
A BILL FOR AN ACT

RELATING TO PROCUREMENT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that the procurement
2 process is in need of clear legislative direction to award state
3 contracts to responsible bidders or offerors through the state
4 procurement process, to increase accountability with performance
5 on state contracts, and to more efficiently utilize taxpayer
6 dollars. Some state contracts may currently be awarded to the
7 lowest bidder through the invitation for bid process without
8 regard to poor past performance. Such bidders may be considered
9 qualified despite poor performance on state contracts in the
10 past, which may result in repeated inefficiencies and
11 substandard work.

12 The purpose of this Act is to:

- 13 (1) Require past performance to be considered in future
14 bid selection of a contractor; and
- 15 (2) Require departments to consider available assessments
16 of previous performance on relevant and recent
17 government contracts when making contract awards.



1 SECTION 2. Section 103D-104, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By adding a new definition to be appropriately inserted
4 and to read:

5 "Past performance" means available recent and relevant
6 performance of a contractor on state, federal, or private
7 contracts that shall be considered in a responsibility
8 determination within the relevance of the current solicitation,
9 including but not limited to legal action."

10 2. By amending the definition of "responsible bidder or
11 offeror" to read:

12 "Responsible bidder or offeror" means a person who has the
13 capability in all respects to perform fully the contract
14 requirements, and the integrity and reliability [which] that
15 will assure good faith performance[-], pursuant to the
16 responsibility determination standards adopted by the policy
17 board."

18 SECTION 3. Section 103D-302, Hawaii Revised Statutes, is
19 amended by amending subsection (f) to read as follows:

20 "(f) Bids shall be evaluated based on the requirements set
21 forth in the invitation for bids. These requirements may



1 include criteria to determine acceptability such as inspection,
2 testing, quality, workmanship, delivery, and suitability for a
3 particular purpose. Those criteria that will affect the bid
4 price and be considered in evaluation for award shall be as
5 objectively measurable[-] as possible, such as discounts,
6 transportation costs, [~~and~~] total or life cycle costs[-], and
7 the bidder's past performance on projects of similar scope for
8 public agencies, including but not limited to notices of
9 deficiencies, legal actions, failure to complete a procurement
10 contract, and assessments of the bidder's prior work. The
11 invitation for bids shall set forth the evaluation criteria to
12 be used. No criteria may be used in bid evaluation that are not
13 set forth in the invitation for bids."

14 SECTION 4. Section 103D-303, Hawaii Revised Statutes, is
15 amended by amending subsection (g) to read as follows:

16 "(g) Award shall be made to the responsible offeror whose
17 proposal is determined in writing to be the most advantageous,
18 taking into consideration price and the evaluation factors set
19 forth in the request for proposals[-], which shall include the
20 offeror's past performance on projects of similar scope for
21 public agencies, including but not limited to notices of



1 deficiencies, legal actions, failure to complete a procurement
2 contract, and assessments of the offeror's prior work. No
3 [~~other factors or~~] criteria [shall] may be used in the
4 evaluation[-] that are not set forth in the request for
5 proposals. The contract file shall contain the basis on which
6 the award is made."

7 SECTION 5. Section 103D-306, Hawaii Revised Statutes, is
8 amended by amending subsection (a) to read as follows:

9 "(a) A contract may be awarded for goods, services, or
10 construction without competition when the head of a purchasing
11 agency determines in writing that there is only one source for
12 the required good, service, or construction, the determination
13 is reviewed and approved by the chief procurement officer, the
14 written determination is posted in the manner described in rules
15 adopted by the policy board, a review of past performance has
16 been conducted, and no objection is outstanding. The written
17 determination, any objection, past performance evaluations
18 relied upon, and a written summary of the disposition of any
19 objection shall be included in the contract file."

