



STATE OF HAWAII
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE HOUSE COMMITTEE
ON
FINANCE

February 25, 2021, 12:00 P.M.

HOUSE BILL 526, HD1
RELATING TO PROCUREMENT

Chair Luke, Vice Chair Cullen, and members of the committee, thank you for the opportunity to submit testimony on HB526 HD1. The State Procurement Office (SPO) appreciates that the House Draft 1 of this bill reflects comments we made in previous testimony.

As important and valuable as this measure is, it must provide the resources necessary for a project of this scope and magnitude. In fact, this project will be an extensive undertaking, requiring expertise, staffing, and funding resources in order to develop any new processes, procedures, templates, contract terms and conditions, and reporting requirements compliant with the Hawaii Code, which will require resources the SPO does not have.

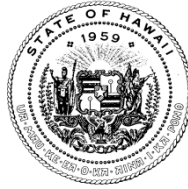
Upon receipt of the appropriated and allocated funding for the report, the SPO will first procure the respective consulting services so that the SPO will be able to create the tools and infrastructure for buyers to adopt a new policy, which is essential for successful implementation. In order to continue this work, the SPO is requesting one-time funding of \$150,500, and annual maintenance funding of \$13,500 to develop the following tools:

	Delivery	\$
1	Past Performance Guide	\$15,000
	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	\$30,000
	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, workflow 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
5	Rules must be prepared, surveys sent, facilitated discussions and the publication fee	\$4,000
6	Training	\$46,500
	Total One-Time Funding	\$150,500
7	Annual Database Maintenance (estimated at 27% of cost)	\$13,500
	Total Funding Recurring Annually	\$13,500

The SPO is committed to working with the State Legislature and Agencies to develop the best policy and procedures for procurement that allow for streamlining, efficiencies, innovation, cost control, and fair and equal contracting opportunities across the State of Hawaii and recognizes the benefits of a past performance database system. Therefore, the cost of implementing a successful past performance database is estimated to start at a minimum of \$164,000 for fiscal year 2021-2022.

Thank you.



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

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

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

February 25, 2021
12:00 p.m.
State Capitol, Room 308
VIA VIDEO CONFERENCE

H.B. 526, H.D. 1
RELATING TO PROCUREMENT.

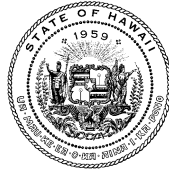
House Committee on Finance

The Department of Transportation (DOT) **supports** the bill which requires past performance of contractors' positive, negative, or lack of previous experience to be considered in offer selection of a contractor; requires departments to consider available assessments of previous performance on relevant and recent government and private contracts when making contract awards; and appropriates funds.

The implementation of past performance is valuable and appropriate as it pertains to competitive sealed proposals and professional services methods of procurement. Past performance may be used to provide relevant and pertinent information for procurement stakeholders in determining and evaluating the responsibility component of an offeror during selection and award. Past performance, as another level of consideration and diligence in evaluating responsibility, may 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.

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 FINANCE

THURSDAY, FEBRUARY 25, 2021, 12:00 P.M.
CONFERENCE ROOM 308, STATE CAPITOL

H.B. 526, H.D. 1

RELATING TO PROCUREMENT.

Chair Luke, Vice Chair Cullen, and members of the Committee, thank you for the opportunity to submit testimony supporting the intent of H.B. 526, H.D. 1 with comments.

The Department of Accounting and General Services (DAGS) supports the intent of increasing accountability, enhancing performance, and utilizing taxpayer dollars more efficiently, but has strong concerns about the requirements of this legislative bill for the following reasons:

1. It is not needed.
 - a. The procurement code already allows for the consideration of past performance in the context of the professional services and competitive sealed proposal procurement methods. The competitive sealed proposal method can be used for construction procurements.
 - b. Even in the context of competitive sealed bids, the procurement code allows the consideration of past performance. For example:

- Experience requirements can be added to project specifications.
 - DAGS' Interim General Conditions for Construction allows the rejection of a bid due to a "Lack of responsibility and cooperation as shown by past work...".
- c. There are other means of increasing contractor accountability such as strict administration of the contract requirements, disapproval of unwarranted change orders, etc.
2. The increase in subjectivity will increase the number of protests.
- a. Mandating the consideration of past performance in sole source and competitive sealed bid procurements introduces subjectivity to processes which are relatively objective and will substantially increase the potential for protests.
 - b. Requiring agencies to rely on data which may not contain crucial contextual information or is otherwise not uniform or of consistent quality to make procurement decisions also increases the potential for protests.
3. The costs associated with implementation of this legislation will far exceed the costs detailed in this legislative bill. It will require additional staffing and resources on the individual departmental level for data input, communication with contractors regarding the results of their evaluations, administration of the contractor rebuttal process, research of available past performance records, documentation of the basis for the procurement decisions made, defense of related protests, etc.

Recommendation:

Surprisingly, the HRS §103D-303 – Competitive Sealed Proposals and Hawaii Administrative Rules §3-122-46 – Preparing a Request for Proposal does not mandate past performance as an evaluation factor in awarding a contract although it is typically, if not, always used as an evaluation factor by the Department of Accounting and General Services, Public Works Division, who procures and administers construction contracts using the competitive sealed proposal method of procurement. Therefore, we recommend the following revision to the language of H.B. 526, H.D. 1:

- Replace Page 1, lines 12 to 16, through Page 2, lines 1 to 2, with the following:

“(1). Provide clear legislation to require past performance of contractors’ positive, negative, or lack of previous experience to be considered in the Competitive Sealed Proposal process; and

(2). Encourage use of the competitive sealed proposal procurement method when deemed appropriate and feasible for the project.”

