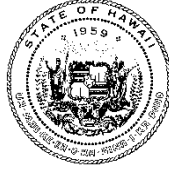


DAVID Y. IGE
GOVERNOR



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

TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON GOVERNMENT OPERATIONS
ON
February 5, 2019, 3:15 PM
Conference Room 225, State Capitol

SENATE BILL 1333
RELATING TO PROCUREMENT

Chair Thielen, Vice Chair Inouye, and members of the Committee, thank you for the opportunity to submit testimony on S.B. 1333.

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.

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR
BONNIE KAHAKUI
ASSISTANT 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
<http://spo.hawaii.gov>
Twitter: [@hawaiispo](https://twitter.com/hawaiispo)

TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
February 5, 2019 3:15 P.M.

SB1333
RELATING TO PROCUREMENT

Chair Laura Thielen, Vice Chair Lorraine Inouye, and members of the committee, thank you for the opportunity to submit testimony on SB1333. The State Procurement Office (SPO) supports this bill and provides the following comments.

The development of an organized system to collect 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.

SAH - Subcontractors Association of Hawaii

1188 Bishop St., Ste. 1003**Honolulu, Hawaii 96813-2938

Phone: (808) 537-5619 ✦ Fax: (808) 533-2739

February 5, 2019

Testimony To: Senate Committee on Government Operations
Senator Laura H. Thielen, Chair

Presented By: Tim Lyons, President

Subject: S.B. 1333 – RELATNG TO PROCUREMENT.

Chair Thielen 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.

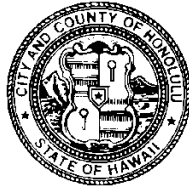
In the past our only reservation has been what the specific criteria might be for determining past performance; whether that is the annual evaluation or a specific job evaluation. As an example, we are concerned as to whether contracting officers will have sufficient staff and time in order to determine 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.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 208 • HONOLULU, HAWAII 96813
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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
February 5, 2019, 3:15 PM, Conference Room 225

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

RE: OPPOSITION OF SENATE BILL 1333, RELATING TO PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **opposes** Senate Bill No. 1333, Relating To Procurement.

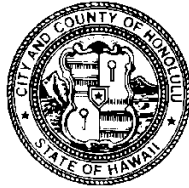
Current procurement law allows entities to consider past performance as an evaluating criterion to determine an offeror's responsibility. Requiring past performance for every project exceeding the small purchase threshold will cause delays in the overall procurement process. Delays would stem from the 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.

DEPARTMENT OF BUDGET AND FISCAL SERVICES
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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 WAYS AND MEANS
January 29, 2019, 9:00 AM, Conference Room 309

TO: The Honorable Donovan M. Dela Cruz, Chair
and Members of the Committee on Ways and Means

RE: RECOMMEND CHANGE OF SENATE BILL 1333, RELATING TO
PROCUREMENT

The Department of Budget and Fiscal Services, City and County of Honolulu (City), **recommends change** to Senate Bill No. 1333, Relating To Procurement.

The City concurs that past performance is a key criteria in the determination of a contractor's ability to perform; however, past performance should only be considered in certain circumstances. Currently, past performance can be evaluated in order to determine an offeror's responsibility. Section 103D-302 subsection (f) of the Hawaii Revised Statute (HRS) states, "Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determination acceptability such as inspection, testing..." Past performance may be specified as a criterion. Requiring past performance as evaluation criteria can lead to award delays and protests. It is for this reason that we recommend the following changes to the bill:

1. Section 2 of the Bill regarding Section 103D-302 HRS:
"(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids... Past performance shall may be evaluated in all bids expected to meet or exceed the small purchase threshold... No criteria may be used in bid evaluation that are not set forth in the invitation for bids."
2. Section 3 of the Bill regarding Section 103D-303 HRS:
"(e) The request for proposals shall state the relative importance of price and other evaluation factors. Past performance shall may be evaluated in all solicitations expected to meet or exceed the small purchase threshold."

3. Section 4 of the Bill regarding Section 103D-306 HRS:

"(a) 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."

Prospective contractors?

4. Section 5 of the Bill regarding Section 103D-306 HRS:

"(a) [~~Unless the policy board, by rules, specifies otherwise, before submitting an offer, a prospective offeror, not less than ten calendar days prior to the day designated for opening offers, shall give written notice of the intention to submit an offer to the procurement officer responsible for that particular procurement.] Purchases ~~shall~~ **may** be made from, and contracts shall be awarded to, responsible prospective contractors only.~~

(b) [~~Whether or not an intention to bid is required, the~~] The procurement officer shall determine whether the prospective offeror has the financial ability, ~~satisfactory past performance,~~ resources, skills, capability, and business integrity necessary to perform the work.

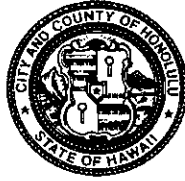
In regard to Section 6 of the Bill referencing Section 103D-320 HRS, conducting performance evaluations would create additional expenses and responsibilities for departments. Added responsibilities could then impact the department's operations.

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.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR

ROBERT J. KRONING, P.E.
DIRECTOR

MARK YONAMINE, P.E.
DEPUTY DIRECTOR

February 4, 2019

The Honorable Laura H. Thielen, Chair
and Members
Senate Committee on Government Operations
State Capitol, Room 225
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Thielen and Members:

SUBJECT: Senate Bill No. 1333, Relating to Procurement

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill No. 1333, 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; (3) Require procurement officers to conduct past performance evaluations to be conducted at least annually and at the time the work under a contract or order is completed, and maintained in the department's files; and (4) Develop and implement a statewide past performance database that collects past performance evaluations to be used as a resource when evaluating past performance in future procurements."

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 Laura H. Thielen, Chair
and Members
February 4, 2019
Page 2

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** Senate Bill No. 1333.

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

Very truly yours,



Robert J. Kroning, P.E.
Director

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON GOVERNMENT OPERATIONS

Sen. Laura Thielen, Chair

Sen. Lorraine Inouye, Vice Chair

Tuesday, February 5, 2019

3:15 pm

Room 225

SUPPORT for SB 1333 – PROCUREMENT

Aloha Chairs Thielen, Vice Chairs Inouye and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,500 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 1333 requires procurement officers to complete periodic performance evaluations of certain contractors and establishes factors to be included in any evaluation, consideration, or review of past performance, and ratings standards for those factors. Requires past performance to be factored into future bid selection of contractors for certain contracts. The bill requires past performance to be considered in all sole source procurement and any competitive contracts that exceeds the small purchase threshold and requires the development and implementation of a statewide past performance database. Appropriates funds to implement.

Community Alliance on Prisons thanks the committee for hearing this important measure that we fully support. I remember asking a procurement person if there was a "bad actor" file. I was told there was...but it was empty!

We have been reviewing the department of public safety's contracts with Corrections Corporation of America (now called CoreCivic – same bad practices with a new name) and over the years have found and identified many contract violations. The department of public safety has never fined the contractor for any violations (as other jurisdictions have done) and continues to send our people into their profit-seeking hands.

We urge the committee to pass this important bill. It is time for accountability and transparency in procuring contracts. Mahalo for this opportunity to testify.