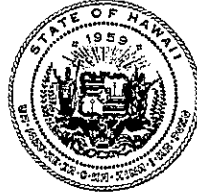


HB1180 HD1

RELATING TO PROCUREMENT.

Requires the state procurement office to establish a database to record inadequate past performance by contractors on public works projects.
(HB1180 HD1)

DAVID Y. IGE
GOVERNOR



SARAH ALLEN
ADMINISTRATOR

PAULA A. YOUNGLING
ASSISTANT ADMINISTRATOR

**STATE OF HAWAII
STATE PROCUREMENT OFFICE**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Telephone: (808) 587-4700
e-mail: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEE
ON
GOVERNMENT OPERATIONS
March 24, 2015, 1:25 p.m.

HOUSE BILL 1180 HD1
RELATING TO PROCUREMENT

Chair Dela Cruz, Vice-Chair Nishihara, and members of the committee, thank you for the opportunity to submit testimony on HB1180 HD1. The State Procurement Office (SPO) OPPOSES this measure.

HB 1180 would require the Administrator of the SPO to develop and administer a database of inadequate performance by contractors. This measure intersects with two issues impacting Hawai'i procurement: (1) development and maintenance of a procurement database containing relevant contract data (HB1126 HD1); and (2) evaluation of contractor past performance (HB1292 HD2).

Unlike HB1126 HD1 and HB1292, this measure does not add value or give useful data about the public procurement landscape in Hawai'i and will not inherently increase the efficiency of our procurement system. What it does instead is duplicate a platform that already exists: the Debarment List Database. The SPO currently maintains a page on our website that is available to list contractors that have been debarred. The criteria that would be used to define a contractor with inadequate performance is the same as found in our suspension and debarment processes. As such, HB1180 HD1 is duplicating a process that already exists for all inadequately performing contractors across the State of Hawaii.

Accordingly, SPO opposes HB1180 HD1.

Thank you.

Hawai'i Construction Alliance

P.O. Box 179441
Honolulu, HI 96817
(808) 348-8885

March 23, 2015

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Clarence K. Nishihara, Vice Chair
and members
Senate Committee on Government Operations
Hawai'i State Capitol
Honolulu, HI 96813

Dear Chair Dela Cruz, Vice Chair Nishihara, and members:

The Hawai'i Construction Alliance **supports the intent** of HB1180 HD1, relating to procurement.

The Hawai'i Construction Alliance is comprised of the Hawai'i Regional Council of Carpenters; the Operative Plasterers' and Cement Masons' Union, Local 630; International Union of Bricklayers & Allied Craftworkers, Local 1; the Laborers' International Union of North America, Local 368; and the Operating Engineers, Local Union No. 3. Together, the member unions of the Hawai'i Construction Alliance represent 15,000 working men and women in the basic crafts of Hawai'i's construction industry.

There are several bills before the legislature this session which seek to establish databases to track contractor performance. In evaluating those bills, concerns have been raised that a database which tracks all contractor performance on all state contracts may be too large, complex, and costly.

HB1180 HD1 offers a more sensible and practical option by requiring the state procurement office to establish a database to record inadequate past performance by contractors on public works projects. The state procurement office would develop criteria or "triggers" for what constitutes inadequate performance, such as being over budget, not being completed as scheduled, or involving substandard construction. Contractors would have the opportunity to respond to any evaluations of their performance, and would also have the opportunity to remove themselves from the database if/when such removal is warranted.

Furthermore, under HB1180 HD1, government entities contracting under HRS§103D would be required to consult the database before a contract award is made, which would reduce the likelihood that a chronically poor performer would be awarded a contract.

We find that HB1180 HD1 offers a way to help government contracting entities to promote high quality procurement, reduce the likelihood that chronically poor performers are awarded contracts, and ensure that public works projects are delivered on-time and on-budget.

Mahalo for the opportunity to provide these comments.