20 SECTION 6. Section 103D-310, Hawaii Revised Statutes, is
21 amended by amending subsection (b) to read as follows:



1 "(b) Whether or not an intention to bid is required, the
2 procurement officer shall [~~determine~~] make a responsibility
3 determination for any awardee, pursuant to rules adopted by the
4 policy board, including whether the prospective offeror has the
5 financial ability, resources, skills, capability, and business
6 integrity necessary to perform the work. For [~~this~~] the
7 purpose[~~, the~~] of making a responsibility determination, the
8 procurement officer shall possess or obtain available
9 information sufficient to be satisfied that a prospective
10 offeror meets the applicable standards set forth by the policy
11 board. The procurement officer shall consider past performance
12 of the offeror as it applies to a responsibility determination
13 for the current solicitation. The officer, in the officer's
14 discretion, may also require any prospective offeror to submit
15 answers, under oath, to questions contained in a standard form
16 of questionnaire to be prepared by the policy board. Whenever
17 it appears from answers to the questionnaire or otherwise, that
18 the prospective offeror is not fully qualified and able to
19 perform the intended work, a written determination of
20 nonresponsibility of an offeror shall be made by the head of the
21 purchasing agency, in accordance with rules adopted by the



1 policy board. The unreasonable failure of an offeror to
2 promptly supply information in connection with an inquiry with
3 respect to responsibility may be grounds for a determination of
4 nonresponsibility with respect to such offeror. The decision of
5 the head of the purchasing agency shall be final unless the
6 offeror applies for administrative review pursuant to section
7 103D-709."

8 SECTION 7. Section 103D-320, Hawaii Revised Statutes, is
9 amended to read as follows:

10 " [+]§103D-320 [-] Retention of procurement records [-];
11 evaluations. All procurement records shall be retained and
12 disposed of in accordance with chapter 94 and records retention
13 guidelines and schedules approved by the comptroller [-];
14 provided that upon completion of a procurement contract, the
15 department that issued the request for proposals shall evaluate
16 the work and performance of the respective contractors and
17 maintain the evaluations in the department's files."

18 SECTION 8. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so much
20 thereof as may be necessary for fiscal year 2016-2017 for the
21 purposes of implementing this Act.



1 The sum appropriated shall be expended by the state
2 procurement office for the purposes of this Act.

3 SECTION 9. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 10. If any provision of this Act, or the
7 application thereof to any person or circumstance, is held
8 invalid, the invalidity does not affect other provisions or
9 applications of the Act that can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are severable.

12 SECTION 11. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 12. This Act shall take effect on July 1, 2050;
15 provided that section 8 shall take effect on July 1, 2016.



Report Title:

Procurement; Past Performance; Criteria; Sole Source;
Evaluation; Appropriation

Description:

Requires past performance to be factored into future bid selection of a contractor. Defines past performance. Requires past performance to be considered in sole source procurement. Requires that upon completion of a procurement contract, the department that issued the request for proposal shall evaluate the work and performance of the respective contractors and maintain the evaluations in the department's files. Appropriates funds. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR

PAULA A. YOUNGLING
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
ECONOMIC DEVELOPMENT & BUSINESS
MARCH 15, 2016; 9:00 AM

SB2501 SD2
RELATING TO PROCUREMENT

Chair Kawakami, Vice-Chair Kong and members of the committee, thank you for the opportunity to submit testimony on SB2501 SD2.

The SPO SUPPORTS the intent of past performance consideration when awarding contracts and submits additional comments in regards to this measure.

SPO submitted a full report to Legislature in January 2015 denoting the challenges to the past performance issue as well as a recommended set of phases for implementation (REF: REPORT ON THE STUDY ON PAST PERFORMANCE CONSIDERATION IN HAWAII CONTRACTING)

- a. In Phase I of SPO's recommendations for implementation of a past performance system, a responsibility determination be made on all procurements prior to the award of any contract and that contractor past performance be assessed as part of that responsibility determination. At first, in regards to competitive sealed bidding, this determination would be made on the basis of references and additional documentation that the proposer includes in their bid/proposal. It is SPO's belief that no matter what criteria you might choose to evaluate a bidder, ultimately, the bidder must be responsible in order to do business with the State.
- b. In respect of Competitive Sealed Bidding, the bill states that evaluation criteria should include: "bidder's past performance on projects of similar scope for public agencies, including but not limited to notices of deficiencies, legal actions, failure to complete a procurement contract, and assessments of the bidder's prior work."

