

HB1292 HD2

RELATING TO PROCUREMENT.

Establishes a past performance task force to establish the factors that should be considered when evaluating a contractor's past performance for the purposes of awarding a contract under Chapters 103D and 103F, Hawaii Revised Statutes. (HB1292 HD2)

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TESTIMONY
OF
SARAH ALLEN, ADMINISTRATOR
STATE PROCUREMENT OFFICE

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

HOUSE BILL 1292 HD 2
RELATING TO PROCUREMENT

Chair Dela Cruz, Vice-Chair Nishihara, and members of the committee, thank you for the opportunity to submit testimony on HB1292 HD2. The State Procurement Office (SPO) is in support of the intent of this bill but OPPOSES the mechanism to achieve its objective.

The SPO suggests this Legislature extend the duration of an existing task force known as the Procurement Task Force. In 2013, the Twenty-Seventh Legislature adopted SCR92 SD2, which requested the Comptroller establish a Procurement Task Force to study the State procurement code and identify amendments that would increase economy, efficiency, effectiveness, and impartiality in the procurement of public works construction projects, to include analysis on past performance. The Procurement Task Force is set to dissolve on June 30, 2015. Because the membership is very similar to that identified in this measure and because consideration of past performance and its statewide implementation can fit within the Procurement Task Force's scope of work, the SPO suggests this group continue its work by focusing on standards for past performance.

This solution is efficient and logical because, instead of starting from scratch, it makes use of a group that is already in existence and it leverages a task force that we already know works.

To continue the work of the Procurement Task Force, the SPO suggests the following amendments to HB1292 HD2:

~~SECTION 2. [(a) The state procurement office shall convene a past performance task force to examine the issue of past performance and establish the factors that should be considered when evaluating a contractor's past performance for the purposes of awarding a contract under chapters 103D and 103F, Hawaii Revised Statutes.~~

~~—(b) The task force shall consist of the following members:~~

~~—(1) The administrator of the state procurement office, or the administrator's designee, who shall serve as the chair;~~

- ~~—(2) The director of commerce and consumer affairs, or the director's designee;~~
 - ~~—(3) The comptroller, or the comptroller's designee;~~
 - ~~—(4) The director of finance, or the director's designee;~~
 - ~~—(5) The director of health, or the director's designee;~~
 - ~~—(6) The director of human services, or the director's designee;~~
 - ~~—(7) The director of public safety, or the director's designee;~~
 - ~~—(8) The director of transportation, or the director's designee;~~
 - ~~—(9) The president of the University of Hawaii, or the president's designee;~~
 - ~~—(10) The superintendent of education, or the superintendent's designee;~~
 - ~~—(11) The director of the department of design and construction of the city and county of Honolulu, or the director's designee;~~
 - ~~—(12) One representative from the General Contractors Association of Hawaii; and~~
 - ~~—(13) One representative from the Subcontractors Association of Hawaii.~~
- ~~—(c) When establishing the factors to be considered in evaluating a contractor's past performance, the task force shall include but not be limited to:~~
- ~~—(1) Evaluation processes required for all procurements to be consistent across all chief procurement officers;~~
 - ~~—(2) Resources needed for agency implementation, including agency rule promulgation, evaluation tool development, and training for effective implementation;~~
 - ~~—(3) Identification of needed components of a centralized database for past performance information collection and retrieval;~~
 - ~~—(4) Criteria and standards to ensure that the evaluation of past performance is conducted in an objective, uniform manner, which includes standardized processes for contractors to respond to the evaluation and provides due process;~~
 - ~~—(5) Standardized processes to address subcontractor issues as they impact on past performance;~~
 - ~~—(6) Identification of any other infrastructure needs necessary for consideration of past performance; and~~
 - ~~—(7) Recommended legislation needed to implement task force findings and recommendations.]~~

(a) The Comptroller shall continue to convene the Procurement Task Force established in accordance with SCR92 SD2 SLH/2012 to study the cost impacts that the procurement process has had for public works construction projects, and 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 governments.

(b) The Comptroller, or the Comptroller's designee, is requested to continue to serve as chair of the task force.

