

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

BONNIE KAHAKUI
ACTING ADMINISTRATOR

**STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
PROCUREMENT POLICY BOARD**

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 587-4701

Email: procurement.policy.board@hawaii.gov
<http://spo.hawaii.gov>

**PROCUREMENT POLICY
BOARD**
RICHARD HELTZEL
LANCE INOUE
LISA MARUYAMA
DIANE NAKAGAWA
KEITH REGAN

**Procurement Policy Board Meeting
Tuesday, July 11, 2023, 1:30 pm – 3:30 pm HST**

Virtual Meeting Using Interactive Conference Technology – Zoom

Join Zoom Meeting

<https://hawaii-gov.zoom.us/j/95703155850?pwd=QIBFTFBnM2s2LzVQbUFJbkRYWU92UT09>

Meeting: 957 0315 5850

Passcode: 749531

One tap mobile

+12532050468,,95703155850#,,,,,0#,,749531# US

+12532158782,,95703155850#,,,,,0#,,749531# US (Tacoma)

Dial by your location

- +1 253 205 0468 US
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- +1 669 444 9171 US
- +1 669 900 6833 US (San Jose)
- +1 719 359 4580 US
- +1 507 473 4847 US
- +1 564 217 2000 US
- +1 646 558 8656 US (New York)
- +1 646 931 3860 US
- +1 689 278 1000 US

Meeting: 957 0315 5850

Passcode: 749531

Find your local number: <https://hawaii-gov.zoom.us/j/95703155850?pwd=QIBFTFBnM2s2LzVQbUFJbkRYWU92UT09>

Join by SIP

95703155850@zoomcrc.com

Join by H.323

162.255.37.11 (US West)

162.255.36.11 (US East)

Meeting: 957 0315 5850

Passcode: 749531

Physical Location

Kalanimoku Building, 1151 Punchbowl Street, Room 410, Honolulu, is available to the public and is guaranteed to be connected to the remote virtual meeting.

In the event that audiovisual communication cannot be maintained by all participating board members and quorum is lost, the meeting will automatically be recessed for 30 minutes, during which time an attempt to restore audiovisual communication will be made. If such attempt to restore is unsuccessful within said 30 minutes, all board members, members of the public, staff and other interested individuals shall log on again to the Zoom link on this Notice, whereby audio communication will be established for all participants and the meeting will continue. If reconvening the meeting is not possible because audio and visual communication cannot be re-established, the meeting will be terminated.

Written Testimony

Written testimony may be submitted by one of the methods listed below:

- By email to: procurement.policy.board@hawaii.gov
- By United States Postal Service to: 1151 Punchbowl Street, Room 416, Honolulu, HI 96813
- By facsimile to: (808) 587-4703

Written testimony will only be accepted for the items listed on the meeting agenda. Written public testimony submitted to the Procurement Policy Board will be treated as public record and any information contained therein may be available for public inspection and copying.

Please include the word “Testimony” and the subject matter following the address line.

Copies of the Board Packet will be available on-line for review at <https://spo.hawaii.gov/procurement-policy-board/procurement-policy-board-meeting-agenda-minutes/>. An electronic draft of the minutes for this meeting will also be made available at the same location when completed.

Procurement Policy Board Meeting
Agenda
Tuesday, July 11, 2023, 1:30 p.m. – 3:30 p.m.

- I. **Call to Order, Public Notice**
- II. **Roll Call, Quorum**
- III. **Approval of [Minutes of June 5, 2023](#), Meeting**
- IV. **Legislative Update**
- V. **Past Performance Assessment – Survey of Stakeholders**
- VI. **Announcements**

Future Meeting Dates/Times:

Thursday, August 31, 1:30 pm – 3:30 pm

Tuesday, September 12, 1:30 – 3:30 pm

VII. Executive Session: Discussion of personnel matters in the recruitment for Administrator, State Procurement Office

The Procurement Policy Board anticipates the need to meet in executive session pursuant to Section 92-5(a)(2) and (4), Hawaii Revised Statutes, to discuss personnel matters and to consult with the Board's attorney on questions and issues pertaining to the Board's powers and duties.

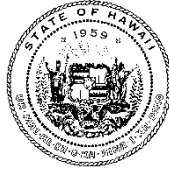
VIII. Adjournment

If you need an auxiliary aid/service or other accommodation due to a disability, contact Ruth Baker at (808) 587-4701 or at ruth.a.baker@hawaii.gov as soon as possible, preferably by COB July 7, 2023. Requests made as early as possible have a greater likelihood of being fulfilled.

Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy.

III.

Approval of Minutes



JOSH GREEN, M.D.
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**PROCUREMENT POLICY
BOARD**
RICHARD HELTZEL
LANCE INOUE
LISA MARUYAMA
DIANE NAKAGAWA
KEITH REGAN

Procurement Policy Board

Minutes of Meeting

Date/Time: Monday, June 5, 2023, 1:30 p.m.

Locations: Comptroller's Conference Room
Kalanimoku Building, Room 410
1151 Punchbowl Street
Honolulu, Hawaii 96813

Virtual Meeting Using Interactive Conference Technology – Zoom

Members Present: Rick Heltzel
Lance Inouye
Lisa Maruyama
Diane Nakagawa
Keith Regan

Department of the
Attorney General: Stella Kam, Deputy Attorney General

State Procurement
Office Staff: Bonnie Kahakui, Acting Administrator
Ruth Baker
Stacey Kauleinamoku
Shannon Ota
Carey Ann Sasaki
Donn Tsuruda-Kashiwabara
Kevin Takaesu

Other State Staff: Chris Butt, Department of Education
Eric Nishimoto, Department of Accounting and General Services - Public Works Division
Lois Mow, Department of Education
Jolie Yee, Department of Accounting and General Services - Public Works Division

County Staff: Reid Goto, City & County of Honolulu
Paula Youngling, City & County of Honolulu Purchasing Administrator

Guests: Tim Lyons, Subcontractors Association of Hawaii
Ryan Sakuda
Gregg Serikaku, PAMCA

I. Call to Order, Public Notice

Chair Lisa Maruyama called the Procurement Policy Board (Board) meeting to order at 1:38 p.m. held on Zoom and in-person in Room 410 of 1151 Punchbowl Street. The meeting was recorded.

II. Roll Call, Quorum

Roll call was taken of the Procurement Policy Board members. There was quorum.

The Deputy Attorney General assigned to DAGS and staff of the State Procurement Office (SPO) were introduced.

III. Approval of Minutes of April 20, 2023, and May 18, 2023, Meeting

The minutes of the April 20, 2023, meeting were revised per the discussion at the May 18, 2023, Board meeting. Rick Heltzel made a motion and Keith Regan seconded the motion to accept the revised minutes as presented. Since there were no objections, the minutes were approved.

The minutes of the May 18, 2023, meeting were corrected. Diane Nakagawa made a motion and Keith Regan seconded the motion to accept the corrected minutes. Since there were no objections, the minutes were approved.

IV. Past Performance Assessment – Survey of Stakeholders

SPO Acting Administrator Bonnie Kahakui reported that on May 24, 2023, the SPO issued a procurement circular to explain Act 188, Session Laws of Hawaii 2021, and the requirement for the SPO to establish a Past Performance Database and Assessment and requested feedback on the proposed Hawaii Administrative Rules (HAR) and the Assessment Form. The procurement circular and request for feedback were distributed to the Office of the Governor, Office of the Lt. Governor, all State Executive Branch Departments, the Hawaii State Library System, Department of Education, University of Hawaii, Office of Hawaiian Affairs, Hawaii Health System Corporation, Hawaii State Judiciary, State Senate, State House of Representatives, and all Chief Procurement Officers of other jurisdictions and counties. The SPO also issued an announcement through the Hawaii Awards & Notices Data System to 994 buyers, 110 department administrators, and 24,555 vendors with a few duplicates within respective organizations. An email was about the Past Performance Database and Assessment was sent to members of the Past Performance Working Group, vendors who participated in the 2019 SPOCon event, the General Contractors Association of Hawaii, the Subcontractors Association of Hawaii, the Building Industry Association, and government agencies who manage contracts. Feedback was requested to be submitted by June 16, 2023. As of June 5, 2023, the SPO received a handful of responses, most of which questioned or did not understand what this request for feedback was about.

Chair Maruyama asked who was on the Past Performance Working Group and if the Board will be able to review the feedback received. Ms. Kahakui responded that the Working Group consisted of stakeholders, including those representing contractors and state/county agencies, and that the SPO intends to present to the Board at the July 11, 2023, meeting the feedback, concerns, and questions received.

Mr. Inouye asked that the SPO provide the Board a distribution list. Ms. Kahakui said the SPO can do so, noting that the distribution list is very large, includes old contact information, and resulted in a number of undeliverable emails to Past Performance Task Force members.

V. Proposed Amendments to Hawaii Administrative Rules (HAR) Section 3-122 – Source Selection and Contract Formation

The SPO staff presented answers to Board members' questions.