- Replace Page 2, lines 3 to 21, through Page 6 in its entirety with the following:

“SECTION 2. Section §103D-303, Hawaii Revised Statutes, is amended as follows:

1. By amending Section §103D-303(e) to read:

“(e) The request for proposals shall include as an evaluation factor, past performance on projects of similar scope for public agencies or private industry, and shall state the relative importance of price, past performance, and other evaluation factors.”

2. By adding to §103D-303(i) the following:

“(4) Past performance on projects of similar scope for public agencies or private industry shall be an evaluation factor for pre-qualification of offerors.”

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

HB-526-HD-1

Submitted on: 2/24/2021 12:20:04 PM

Testimony for FIN on 2/25/2021 12:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Christine Kinimaka	Department of Accounting and General Services	Support	No

Comments:

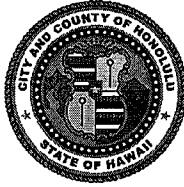
I am available for comments.

Testifier for DAGS on HB526, HD1, representing Comptroller Curt Otaguro.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov

RICK BLANGIARDI
MAYOR



ALEX KOZLOV, P.E.
DIRECTOR

HAKU MILLES, P.E.
DEPUTY DIRECTOR

February 23, 2021

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. 526 HD1
Relating to Procurement

The Department of Design and Construction (DDC) respectfully **opposes** House Bill No. 526 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; and (2) Require 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 improve the existing procurement process.

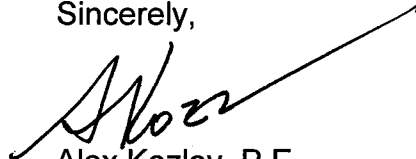
The proposed legislation would burden procurement and contract administration procedures with requirements that consume additional resources and potentially increase bid protests and contracting delays without commensurate benefits. DDC has implemented procedures that incorporate past performance into 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 Sylvia Luke, Chair
and Members of the Committee on Finance
February 23, 2021
Page 2

Based on the above consideration, DDC respectfully **opposes** House Bill
No. 526 HD1.

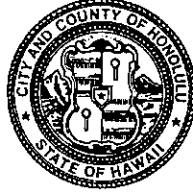
Thank you for the opportunity to express our opposition to this bill.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Kozlov', with a long, sweeping horizontal stroke extending to the right.

Alex Kozlov, P.E.
Director

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
PHONE: (808) 768-3900 • FAX: (808) 768-3179 • INTERNET: www.honolulu.gov



RICK BLANGIARDI
MAYOR

ANDREW T. KAWANO
DIRECTOR

KELLI J. NISHIMURA
ACTING DEPUTY DIRECTOR

TESTIMONY OF ANDREW T. KAWANO
DIRECTOR OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
BEFORE THE HOUSE COMMITTEE ON FINANCE
February 25, 2021, 12:00 PM, Conference Room 308

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

RE: OPOSITION OF HOUSE BILL 526, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **opposes** House Bill 526, Relating To Procurement.

Current procurement law allows agencies to consider past performance as an evaluating criterion to determine an offeror's responsibility. Requiring past performance on all contracts that shall be considered in a responsibility determination will cause delays in the overall procurement process. Delays would stem from the evaluation process and may lead to more protests due to the responsibility determinations based on past performance. The delays may cause increases to costs associated with the procurement.

For the reasons stated above, the Department of Budget and Fiscal Services of the City and County of Honolulu respectfully opposes this bill.

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.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
Email: info@gcawhawaii.org
Website: www.gcawhawaii.org



GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

February 24, 2021

TO: HONORABLE SYLVIA LUKE, CHAIR, HONORABLE TY J.K. CULLEN,
VICE CHAIR, COMMITTEE ON FINANCE

SUBJECT: **OPPOSITION TO H.B. 526 HD1, RELATING TO PROCUREMENT.**
Requires the past performance of contractors' positive, negative, or lack of previous experience to be considered in bid selection of a contractor. Requires Departments to consider available assessments of previous performance on relevant and recent government and private contracts when making contract awards and appropriates funds.

HEARING

DATE: Thursday, February 25, 2021
TIME: 12:00 p.m.
PLACE: Capitol Room 308

Dear Chair Luke, Vice Chair Cullen and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of approximately five hundred (500) general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. Our mission is to elevate Hawaii's construction industry and strengthen the foundation of our community.

GCA is in **opposition** to H.B. 526 H.D.1, which requires the past performance of contractors' positive, negative, or lack of previous experience to be considered in bid selection of a contractor. It also requires Departments to consider available assessments of previous performance on relevant and recent government and private contracts when making contract awards and appropriates funds.

The language in this measure will have the unintended consequence of increasing administrative costs, creating additional bureaucracy, and increasing the number of protests. Past performance introduces a considerable amount of subjectivity that will result in increased protests. There are many reasons that a contractor could be negatively rated that are not the fault of a contractor.

Additionally, poor performing contractors can be addressed by turning to the State Procurement Office to suspend or debar the contractor.

Thank you for this opportunity to testify in opposition of this measure.



**HOUSE COMMITTEE ON FINANCE
State Capitol, Via Videoconference
415 South Beretania Street
12:00 PM**

February 25, 2021

RE: HB 526 HD1, RELATING TO PROCUREMENT

Chair Luke, Vice Chair Cullen, and members of the committee:

My name is Beau Nobmann, 2021 President of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA-Hawaii is in opposition to HB 526, which would require the past performance of contractors' positive, negative, or lack of previous experience to be considered in bid selection of a contractor, and requires departments to consider available assessments of previous performance on relevant and recent government and private contracts when making contract awards.

The past performance of a contractor is already allowed by current procurement law. Therefore, this legislation is unnecessary.

We appreciate the opportunity to express our views on HB 526 HD1..