Aloha,



Tyler Dos Santos-Tam
Executive Director
Hawai'i Construction Alliance
execdir@hawaiiconstructionalliance.org

The Senate
The Twenty-Eighth Legislature
Committee on government Operations
March 24, 2015 1:25 p.m.
Room 414

Statement of the Hawaii Regional Council of Carpenters on HB 1180 HD1
Relating to Procurement

The Hawaii Regional Council of Carpenters supports H.B. 1180, to continue systems work to address the problem of construction contractors continuing to win contract awards with no consideration of a history of poor performance on public works projects.

The problem is real, as was established in previous legislative sessions. Public works have been delayed, poorly built, even abandoned, by contractors who then go on to be awarded another public works project. The City and County of Honolulu was among the first to begin the implementation process with the "Construction 32" Standard Operating Procedures. Personnel changes may have limited the implementation, but there has been no statement that bid protests or other problems stemmed from the Procedure.

The challenges of implementing a system must be weighed against the delays in delivery facilities for the public, and costs to government. For example, the City may have been better prepared to work towards timely completion of the Ewa Mahiko park facilities if a cross-agency data base was available. The Waiialua community might also have benefitted in the completion of its library. A new system will need field testing and adjustment, but it must be started at some point.

H.B. 1180 makes the checking of past inadequate performance uniform for public works procurement. It provides guidance, with flexibility, for the development of a data base so that inadequate performance on projects for different subdivisions of government will be available. We believe that the focus on inadequate past performance is to address concerns that new contractors would lack a record of good performance. That concern should be addressed.

While the Bill does not mandate loss of eligibility to bid on or be awarded a contract based on inadequate past performance, further work on systems for those matters can take place once the data base and regular consulting of the data base, are put into practice. It is conceivable that a contractor with inadequate past performance can be awarded a contract, then worked with on points for improvement raised by past performance.

Facilities for the public and wise use of taxpayers' money are at stake, making development of this aspect of public works procurement worth our while.

1065 Ahua Street
Honolulu, HI 96819
Phone: 808-833-1681 FAX: 839-4167
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 24, 2015

TO: HONORABLE DONOVAN DELA CRUZ, CHAIR, HONORABLE
CLARENCE NISHIHARA, VICE CHAIR, COMMITTEE ON CONSUMER
GOVERNMENT OPERATIONS

SUBJECT: **COMMENTS TO H.B. 1180, HD1 RELATING TO PROCUREMENT.**
Requires the state procurement office to establish a database to record inadequate
past performance by contractors on public works projects. (HB1180 HD1)

HEARING

DATE: Tuesday, March 25, 2015
TIME: 1:25 p.m.
PLACE: Capitol Room 414

Dear Chair Dela Cruz, Vice Chair Nishihara and Members of the Committee,

The General Contractors Association of Hawaii (GCA) is an organization comprised of over five hundred eighty 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 GCA's 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.

HB 1180, HD1 proposes to gather information on bad performing contractors only pursuant to Hawaii Revised Statutes, Section 103D, instead of analyzing procurement data as a whole that could provide better information in analyzing what defines a bad contractor. 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.

During the two past years the Procurement Task Force has been meeting and one of the issues discussed included bad performing contractors. Additionally, last year this body passed House Concurrent Resolution 173 (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 vetting before dictating an approach with potential unintended consequences. Furthermore, 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.

Furthermore, while analysis and data collection of past performance may make considerable sense for goods and services contracts, the performance in construction contracts is inherently subjective and involves many facets of evaluation. For example 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 a project does not come in satisfying the 3 noted criteria: 1) On budget; 2) On time; and 3) Good Quality.

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. Therefore, GCA believes this bill is premature as state and county agencies along with stakeholders have made initial steps in addressing what solutions may be able to provide better guidance in addressing how past performance can be used to evaluate contractors.

While this bill would only authorize the collection of inadequate performance data, we do not believe this would be the most efficient and effective way to measure past performance. Further review and analysis are necessary to identify, process and penalize bad performing contractors.

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; 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.

Instead, the better option is to continue work within a Past Performance Procurement Task Force proposed in HB 1292, HD2. The Task Force identifies the need for a centralized database for past performance information collection and retrieval, which would provide uniform analysis of a contractor's performance.

Thank you for considering our comments on this measure.