- There are several subchapters in HAR 3-122 that need to be revised.
- After voting to approve any of the interim rules, the Board can go back to modify those rules.
- The interim rules are still subject to public hearing.

Chair Maruyama proposed that the Board vote to approve each section as they are being presented.

Mr. Inouye asked about the process for rule changes. Ms. Kahakui explained that the SPO reviewed and revised/updated the rules for HAR Chapter 3-122 and now seeks Board approval on the proposed amendments as interim rules. The SPO will refine and revise the HAR during the interim period, then hold a public hearing on the rules. While the HAR Chapter 3-122 rules are not tied into Past Performance, the SPO's goal is to have the proposed Past Performance rules follow the same process.

i. Subchapter 2 – General Provisions

SPO Staff Carey Ann Sasaki summarized the proposed amendments to HAR Subchapter 2, General Provisions.

- In §3-122-3, Extension of time on contracts, Subsection (4)(b) is amended by adding “and provided the prices are fair and reasonable.” If a contract extension with the contractor cannot be done, this would allow alternative procurement with another party, conditioned that it will be up to 180 calendar days and that prices are fair and reasonable.

This implements a best practice; a reminder that agencies are required to conduct the analyses for sole source and for request for proposals \$100K and more. This also ensures that any extension of contracts are made with the condition that prices are fair and reasonable.

- In §3-122-9, references to antiquated language were updated to reflect the use of electronic communication and submission, as well as for clarify and consistency. For clarity, “contract documents” were added as documents transmitted by vendors via electronic communication. “Invitation for bids or request for proposals” is replaced with “solicitation” to include all methods of procurement.
- In §3-122-9 (d), “the complete original offer, with” is removed because this should not be mandated if electronically submitted offers with electronic signatures are accepted.
- In §3-122-9.01, Disclosure of information, subsection (a)(1) is amended to address small purchases: a purchasing agency is not required to disclose any information until after the time and date set for receipt of quotes instead of after a purchase order is issued or a purchasing card order is placed. Pricing or information submitted electronically may be available immediately after the deadline for receipt of quotes, so there is no valid reason why quotes or information can only be made available after a purchase order or purchasing card order is completed. This amendment was made to allow agencies to disclose information sooner rather than later.
- The non-substantive amendment of §3-122-9.01 (b) is for grammar, clarity, consistency, and style. “Name of members of an evaluation committee” was changed to “names of evaluation committee members”. This amendment reads as “A purchasing agency shall not disclose the

names of the evaluation committee members established by section 3-122-45.01 prior to the posting of the award pursuant to section 3-122-57(a) for multi-step bids and competitive sealed proposals.”

Comments on the proposed changes to §3-122-9 (d) were offered.

Mr. Inouye stated that he is not comfortable with the language in §3-122-9 (d), which reads “If the offeror fails to comply with this requirement, the procurement officer has the option to reject the [~~facsimile or~~] electronically submitted offer.” The phrase “has the option to” can be subject to protest and should be changed to “shall.” He clarified that if an offeror fails to comply with the requirement in the submittal of the original bid bond within five working days, the offer should automatically be rejected.

Mr. Heltzel stated that he is comfortable with this change as applicable to the original bid bond. He suggested keeping the word “shall” and revising the receipt timeline of the original bid bonds from five working days to 10 working days.

Paula Youngling of the City & County of Honolulu expressed her support of the intent to allow electronic submission, however she is worried about mixing the time the electronic offer is submitted and removing room for discretion in the submission of the original bid bond. Eric Nishimoto of DAGS Public Works Division commented that keeping the word “shall” provides some options for government agencies.

Ms. Kahakui referenced HRS §103D-323, Bid security, which states that “(a) Unless the policy board determines otherwise by rules, bid security shall be required only for construction contracts to be awarded pursuant to sections 103D-302 and 103D-303 and when the price of the contract is estimated by the procurement officer to exceed \$25,000 or, if the contract is for goods or services, the purchasing agency secures the approval of the chief procurement officer.”

Donn Tsuruda-Kashiwabara of the SPO referenced that the rules pertaining to bid security are in HAR 3-122-223 and clarified that the proposed rule change is to allow for electronically submitted offers. She added that the purpose of the bid security is to guaranty that the offeror is serious about its bid submittal.

Deputy AG Stella Kam questioned the language “within five working days from the notification of intent to award,” which occurs after the high scorer is determined. She also pointed out that the HAR states “Unless otherwise specified in the solicitation,” so if the solicitation is not clear, the contractor needs to get the original bid bond within five/10 working days from the notification of intent to award.

