procurement process consider a contractor's past performance.

Judiciary's Position:

The Judiciary **supports** this bill and offers the following testimony.

The Judiciary would benefit from a past performance database to supplement decisions on contract award determinations. While the Judiciary considers past performance as a criteria for contract award, we are a small entity and our experiences rather limited. Being able to draw on other State and county agencies' experience and outcomes with contractors would further supplement the basis for our decisions. Being able to leverage that information would be a positive step towards better ensuring smart decisions are made to effectively use taxpayer dollars.

Thank you for the opportunity to testify on this measure.

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 SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
Tuesday, March 10, 2020, 2:45 P.M.**

**HB2020 HD1
RELATING TO PROCUREMENT**

Chair Thielen, Vice Chair Inouye, and members of the committee, thank you for the opportunity to submit testimony on HB2020 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 28th, 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:

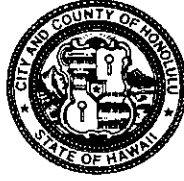
	Delivery	\$
1	Past Performance Guide	14,665
	Prepare a past performance implementation guide that provides information for Hawaii contracting officers with more user-friendly detailed instructions on how to effectively implement the Administrative Rules into practice. The implementation guide will include 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
	Total One Time Funding	144,370
6	Annual Database Maintenance (est. at 27% of cost)	13,500
	Total Funding Recurring Annually	13,500

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.

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

March 9, 2020

The Honorable Laura H. Thielen, Chair
The Honorable Lorraine R. Inouye, Vice-Chair
and Members of the Committee on Government Operations
The House
State Capitol, Room 225
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Thielen, Vice-Chair Inouye, 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 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.

The Honorable Laura H. Thielen, Chair
and Members of the Committee on Government Operations
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Based on the above consideration, DDC respectfully **opposes** House Bill
No. 2020 HD1.

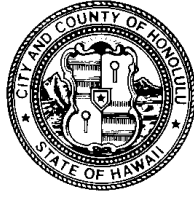
Thank you for the opportunity to express our opposition to this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Yonamine", written in a cursive style.

Mark Yonamine, P.E.
Director

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 SENATE COMMITTEE ON GOVERNMENT OPERATIONS
March 10, 2020, 2:45 PM, Senate Conference Room 225

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

TO: The Honorable Laura H. Thielen, Chair
and Members of the Committee on Government Operations

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.