It is imperative that the State create a record of past performance that is based on truth and fairness, and can be validated by formal documentation collected throughout the contract period that clearly shows the onus is on the contractor alone. In addition, it is also critical to develop this information as

to what positive areas the contractor has been able to achieve, i.e., ahead of schedule, in or under budget. The collection of past performance is to develop a record of responsible contractors and to encourage contractors to constantly be looking to improve performance.

Two major logistical challenges exist.

1. There is no past performance database that Procurement Officers can access. In our Past Performance Report, SPO recommends this as Phase II of the implementation process. We surmise a stand-alone State-wide past performance database could cost as much as \$4 million not including at least a 23% per year maintenance fee. Another option is to fund the \$2.5 million implementation of a robust eProcurement system that would be mandated for the Executive Branch, but also be available to any Agency across the State. This system would include the ability to collect information on contract performance, and give much needed transparency and consistency to the manner in which procurements are conducted. This is a self-funded model, and so no continuing maintenance fees would be required after initial implementation (REF: STATE PROCUREMENT OFFICE STRATEGIC PLAN, attached)
2. Second, there is no formal, available assessment of a bidder's prior work. Agencies and Departments typically assess a contractor's performance in varying ways, with differing policies, procedures and forms. Any assessment conducted may or may not be kept in the contract files. Certainly, these assessments are not readily available outside of the originator's division. Post-award contract management is an area where many States and Commercial companies struggle and a series of areas needs to be addressed such as training, consistency in forms and policy, and a database for collection. Here to, an eProcurement system would be most helpful as it would have the capability to search for construction contracts, and the visibility to see the contract information.

Act 182 was passed at the last Legislative Session (2015) extending the Procurement Task Force to continue its work. It was tasked "specifically to examine and recommend past performance standards and statewide processes in order to promote economy, efficiency, effectiveness, and impartiality in procurement for state and county government." Those findings should be reviewed.

There are many areas of policy, procedure, infrastructure and logistical issues to be considered in implementing past performance. These can be addressed in Hawaii Administrative Rules. Resources will be required such as staffing to develop definitions, policies and procedures. This will entail meeting with stakeholders including, procurement personnel, vendors, departments and members of the community. Infrastructure must be created whereby each contracting unit may have access to enter and view performance data. There must also be a procedure for due process for vendors to respond to evaluations of their performance. Resources will also be needed for change management and training for personnel involved in procurement and contract administration as well as for vendors. For strong and robust implementation of Phase I, funds of at least \$130,000 would be required.

Lastly, in section 2, page 2, Line 6 the definition of past performance includes past performance of a contractor on "state, federal, or private contracts". In Section 3, page 3, line 8 and Section 4, page 3 line 21 the reference is to evaluating past performance on similar contracts for "public agencies." The contradiction makes it unclear as to what past performance is to be based upon.

Thank you.

Attachment: SPO Initiatives

Links:

[Past Performance Report](http://spo.hawaii.gov/wp-content/uploads/2015/01/SPO-Past-Performance-Legislative-Report-submitted.pdf) (http://spo.hawaii.gov/wp-content/uploads/2015/01/SPO-Past-Performance-Legislative-Report-submitted.pdf)

[Past Performance Report Appendices](http://spo.hawaii.gov/wp-content/uploads/2015/01/Appendices-for-Past-Performance-Report.pdf) (http://spo.hawaii.gov/wp-content/uploads/2015/01/Appendices-for-Past-Performance-Report.pdf)



LATE

Testimony by:

FORD N. FUCHIGAMI
DIRECTOR

Deputy Directors
JADE T. BUTAY
ROSS M. HIGASHI
EDWIN H. SNIFFEN
DARRELL T. YOUNG

IN REPLY REFER TO:

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

March 15, 2016
9:00 a.m.
State Capitol, Room 312

**S.B. 2501, S.D. 2
RELATING TO PROCUREMENT**

House Committee on Economic Development and Business

The Department of Transportation (DOT) **supports** the intent of this bill that proposes to consider past performance in future bid selection of a contractor under the Competitive Sealed Bid (CSB) provisions of the Procurement Code, HRS § 103D-302.

The proposed definition of past performance includes consideration of past performance as a responsibility determination. The determination of contractor responsibility has always been a requirement under the Procurement Code, and is consistent with the definition of the responsible bidder, "a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance."

The purchasing agency has the flexibility to include provisions in the specifications that help to determine the responsibility of bidders. For example, a specification proviso, "contractor shall have performed similar work for at least two years prior to the bid date. Failure to meet this requirement shall be cause of disqualification." During bid evaluation, certain items are verified. If, during bid evaluation, the purchasing agency has any doubts on the responsibility of the bidder, the purchasing agency may, under HRS § 103D-310, "inquire whether the bidder has the financial ability, resources, skills, capability, and business integrity necessary to perform the work...the purchasing agency may require the bidder to submit answers, under oath, to questions contained in a standard form of questionnaire...whenever it appears from answers to the questionnaire or otherwise, that the prospective offeror is not fully qualified and able to perform the intended work, a written determination of nonresponsibility of an offeror shall be made by the purchasing agency."

However, the proposed revision to HRS 103D-310 lines 6 through 13 which includes, "the procurement officer shall possess or obtain available information sufficient to be satisfied that a prospective offeror meets the applicable standards set forth by the policy board." Should not be part of this bill. While applicable standards may be written, the many unknown variables may result in challenges.

This proposed revision of consideration of contractor's notices of deficiencies, legal actions, failure to complete a procurement contract, and assessments of the bidder's prior work is rooted in the intent of the purchasing agency's underlying ethical duties under the Procurement Code.¹

However, including past performance as an evaluation factor in the HRS § 103D-303, Competitive Sealed Proposal (CSP), and HRS §103D-306, Sole Source methods of procurement is not necessary as the procurement code already includes the inclusion of past performance for these methods of procurement.

Thank you for the opportunity to provide testimony.

¹ § 103D-101 "(1) as fiduciary and trustee of public moneys;...(3) [a]ct only in the public interest;...(5)[i]dentify and maximize efficiencies in the public procurement process."

**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

March 14, 2016

The Honorable Derek S.K. Kawakami, Chair
and Members
House Committee on Economic Development & Business
State Capitol, Room 314
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Kawakami and Members:

SUBJECT: Senate Bill No. 2501 SD2, Relating to Procurement

The Department of Design and Construction (DDC) respectfully provides the following comments on Senate Bill No. 2501 SD2, which "(1) Requires past performance to be considered in future bid selection of a contractor; and (2) Requires departments to consider available assessments of previous performance on relevant and recent government contracts when making contract awards."

1. 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.
 - a. Consideration of past performance in selection of professional services providers is encoded in Hawaii Revised Statutes (HRS) 103D-304. DDC's procedures include completing performance evaluations of professional services providers and considering past evaluations when selecting consultants for future professional services contracts.
 - b. Consideration of past performance in selection of construction contractors by competitive sealed bidding is allowable under HRS 103D-302. DDC's procedures include completing performance evaluations of construction contractors. Also, DDC has piloted and is continuing to develop procedures to incorporate consideration of past performance in qualification of offerors for construction contracts.

The Honorable Derek S.K. Kawakami
and Members
March 14, 2016
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2. The bill does not allow consideration of past performance on projects for private owners, which can be particularly relevant for contractors with no past performance record on projects for public agencies.
3. The proposed legislation could burden procurement procedures with requirements that consume additional resources and result in additional contracting delays without commensurate benefits.