Kevin Takaesu of the SPO said the proposed rules require the original bid bond after electronic submittal of the offer. Chris Butt of the Department of Education stated that insurance/assurity companies said that they feel a photocopy is sufficient. Jolie Yee of DAGS Public Works Division said the reason for the original assurity bid bond is that it would be used as a claim in the event a winning offeror ends up turning down the award. If the electronic version of the bid bond is enforceable, then the original version may not be needed. Mr. Regan said that since a contractor would be debarred if it submits a fraudulent electronic copy of a bid bond, and that electronic bid bonds are acceptable. He said that the HARs should be revised to allow electronic bid bonds. Ms. Youngling, Mr. Nishimoto, and Mr. Butt agree to allow the submission of an electronic version of a bid bond.

Ms. Nakagawa asked that Ms. Kam and the SPO do more research on HAR §3-122-9 (d) on the necessity of an original bid bond and whether an electronic bid bond would suffice.

Chair Maruyama proposed to defer the presentation/explanation of HAR Subchapters 3, 4, and 4.5 to another meeting date, and at that meeting, the Board will revisit those sections that are awaiting clarification or answers. The SPO will also provide a matrix that lists the changes and the reason for the changes. There were no objections to defer HAR Subchapters 3, 4, and 4.5.

- ii. Subchapter 3 – Specifications
This item was deferred.
- iii. Subchapter 4 – Methods of Source Selection and General Guidance
This item was deferred.
- iv. Subchapter 4.5 – Source Selection for Federal Grant
This item was deferred.

VI. Announcements

The next Procurement Policy Board meeting will be held on Tuesday, July 11, 2023, at 1:30 p.m. The meeting will be hybrid on Zoom and in person at the physical location of Room 410 at 1151 Punchbowl Street.

VII. Executive Session: Discussion of personnel matters in the recruitment for Administrator, State Procurement Office

Mr. Regan made a motion to go into Executive Session. Diane Nakagawa seconded the motion. There were no objections. At 3:17 p.m., the Board recessed its regular meeting and went into Executive Session pursuant to Section 92-5(a)(2) and (4), Hawaii Revised Statutes, to discuss personnel matters and to consult with the Board's attorney on questions and issues pertaining to the Board's powers and duties.

The Board reconvened its regular meeting at 3:27 p.m.

Chair Maruyama reported that the Board discussed recruitment for the position of Administrator of the SPO.

VIII. Adjournment

Since there was no new business, Mr. Inouye moved to adjourn the meeting; Mr. Heltzel seconded the motion. There were no objections. The meeting adjourned at 3:28 p.m.

Respectfully submitted,

Diane Nakagawa
Secretary, Procurement Policy Board

V.
Past Performance Assessment
Survey of Stakeholders

Assessment Feedback from Departments/Agencies/CPO Jurisdictions/Vendors

Procurement Circular 2023-07: Procurement Policy Board Request

Past Performance Hawaii Administrative Rules and Assessment Pursuant to Act 188, Session Laws of Hawaii 2021

PC2023-07, Past Performance Database Assessment Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: Section 1. GENERAL INFORMATION. Please complete form, by providing the information requested below, for whom the Contractor has provided or is currently providing products, services and/or construction specified herein.

Procuring Agency Information.

- Procuring Agency Department:
- Procuring Agency Division:
- Procuring Agency Jurisdiction:
- Procuring Agency Contact Name:
- Procuring Agency Contact Title:
- Procuring Agency Postal Address:
- Procuring Agency Contact Phone:
- Procuring Agency Contact Email:
- Procuring Agency Contact Fax:
- Procurement Officer Name:
- Procurement Officer Email:

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Board of Water Supply - C&C HNL		Change the description to, "Please complete form, by providing the information requested below, for whom <u>each contract under which</u> the Contractor..."	Clarifies that the form needs to be filled out for each contract that the Contractor performed under, and not for each Procurement Officer or procuring agency.

PC2023-07, Past Performance Database Assessment Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: Section 1. GENERAL INFORMATION. Contractor Information.