(c) The Comptroller is requested to solicit representatives from the following entities to serve on the task force, provided that those persons designated shall be knowledgeable of procurement procedures and issues within their respective organizations:

- (1) The State Procurement Office;
- (2) The University of Hawaii;
- (3) The Department of Education;
- (4) The Office of Hawaiian Affairs;
- (5) The Department of Transportation;
- (6) A county procurement department;
- (7) A county board or department of water supply;
- (8) The semi-autonomous public transit agency of the City and County of Honolulu;
- (9) The Subcontractors Association of Hawaii;
- (10) The General Contractors Association of Hawaii;
- (11) The Hawaii Building and Construction Trades Council.
- (12) AFL-CIO; and
- (13) The Hawaii Construction Alliance.

(d) The task force is requested to:

- (1) Identify and propose amendments, if any, to the state 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 processes.

~~[(d)]~~(e) Task force members shall serve without compensation but shall be reimbursed for all necessary expenses, including travel expenses, which are incurred in the performance of their duties as members of the task force.

~~[(e)]~~(f) No member shall be made subject to chapter 84, Hawaii Revised Statutes, solely because of that member's participation as a member of the task force.

~~[(f)]~~(g) The task force shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2016.

~~[(g)]~~(h) The task force convened pursuant to this Act shall cease to exist on June 30, 2016.

SECTION 3. This Act shall take effect upon its approval.

If this committee decides not to avail the State of this existing group and instead recommends passage of HB1292 HD2, the SPO opposes the measure without adequate funding. The SPO will require specialized help. The Past Performance Task Force envisioned by HB1292 HD2 will succeed with the assistance of a professional who has facilitation experience, knowledge of past performance, procurement in Hawai'i, the various interests involved, and Hawai'i law. This temporary position will provide administrative support to the Past Performance Task Force, ensure the Task Force complies with the Sunshine Laws, Hawaii Revised Statutes Ch. 92, serve as facilitator and liaison, as well as perform independent research and analysis as required. Accordingly, the SPO would need \$60,000 and a temporary three-year position (one year to facilitate and assist in developing Statute and Rules, two years to implement interim and final Rules), to facilitate and support the Past Performance Task Force in their charge.

Thank you.



**Testimony to the Senate Committee on Government Operations
Senator Donovan M. Dela Cruz, Chair
Senator Clarence K. Nishihara, Vice Chair
Tuesday, March 24, 2015 at 1:25 p.m.
Conference Room 414
HB 1292 HD2 - Relating to Procurement**

Dear Chair Dela Cruz, Vice Chair Nishihara, and members of the Committee:

The Hawai'i Alliance of Nonprofit Organizations **supports the intent of HB 1292 HD2 and requests amendments.** HB1292 HD2 establishes a past performance task force to establish the factors that should be considered when evaluating a contractor's past performance for the purposes of awarding a contract under HRS Chapters 103D and 103F.

Hawai'i Alliance of Nonprofit Organizations (HANO) is a statewide, sector-wide professional association of nonprofits. Our mission is to unite and strengthen the nonprofit sector as a collective force to improve the quality of life in Hawai'i. Our member organizations provide essential services to every community in the state.

HANO supports the intent of this measure to increase transparency and accountability and establish a task force to examine past performance factors in procurement. We note that the HD2 version of the bill includes contracts under HRS 103F (health and human services contracts). Given this recent addition to the bill, **we respectfully request the Committee to include two representatives on the task force representing nonprofit health and human services providers.** These voices are needed to bring the necessary perspectives and experience into the discussion regarding HRS 103F. Based on our previous work in this area of government contracting, HANO would be happy to serve if asked.

Thank you very much for your consideration.

Mahalo,
Nikki Love Kingman
Public Policy Director

SAH - Subcontractors Association of Hawaii

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March 24, 2015

Testimony To: Senate Committee on Government Operations
Senator Donovan M. Dela Cruz, Chair

Presented By: Tim Lyons, President

Subject: H.B. 1292, HD 2 - RELATING TO PROCUREMENT

Chair Dela Cruz 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

We support this bill but request an amendment.

