



STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
STATE PROCUREMENT OFFICE

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**TESTIMONY
OF
BONNIE KAHAKUI, ADMINISTRATOR
STATE PROCUREMENT OFFICE**

**TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
FEBRUARY 4, 2025, 3:05 PM**

**SENATE BILL 1175
RELATING TO PROCUREMENT**

Chair McKelvey, Vice Chair Gabbard, and members of the committee, thank you for the opportunity to submit testimony on Senate Bill 1175. The State Procurement Office (SPO) supports this bill to add required assessment criteria for the State's past performance database and offers the following comments.

Background/History of the Contractor Past Performance Database:

Act 188, Session Laws of Hawaii (SLH) 2021, required the SPO to develop a Past Performance Database no later than December 31, 2023. The SPO contracted the services of the State of Hawaii's Internet Portal Manager to develop an online application for a contractor past performance database. For months the SPO worked with the Procurement Policy Board (PPB), state and county procurement jurisdictions, and the contractor community to develop Hawaii Administrative Rules (HAR) and a Contractor Performance form. The rules and the form were both approved by the PPB on December 4, 2023. The SPO's contractor past performance database was launched in December 2023, prior to the December 31, 2023, deadline mandated by Act 188, SLH 2021.

The interim rules cover the information required to be included in the contractor past performance database:

- Name of the state contractor;
- Date of the project;
- Size of the project;
- Brief description of the project;
- Responsible managing employees for the project;
- Whether or not the project was timely completed;
- Authorized budget
- The positive or negative difference between the final cost of the project and the project's authorized budget, including the reasons for the difference.

The Contractor Performance form is currently on the SPO's Hawaii Awards and Notices & Data System (HANDS), which operates 24/7, 365 days a year, and is accessible via popular browsers such as Microsoft's Edge, Mozilla Firefox, and Google Chrome, but the database only includes what is specifically stated in HRS §103D-329 without any additional assessment criteria as part of the evaluation of the contractor. The minimal information currently available affords little opportunity for a valid performance assessment that is useful for government purchasing agencies.

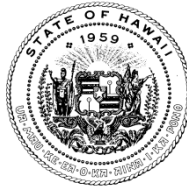
The SPO supports the amendments offered in Section 1, in its entirety, to address the government's ability to identify the lowest "responsible bidder" on all projects by considering a contractor's past performance, beyond just basic information, in the procurement process.

In order to implement any changes to the current past performance database, the SPO is requesting time and funding. Time is required to amend the rules, update the database, develop training on the assessment criteria, and coordinate and execute the training. The SPO requests the continued funding of \$13,500 each calendar year for the State's past performance database's annual maintenance, plus a one-time funding of \$7,500 to revise the contractor past performance database.

This database routinely captures contractor performance information in a structured and uniform way and is available to be utilized by government agencies when future procurements need to determine a contractor's responsibility in competitive sealed bidding in the HAR 3-122, Subchapter 5; in competitive sealed proposals in the HAR 3-122, Subchapter 6; and in sole source procurements in HAR 3-122, Subchapter 9.

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



LATE

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February 4, 2025
3:05 p.m.
State Capitol
Conference Room 225 & Videoconference

**S.B. 1175
RELATING TO PROCUREMENT**

The Senate Committee on Government Operations

The Department of Transportation (DOT) **supports** the bill which adds the state contractor's project performance assessment to the information required in the past performance database maintained by the State Procurement Office; information to include quality of work, schedule and timeliness of performance, cost and financial management, management, personnel and labor, safety and security, and general comments, for procurements of goods, services, and construction.

The inclusion of a contractor's project performance assessment in the past performance database is valuable as it provides information for State project managers in evaluating a contractor's responsibility as it pertains to the quality of work and the ability to successfully perform on a project. A contractor's project performance assessment may be another tool in the procurement evaluation process to ensure the awarded bidder has the capability to perform the contract requirements, and the integrity and reliability that will assure good faith performance.

Thank you for the opportunity to provide testimony.

February 4, 2025

TO: HONORABLE ANGUS L.K. MCKELVEY, CHAIR, HONORABLE MIKE GABBARD, VICE CHAIR, COMMITTEE ON GOVERNMENT OPERATIONS

SUBJECT: **OPPOSITION TO S.B. 1175, RELATING TO PROCUREMENT.** Adds state contractor's performance assessment to information required to be included in the past performance database maintained by the State Procurement Office.

HEARING

DATE: Tuesday, February 4, 2025
TIME: 3:05 p.m.
PLACE: Capitol Room 225

Dear Chair McKelvey, Vice Chair Gabbard 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 **Opposes** S.B. 1175, which adds state contractor's performance assessment to information required to be included in the past performance database maintained by the State Procurement Office.

The purpose of a procurement code is to ensure the fair, ethical, and transparent procurement of goods and services while maximizing taxpayer funds. The Hawaii Procurement Code specifically highlights the importance of objectivity in order to ensure fair, ethical, and transparent procurement. This can be seen with the language of 103D-302(f), which states that "those criteria that will affect the bid price and be considered in evaluation for award shall be as objectively measurable as possible, such as discounts, transportation costs, total or life cycle costs, and the bidder's past performance, if available." Remaining as objective as possible is critical to prevent unethical behavior in state procurement.

In 2023, the Procurement Policy Board underwent rulemaking to establish a past performance assessment form. After numerous hearings, the Board determined that the past performance assessment form should be as simple and objective as possible as many issues arose during rulemaking.

The language in this measure was proposed to the Procurement Policy Board for consideration and was rejected by the board over subjectivity concerns. This measure seeks to force the Procurement Policy Board to include information that they specifically intended to keep out of the assessment form after numerous hearings.



Further, there were several concerns with due process. For example, a negative assessment could act as a de facto debarment without going through the proper hearing procedures of debarment. This is because a negative assessment would essentially prevent the contractor from getting future work without proper due process procedures to allow a contractor to rebut and challenge the assessment.

Thank you for the opportunity to provide testimony on this measure.