Contractor/Business Name:

Contractor Contact Name:

Contractor Contact Phone:

Contractor Contact Email:

Business Address:

License Requirement(s) Placed on Bidders for Project, if applicable (ie., A, B, C13, etc.):

Name(s) of Responsible Managing Employees for Project:

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
C&C HNL Dept. of Budget & Fiscal Services for BFS	Section 1. General Information, Contractor Information, Contractor/Business Name:	Uniform name format	Suggest using a drop down list of vendor names from a database to ensure business names appear as they do in HCE and/or other "official" database. Avoid allowing free flow entry of Contractor Business name to ensure uniformity in spelling and clear identification of the actual Contractor being assessed.
Board of Water Supply - C&C HNL		“License(s) Required d ^{ment(s) Placed on} Bidders for Project, if applicable ([i.e.]e.g., A, B, C13, etc.):”	Clarifies that the identified licenses should be those required for the project, whether or not the procuring agency placed those requirements on bidders. Also, should be e.g. (for example), and not i.e. (in other words).

PC2023-07, Past Performance Database Assessment Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: Section 1. GENERAL INFORMATION. Solicitation/Project Information.

Solicitation Title:

Term of Contract/Project Date(s), including all supplemental periods, if applicable:

Method of Procurement (IFB, RFP, Sole Source):

Solicitation/Contract No.:

Original Award Amount (Size of the Project):

Notice of Award Date:

Notice to Proceed Date:

Brief Description of the Project:

Estimated Start & Completion Dates (From and To):

Actual Start & Completion Dates (From and To):

Reason(s) for Difference Between Estimated and Actual Dates, if applicable:

Project's Authorized Budget:

Project's Final Cost:

Positive or Negative Difference, if applicable:

Reason(s) for Change in Cost, if applicable:

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
UH Systems		UH respectfully recommends deleting the following sections from the "Solicitation/Project Information": Notice of award date; notice to proceed date; estimated start and completion dates; and reasons for difference between estimated and actual dates, if applicable.	The items that are recommended for deletion are not required by Act 188 and, therefore, is an unnecessary requirement.

PC2023-07, Past Performance Database Assessment Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: Section 2. ASSESSMENT GUIDANCE

Rating	Definition + General Factors	Notes
Satisfactory (S)	<p>Performance meets minimum contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.</p> <p>This rating represents contractors meeting expected performance to support the project.</p> <p>To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract/order:</p> <ul style="list-style-type: none"> • Meets standards, objectives, and all performance requirements. • Stayed within project's authorized budget. • Deliveries on-time. • Schedule not impacted. • Met expectations. • Adequate user satisfaction. • Met goals and expectations of the project. <p>NOTE: The term "authorized budget" is defined as the initial funds allocated to a project and encumbered.</p>	<p>There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be assessed with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.</p>

Unsatisfactory (U)	<p>Performance does not meet most contractual requirements and recovery is not likely in a timely manner. The contractual performance of the element or sub-element contains serious problems for which the contractor's corrective action appear or were ineffective (i.e., reports, letters, etc.)]</p> <p>This rating represents contractors whose performance consistently does not meet requirements defined in the contract.</p> <p>To justify an Unsatisfactory rating, identify multiple significant events in each category that the contractor had trouble overcoming and state how it impacted the Government:</p> <ul style="list-style-type: none"> • Work consistently fails to meet contract requirements. • Close supervision of the contractor was necessary to progress/complete the work. • Many performance requirements were not met. • Did not stay within project's authorized budget. • Missed multiple schedule deadlines which negatively impacted cost. • Lack of cooperation. • Unnecessary changes. 	<p>A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency).</p>
	<ul style="list-style-type: none"> • Delayed • Lack of user satisfaction. <p>NOTE: If a contractor is deemed "unsatisfactory," the rating must be accompanied with multiple letters (department head) sent to the contractor to cure the problem. If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment.</p>	

Not Applicable (N/A)	No information or did not apply to contract requirements.	NOTE: Rating will be neither positive nor negative.
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Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
C&C HNL Dept. of Budget & Fiscal Services for HFD	<p>Section 1. General Information, Contractor Past Performance Assessment Guidance, Unsatisfactory Rating, Definition + General Factors "NOTE" states, "If a contractor is deemed "unsatisfactory," the rating must be accompanied with multiple letters (department head) sent to the contractor to cure the problem. If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment.</p>	<p>If a contractor is deemed "unsatisfactory," the rating must be accompanied with multiple letters (department head) or documentation sent to the contractor to cure the problem. If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment.</p>	<p>Multiple letters on department head should be expanded to provide the flexibility to include documentation that is admissible evidence.</p>