Based on the above considerations, DDC considers Senate Bill No. 2501 SD2 to be unnecessary and potentially detrimental to efficient contracting procedures.

Thank you for the opportunity to testify.

Very truly yours,


Robert J. Kroning, P.E.
Director

SAH - Subcontractors Association of Hawaii

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

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March 15, 2016

Testimony To: House Committee on Economic Development & Business
Representative Derek S.K. Kawakami, Chair

Presented By: Tim Lyons, President

Subject: S.B. 2501, SD 2 - RELATING TO PROCUREMENT

Chair Kawakami 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

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

The concept that this bill puts forward is overdue. The mechanics of how it will be done are less clear to us so we reserve judgement on this bill. There is no doubt that those contractors that do not have a good past performance should not be entitled to receive additional contracts potentially costing the state and the counties more money for remedial work and/or liability exposure for faulty work.

Our concern however, is based on how one judges these items. As is noted in the bill, the kinds of things that past performance will be judged on are deficiencies, legal actions, failure to complete and "assessments" of prior work. The problem is the subjective judgment that will be required in order to determine these items. Was it a supplier/manufacturer that could not deliver materials on time to the contractor who then caused a failure to complete the project? Was a change order a result of architectural deficiencies not the fault of the contractor or, was the contract in litigation because of actions of the general but all contractors on the project were enjoined in a lawsuit? While it is important to know if there was a delay, it is more important to why there was a delay and how to judge who is at fault.

In summary, we are not opposed to the usage of past performance however, this Committee may remember the creation of the PIP Program under a past Administration which caused an uproar in the construction industry because it was seen as so subjective that contractors felt they were being denied an opportunity to participate while others were being favored. Its centerpiece was past performance. We would like not to see a repeat of that fiasco.

Based on the above then, we are not opposed to the concept offered in this bill; however we would like to reserve judgement until we can see additional details.

Thank you.



Chamber of Commerce HAWAII

The Voice of Business

**Testimony to the House Committee on Economic Development & Business
Tuesday, March 15, 2016 at 9:00 A.M.
Conference Room 312, State Capitol**

LATE

RE: SENATE BILL 2501 SD2 RELATING TO PROCUREMENT

Chair Kawakami, Vice Chair Kong, and Members of the Committee:

The Chamber of Commerce Hawaii ("The Chamber") **supports** SB 2501 SD2, which requires past performance to be factored into future bid selection of a contractor. Defines past performance. Requires past performance to be considered in sole source procurement. Requires that upon completion of a procurement contract, the department that issued the request for proposal shall evaluate the work and performance of the respective contractors and maintain the evaluations in the department's files. Appropriates funds.

The Chamber is Hawaii's leading statewide business advocacy organization, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The procurement process is in need of improvement. Business and the public want an open, competitive, and transparent, procurement process. The procurement process must also be timely in the selection and payment for goods and services. In addition, the State is looking for the best value, not necessarily the lowest price.

SB 2501 SD2 will increase accountability with state contract performance to bidders. Collection of past performance will develop a record and encourage responsible contractors and bidders to continue to improve performance.

We appreciate the opportunity to express our support for SB 2501 SD2.

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Email: info@gcahawaii.org
Website: www.gcahawaii.org



GCA of Hawaii
GENERAL CONTRACTORS ASSOCIATION OF HAWAII
Quality People. Quality Projects.