We wholeheartedly agree with the concept of using past performance in order to award a contractor projects using taxpayers money. Endorsing the concept is not a problem. The devil however may be in the details. As a result we fully support the establishment of a task force in order to further investigate the criteria and standards that would be used in order to judge past performance. This is an area that could have many factors that perhaps would not be considered at the outset but only realized after further exploration.

We do however suggest that the task force have increased representation from contractors. As it is right now it appears to be an 11 to 2 composition and we think it would serve the task force well to have more experience on the task force from those who actually bid and participate in the procurement process. As a result we would recommend additional representatives, such as 3 representatives from the Subcontractors Association of Hawaii and an equal number from the General Contractors Association.

Thank you.



A'ohe hana nui ka alu'ia
"No Task Is Too Big When Done Together By All"

HAWAII BUILDING AND CONSTRUCTION TRADES COUNCIL, AFL-CIO

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KIKA G. BUKOSKI
Executive Director

March 23, 2015

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Hawaii Teamsters & Allied
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Roofers, Waterproofers & Allied
Workers United Union of Roofer
Local 221

Honorable Senator Donovan Dela Cruz, Chair
Honorable Senator Clarence Nishihara, Vice Chair
Members of the Committee on Government Operations
Hawaii State Capitol
415 South Beretania Street
Honolulu, HI 96813

RE: **COMMENTS ON HB1292, HD2 RELATING TO PROCUREMENT**
Hearing: Tuesday, March 24, 2015, 1:25 p.m. Conference Room 414

Honorable Chair, Vice Chair and Committee Members;

The Hawaii Building & Construction Trades Council, AFL-CIO (HBCTC) is a chartered member of the Building and Construction Trades Department, AFL-CIO which was first organized in 1908 and is comprised of 16 out of 17 construction trade unions with 386 state, local and provincial councils in the United States and Canada and an estimated 15,000 members locally. Our primary mission being to provide employment opportunities and living wages for many of Hawaii's working men and women in the construction industry.

The Council supports the intent of HB1292, HD2 which proposes to create a past performance task force to establish the factors that should be considered when evaluating a contractor's past performance for the purposes of awarding a contract under Chapters 103D and 103F, Hawaii Revised Statutes.

HBCTC supports the intent of Chapter 103D to ensure that public money being spent on public works projects are done so in the most fair and equitable manner. Initiatives like what is proposed here would further the state's obligation to protect the public's.

This task force as proposed could, depending on its ultimate recommendations and the adoption thereof, have a significant impact on the construction industry going forward.

The issues to be discussed in such a task force will have a direct impact on the local union-members of the HBCTC and the thousands of hard working men and women it serves throughout Hawaii.

As such, HBCTC on behalf of the constituency it serves, respectfully requests to be included in the discussion and afforded a seat at the table as a member of the task force being proposed in HB1292, HD2.

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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: **SUPPORT OF H.B. 1292, HD2 RELATING TO PROCUREMENT.**

Establishes a past performance task force to establish the factors that should be considered when evaluating a contractor's past performance for the purposes of awarding a contract under Chapters 103D and 103F, Hawaii Revised Statutes. (HB1292 HD2)

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 hundred five hundred eighty (580) 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.

GCA supports H.B. 1292, HD2 which proposes to form a Past Performance Procurement Task Force because further study is needed to ensure criteria regarding inadequate performance or past performance in public works construction contracts can be fairly implemented and avoid unintended consequences.

For the past two years GCA has been participating in a Procurement Task Force which identified issues of concern with regard to the procurement of public works construction projects - identifying bad contractors was one of the issues identified. It is important to note that **past performance can already be considered in the procurement process under HRS 103D-302(f), Invitation for Bid process, as deemed appropriate by the contracting agencies. Such consideration of past performance does not require a law change; instead it can be implemented through use of current law.** GCA prefers developing and testing criteria determining "inadequate performance" using current law before considering laws that dictate criteria and implementation across the board. Concerns such as closing the door on new small businesses wanting to get into construction with no past performance and who would be doing the rating as well as their objectivity, consistency and fairness need further discussion. Due process concerns also need vetting for those who may feel they have been unfairly rated. In short, the issue is not as simple as it may appear and warrants further review.

Thank you for the opportunity to share our support for H.B. 1292, HD2.