C&C HNL Dept. of Budget & Fiscal Services for BFS	Section 1. General Information, Contractor Past Performance Assessment Guidance, Unsatisfactory Rating, Definition + General Factors "NOTE" states," . . . If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment."	Delete entire sentence ," . . . If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment."	One instance of unsatisfactory performance does not equate to the sole reason for suspension or debarment and the two concepts need to be distinguished. We heard from many of our agency's the concern that the form seems to imply if a contractor is getting a unsatisfactory performance rating that it will mean that will have to debar/suspend them.
C&C HNL Dept. of Budget & Fiscal Services for DDC	<p>...</p> <ul style="list-style-type: none"> · Schedule not detrimentally impacted. · Met expectations · Work substantially complied with contract requirements. · Adequate user satisfaction. · Met goals and expectations of the project. 		<p>"Met expectations" is too general.</p> <p>"User satisfaction" does not apply to the contractor when the construction project is administered by an agency other than the user. For example, Honolulu Department of Design and Construction administers capital improvement projects for other departments that own and operate the facility. The user agency's input needs to be incorporated into the plans and specifications, which is what the construction contractor is required to comply with.</p>
C&C HNL Dept. of Budget & Fiscal Services for DDC		<p>...</p> <ul style="list-style-type: none"> · Did not stay within project's authorized budget. <p>...</p> <ul style="list-style-type: none"> · Unnecessary changes. 	Staying within budget and approving any change orders are the responsibility of the administering government agency. The contractor will not be paid more than the contracted amount unless approved by the government.
C&C HNL Dept. of Budget & Fiscal Services for DDC		NOTE: If a contractor is deemed "unsatisfactory," the rating must be accompanied by multiple written notices to the contractor, signed by the department head, that document the deficiency and direct the contractor to resolve it.	<p>In addition to letters, an interim evaluation of the contractor's performance identifying deficiencies and signed by the department head could serve as official notice to the contractor.</p> <p>Delete the second sentence, because suspension and debarment are actions beyond the intent of the performance evaluation.</p>
C&C HNL Dept. of Budget & Fiscal Services for DDC	The form should have an overall assessment rating so that database users could quickly identify contractors whose performance has been rated unsatisfactory by simply searching or sorting all assessments for only one of the contract types, such as construction. The Guidance section should indicate clearly how the overall rating is determined, such as "U" for any one rating question, "U" for at least 2 rating questions, "U" for at least 50% of the rating questions, or some other criterion.		

C&C HNL Dept. of Budget & Fiscal Services for DDC	For the construction contractor form (see General recommendation above), it is recommended to use 4 performance elements for assessment, as follows: Quality Control, Timely Performance, Effectiveness of Management, and Labor Standards Compliance. Honolulu Department of Design and Construction has used these 4 elements for evaluation of construction contractor performance for many years and found them to be effective.		
C&C HNL Dept. of Budget & Fiscal Services for BFS	Section 1. General Information, Contractor Past Performance Assessment Guidance; Rating "Satisfactory" and "Unsatisfactory" - Definition + General Factors	For both ratings under the Definition + General Factors delete all bullet items.	Since there is no way to accurately reflect all actions/inactions that could result in either a satisfactory v. unsatisfactory rating suggest leaving the definition and removing the bulleted factors and allow the agency to document via specific examples of non-compliance with the contract.
C&C HNL Dept. of Budget & Fiscal Services for BFS	Section 1. General Information, Contractor Past Performance Assessment Guidance, Satisfactory Rating, Definition + General Factors "NOTE" states," . . . The term "authorized budget" is defined as the initial funds allocated to a project and encumbered."	" . . . The term "authorized budget" is defined as the initial funds allocated to a project and encumbered along with any change orders and/or amendments authorized and encumbered in accordance with the contractual terms and conditions and/or HAR."	Contractors are entitled to changes in price and schedule in clearly defined circumstances under HAR §3-125, §3-126 and terms and conditions of the contract. For these changes that add funds/time to an existing contract, as authorized in HAR and/or the contract, they should also be deemed part of the "authorized budget" for performance assessment purposes.
C&C HNL Dept. of Budget & Fiscal Services for BFS	Section 1. General Information, Contractor Past Performance Assessment Guidance, Unsatisfactory Rating, Definition + General Factors "NOTE" states," . . . If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment."	Delete entire sentence ," . . . If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment. "	One instance of unsatisfactory performance and even default does not automatically equate to the sole reason for suspension or debarment and the two concepts need to be distinguished. We heard from many of our agency's the concern that the form seems to imply if a contractor is getting a unsatisfactory performance rating that it will mean that will have to debar/suspend them.
C&C HNL Dept. of Budget & Fiscal Services for DFM	Contractor Past Performance Assessment Guidance, Satisfactory (S)'s (Definition + General Factor): "To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract/order:".	"To justify a Satisfactory rating, there should have been only minor problems, or major problems the contractor recovered from without impact to the contract/order. General factors that may be considered for a Satisfactory rating shall include but not be limited to:".	The sentence and the bullets/listed items are not related. The sentence is related to problems in the contract; however the bulleted items seem to be items that can be considered for a satisfactory rating. It should be identified that the bulleted items are some items that can be considered. There may be other critical factors from the project/contract that should/could be considered