Uploaded via Capitol Website

March 15, 2016

TO: HONORABLE DEREK KAWAKAMI, CHAIR, HONORABLE SAM KONG, VICE CHAIR, HOUSE COMMITTEE ON ECONOMIC DEVELOPMENT & BUSINESS

SUBJECT: **COMMENTS REGARDING S.B. 2501, SD2 RELATING TO PROCUREMENT.**
Requires past performance to be factored into future bid selection of a contractor. Defines past performance. Requires past performance to be considered in sole source procurement. Requires that upon completion of a procurement contract, the department that issued the request for proposal shall evaluate the work and performance of the respective contractors and maintain the evaluations in the department's files. Appropriates funds. Effective 7/1/2050. (SD2)

HEARING

DATE: Tuesday, March 15, 2016
TIME: 9:00 a.m.
PLACE: Capitol Room 312

LATE

Dear Chair Kawakami and Vice Chair Kong and Members,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred seventy general contractors, subcontractors, and construction related firms. The GCA was established in 1932 and is the largest construction association in the State of Hawaii. The mission is to represent its members in all matters related to the construction industry, while improving the quality of construction and protecting the public interest.

S.B. 2501, SD2, Relating to Procurement proposes to require that past performance of a contractor be factored into future low bid selection and for sole source procurement. **GCA's comments are limited to how this measure relates to construction contracts only as it appears the areas of concern in construction include: (1) being on budget; (2) being on time; and (3) the delivery of good quality work.**

2013-2015 History of Past Performance Discussions and Task Forces

From 2013 through part of 2015 the Procurement Task Force was initiated pursuant to [Senate Concurrent Resolution 92 \(2013\)](#) which has been meeting since 2013 through the early part of 2015, and one of the issues discussed included how to address bad performing contractors. Additionally, in 2014 this body passed [House Concurrent Resolution 176 \(2014\)](#), which required a study of past performance of government contractors. These Task Forces together with participating government agencies and private industry stakeholders agreed that this issue needs further discussion before dictating an approach with potential unintended consequences. Last year, pursuant to [Act 182 \(2015\)](#) this body extended the Procurement Task Force to specifically identify and propose amendments, if any, to the procurement code that may better promote economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, specifically regarding statewide past performance standards and

procedures. Unfortunately, the Act 182 (2015) Task Force did not meet during the interim to address these issues, but it has initiated meeting last month to address this very issue.

It is important to note that consideration of past performance in procurement is already permitted under 103D-302(f) under the invitation for bid process, what is commonly known as low bid, however for various reasons agencies choose not to use it. Under Section 103D-302(f), HRS an invitation for bid may set the requirements to determine qualifications and criteria for a project. In other words, the agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance, recent project history and any other qualifications an agency may find necessary. The reason for this reluctance on the part of the state agencies to use this section may be due to difficulty to quantify, evaluate, and administer past performance.

The consideration of past performance for low bid contracts raises a number of concerns for GCA, including but not limited to: ensuring objective administration and evaluation processes for agencies in determining qualified past performance criteria, including how the state or county would receive information about private projects; inability for a new contractor to bid public work due to lack of past performance qualifications; agency's lack of resources, including staff and funding for implementation and administration of past performance for low bid contracts; procedural due process concerns and appeal procedures; and ensuring efficiency, integrity and transparency in the procurement process of public works construction projects. In construction, a number of evaluation factors must be taken into consideration, including licensing, subcontractor performance, less than stellar designs, unforeseen conditions, inclement weather, inadequate administration and oversight, untimely and disruptive owner requested change orders, unforeseen hazardous condition discoveries, the need to accommodate user activities that limit noise (such as exam week) or odorous, sometimes toxic activities, that may be reasons why the project does not come in satisfying the 3 noted criteria: (1) On budget; (2) On time; and (3) numerous changes to the original design.

Therefore, GCA believes this bill is premature as state and county agencies along with stakeholders have made initial steps in addressing possible solutions, thus may be able to provide better guidance in addressing how past performance can be used to evaluate contractors. Instead, the better option is to provide an opportunity for agencies to initiate a pilot project where they can test select projects and administer past performance requirements upon them. It is necessary to identify the best approach to factor in past performance to ensure a fair and objective assessment of a contractor's performance.

Thank you for considering our comments on this measure and we respectfully request this bill be deferred.