



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

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TESTIMONY  
OF  
BONNIE KAHAKUI, ACTING ADMINISTRATOR  
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE  
ON  
WAYS AND MEANS

April 7, 2021, 9:45 A.M.

HOUSE BILL 526, HD1, SD1  
RELATING TO PROCUREMENT

Chair Dela Cruz, Vice Chair Keith-Agaran, and members of the committee, thank you for the opportunity to submit testimony on HB526 HD1, SD1. The State Procurement Office (SPO) 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 28, 2019, the Procurement Policy Board voted to approve to development of past performance Rules.

In 2019, the SPO 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.

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.

Recommendation:

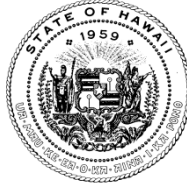
Create the tools and infrastructure for buyers to adopt a new policy is essential for successful implementation. In order to continue this work, the SPO is requesting time and funding. Time is required to verify and implement rules, begin creating the database, develop training, and coordinate and execute the training. The SPO is requesting one-time initial funding of \$164,000 pretax to develop and implement the guidance and related implementation training to cover at least the first two years, 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.

The SPO also recommends removing Section 2 on pages 2 to 4, 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.



**TESTIMONY BY:**

JADE T. BUTAY  
DIRECTOR

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LYNN A.S. ARAKI-REGAN  
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**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
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April 7, 2021  
9:45 A.M.  
State Capitol  
Conference Room 211  
VIA VIDEO CONFERENCE

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

Senate Committee on Ways and Means

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The Department of Transportation (DOT) **supports the intent** of this bill which defines past performance of contractors; requires procurement officers to consider specific factors, including past performance, when available; requires the state procurement office to establish and administer a past performance database and adopt rules pursuant to past performance requirements, by 12/31/23; and appropriates funds for the development, implementation, and training of certain procurement resources tools, including a past performance guide and past performance database.

The inclusion of past performance, as a consideration in determining responsibility for contractors, is valuable and appropriate as it pertains to competitive sealed proposals and professional services methods of procurement, especially since these respective methods are structured to include non-cost factors and evaluation criteria, relevant to the procurement, in the determination for selection and award.

Past performance, derived from facts collected responsibly, diligently, and objectively to the best extent possible, for the purpose(s) of accurate documentation and sound project management of a contractor's performance throughout the project may further ensure optimal performance by contractors on State procurement contracts. Relevant and pertinent information, verified by the State procurement stakeholder and contractor to ensure an accurate and fair assessment, may contribute valuably in determining responsibility of a contractor during selection and award. Past performance, as an added level of diligence in evaluating responsibility, may 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.

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# GCA of Hawaii

GENERAL CONTRACTORS ASSOCIATION OF HAWAII

Quality People. Quality Projects.

Uploaded via Capitol Website

April 6, 2021

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE GILBERT S.C. KEITH-AGARAN, VICE CHAIR, COMMITTEE ON WAYS AND MEANS

SUBJECT: **OPPOSITION TO H.B. 526 HD1, RELATING TO PROCUREMENT.**  
Defines past performance. Requires procurement officers to consider specific factors, including past performance, when available. Requires the state procurement office to establish and administer a past performance database and adopt rules pursuant to this past performance requirement, by 12/31/23. Appropriates funds for the development, implementation, and training of certain procurement resources tools, including a past performance guide and past performance database.

#### HEARING

DATE: Wednesday, April 7, 2021  
TIME: 9:45 a.m.  
PLACE: Capitol Room 211

Dear Chair Dela Cruz, Vice Chair Keith-Agaran 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 S.D.1.

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.