C&C HNL Dept. of Budget & Fiscal Services for DFM	<p>Contractor Past Performance Assessment Guidance, Unsatisfactory (U)'s (Definition + General Factor): "Performance does not meet most contractual requirements and recovery is not likely in a timely manner."</p>	<p>"Performance did not meet most contractual requirements."</p>	<p>The terminology presents ambiguity in regards to when the assessment form should be completed. Though it was stated that the assessment should begin during project, should the assessment ultimately reflect the project from an overall standpoint once completed?</p> <p>Or is the assessment reflective at periods of time in the project in which case multiple assessments may be needed over the contract term? In that case, the Subchapter 13.5 should be modified. The referenced section implies that the project is on-going and is speculative.</p>
ABC Hawaii Chapter	<p>"The term 'authorized budget' is defined as the initial funds allocated to a project and encumbered."</p>	<p>"The term 'authorized budget' is defined as the initial funds allocated to a project plus any increases in the budget due to approved change orders."</p>	<p>The definition of "authorized budget" should be updated to take into account financial modifications that are unrelated to contractor competence. The reality is that change orders are often necessary on a project, whether that be due to design changes, scheduling issues, or miscellaneous cost increases that have nothing to do with a contractor's work on a particular project, and contractors should not be penalized for change orders needed due to circumstances beyond their control.</p>
ABC Hawaii Chapter	<p>"This rating represents contractors meeting expected performance to support the project."</p>	<p>"A 'satisfactory' rating is defined to mean that the contractor met the minimum contractual requirements of a project, such that the contractor generally (1) met expressed and identifiable standards, objectives, and performance requirements, (2) stayed within the project's authorized budget, (3) ensured, to the extent within its control, that deliveries were made on-time, and (4) ensured, to the extent within its control, that project milestones were completed on schedule. In determining whether a contractor completed a project satisfactorily, the procurement officer shall also consider industry standards, norms, and protocols, as well as the particularities of a given project, and any unique hardships or difficulties presented."</p>	<p>There should be a definition of "satisfactory" that is more standardized than what is currently being proposed. This will act to provide all parties with an even playing field, and better establish expectations. The definition should also reference and incorporate an industry standard so that a contractor's performance is evaluated against its peers, and not in a vacuum. Finally, the definition should require procurement officers to expressly consider components of a project that present unusual difficulties or hardships that could mitigate against a finding that a contractor acted unsatisfactorily.</p>

ABC Hawaii Chapter	<p>"This rating represents contractors whose performance consistently does not meet requirements defined in the contract."</p>	<p>"An 'unsatisfactory' rating is defined to mean that the contractor failed to meet the minimum contractual requirements of a project, such that the contractor substantially failed (1) to meet expressed and identifiable standards, objectives, and performance requirements, (2) to stay within the project's authorized budget, (3) to ensure, to the extent within its control, that deliveries were made on-time, and/or (4) to ensure, to the extent within its control, that project milestones were completed on schedule. In determining whether a contractor completed a project unsatisfactorily, the procurement officer shall consider industry standards, norms, and protocols, as well as the particularities of a given project, and any unique hardships or difficulties presented.</p>	<p>Again, there should be a standardized definition of "unsatisfactory," which will act to provide all parties with an even playing field, and better establish expectations. The definition should also reference and incorporate an industry standard so that a contractor's performance is evaluated against its peers, and not in a vacuum. Finally, the definition should require procurement officers to expressly consider components of a project that present unusual difficulties or hardships that could mitigate against a finding that a contractor acted unsatisfactorily.</p>
Subcontractors Association of Hawaii (SAH)		<p>Satisfactory Rating (S) Additional wording to "NOTE" to include" additional budget authorized". Delete: [during performance of the contract].</p>	<p>We are unsure as to why this wording is necessary. Is there a difference between budget items authorized during performance as opposed to after performance?</p>
Subcontractors Association of Hawaii (SAH)	<p><u>Unsatisfactory Rating (U)</u> (bolded sentence) Not sure what "performance <u>consistently</u> does not meet requirements" means. (3 out of 5, 5 out of 5?)</p>		
Subcontractors Association of Hawaii (SAH)		<p>Unsatisfactory Rating (U) 5th bullet: Delete "Missed multiple schedule deadlines [which negatively impacted cost].</p>	<p>The deadline was either missed or not. Are there situations where a missed schedule deadline resulted in a positive impact to cost?</p>
Subcontractors Association of Hawaii (SAH)		<p>Unsatisfactory Rating (U) 6th bullet: Delete "lack of cooperation".</p>	<p>Very ambiguous. Delete or define it. Already covered in Section 5. Customer Satisfaction.</p>
Subcontractors Association of Hawaii (SAH)		<p>Unsatisfactory Rating (U) 7th bullet: [Unnecessary changes]. Delete.</p>	<p>If they were approved, then they were likely necessary. Unnecessary changes would not likely be approved anyway.</p>

