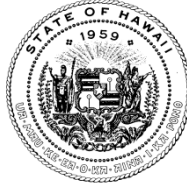


DAVID Y. IGE  
GOVERNOR



**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

March 16, 2021  
3:00 P.M.  
State Capitol, Teleconference

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

Senate Committee on Government Operations

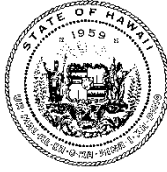
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The Department of Transportation **supports** this bill which requires past performance of contractors' positive, negative, or lack of previous experience to be considered in bid selection of a contractor; requires departments to consider available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

The implementation of past performance is valuable as it pertains to competitive sealed proposals and professional services and provides information for procurement stakeholders in determining and evaluating 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.

DAVID Y. IGE  
GOVERNOR



BONNIE KAHAKUI  
ACTING ADMINISTRATOR

**STATE OF HAWAII**  
**STATE PROCUREMENT OFFICE**

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

TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
GOVERNMENT OPERATIONS

March 16, 2021, 3:00 P.M.

HOUSE BILL 526, HD1  
RELATING TO PROCUREMENT

Chair Moriwaki, Vice Chair Dela Cruz, 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 and recommends the following change to SECTION 4, page 4, lines 1-2, of the bill as follows:

“once the past performance database has been established that shall include [including but not limited to] notices of deficiencies and failure to complete a procurement contract.”

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.

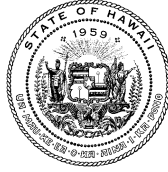
Upon receipt of the appropriated and allocated funding for the report, the SPO will first procure the respective consulting services so that the SPO will be able to create the tools and infrastructure for buyers to adopt a new policy, which is essential for successful implementation. In order to continue 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
	<b>Total One-Time Funding</b>	<b>\$150,500</b>
7	Annual Database Maintenance (estimated at 27% of cost)	\$13,500
	<b>Total Funding Recurring Annually</b>	<b>\$13,500</b>

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.

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 GOVERNMENT OPERATIONS

TUESDAY, MARCH 16, 2021, 3:00 P.M.  
CONFERENCE ROOM O16 AND VIA VIDEO CONFERENCE, STATE CAPITOL

H.B. 526, H.D. 1

RELATING TO PROCUREMENT.

Chair Moriwaki, Vice Chair Dela Cruz, 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.

**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, lines 1 to 5, 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.

**LATE**

**HB-526-HD-1**

Submitted on: 3/16/2021 7:27:07 AM

Testimony for GVO on 3/16/2021 3:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Christine Kinimaka	Testifying for DAGS	Comments	No

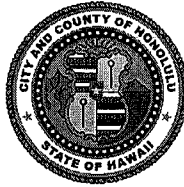
Comments:

I am available for comments.

DEPARTMENT OF DESIGN AND CONSTRUCTION  
CITY AND COUNTY OF HONOLULU

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

RICK BLANGIARDI  
MAYOR



ALEX KOZLOV, P.E.  
DIRECTOR

HAKU MILLES, P.E.  
DEPUTY DIRECTOR

March 15, 2021

The Honorable Sharon Y. Moriwaki, Chair  
The Honorable Donovan M. Dela Cruz, Vice-Chair  
and Members of the Committee on Government Operations  
The Senate  
State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Moriwaki, Vice-Chair Dela Cruz, 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 Sharon Y. Moriwaki, Chair  
and Members of the Committee on Government Operations  
March 15, 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 "Alex Kozlov", with a long, sweeping horizontal stroke extending to the right.

Alex Kozlov, P.E.  
Director

1065 Ahua Street  
Honolulu, HI 96819  
Phone: 808-833-1681 FAX: 839-4167  
Email: [info@gcawhawaii.org](mailto:info@gcawhawaii.org)  
Website: [www.gcawhawaii.org](http://www.gcawhawaii.org)



# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

March 15, 2021

TO: HONORABLE SHARON MORIWAKI, CHAIR, HONORABLE DONOVAN DELA CRUZ, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

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: Tuesday, March 16, 2021  
TIME: 3:00 p.m.  
PLACE: Capitol Room 016

Dear Chair Moriwaki, Vice Chair Dela Cruz 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.



**SENATE COMMITTEE ON GOVERNMENT OPERATIONS**  
**State Capitol, Via Videoconference**  
**415 South Beretania Street**  
**3:00 PM**

March 16, 2021

RE: HB 526, RELATING TO PROCUREMENT

Chair Moriwaki, Vice Chair Dela Cruz, 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.