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Rating	Definition + General Factors	Notes
<p>Satisfactory (S)</p>	<p>Performance fulfilled the contract's material terms and the contract's purpose; or the failure to do so was justified. The contractual performance of the element or sub-element may contain some minor problems for which corrective actions taken by the contractor appear or were satisfactory. Performance meets minimum contractual requirements. The contractual performance of the element or sub-element contains some minor problems for which corrective actions taken by the contractor appear or were satisfactory.</p> <p><i>This rating represents contractors <u>having</u> meeting expected performance to support the project.</i></p> <p>To justify a Satisfactory rating, there should have been <u>only no more than</u> minor problems, or major problems the contractor recovered from without impact to the contract/order:</p> <ul style="list-style-type: none"> • Meets standards, objectives, and all performance requirements. • Stayed within project's authorized budget. • Deliveries on-time. • Schedule not impacted. • Met expectations. • Adequate user satisfaction. • Met goals and expectations of the project. <p>NOTE: The term "authorized budget" is defined as the initial funds allocated to a project and encumbered.</p>	<p>A contractor's performance that meets the minimum requirements of the contract will not be assessed lower than Satisfactory. There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be assessed with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order. There should have been NO significant weaknesses identified. A fundamental principle of assigning ratings is that contractors will not be assessed with a rating lower than Satisfactory solely for not performing beyond the requirements of the contract/order.</p>

Provides additional clarity on what a satisfactory rating entails. Allows for a satisfactory rating when the contractor may have missed some minor, immaterial requirements. Closes loophole for a contractor that met minimum contractual requirements, but failed to fulfill the contract's purpose. Also, as written, the language appears to require there to have been some minor problems to achieve a satisfactory rating.

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<p>Unsatisfactory (U)</p>	<p>Performance does not meet most significant/material contractual requirements and recovery was not likely accomplished in a timely manner. The contractual performance of the element or sub-element contains serious material problems for which the contractor's corrective action appear or were ineffective (i.e.g., reports, letters, etc.)]</p> <p>This rating represents contractors whose performance did not meet material requirements defined in the contract, whether due to a number of material performance issues or significant problems with one aspect of contract performance, contractors whose performance consistently does not meet requirements defined in the contract.</p> <p>To justify an Unsatisfactory rating, identify multiple significant event(s) in each category that the contractor had trouble overcoming and state how it impacted the Government:</p> <ul style="list-style-type: none"> • Work consistently fails to meet contract requirements. • Close supervision of the contractor was necessary to progress/complete the work. • Many performance requirements were not met. • Did not stay within project's authorized budget. • Missed multiple schedule deadlines which negatively impacted cost. • Lack of cooperation. • Unnecessary changes. 	<p>A singular problem, however, could be of such serious magnitude that it alone constitutes an unsatisfactory rating. An Unsatisfactory rating should be supported by referencing the management tools used to notify the contractor of the contractual deficiencies (e.g., management, quality, safety, or environmental deficiency).</p>
	<ul style="list-style-type: none"> • Delayed • Lack of user satisfaction. <p>NOTE: If a contractor is deemed "unsatisfactory," the rating must be accompanied with multiple letters (department head) sent to the contractor to cure the problem. If no results occur by the contractor, it can be stated that the department will submit its recommendation to SPO for suspension and debarment.</p>	
<p>Not Applicable (N/A)</p>	<p>No information or did not apply to contract requirements.</p>	<p>NOTE: Rating will be neither positive nor negative.</p>

Provides additional clarity on what an unsatisfactory rating entails. Closes loophole where a contractor met many minor requirements (more than 50% total requirements), but fails to meet significant or material requirements. Requires recovery to have actually occurred to take a rating beyond unsatisfactory. Also provides more specific, useful language – a problem could be serious but not material to the project, or vice versa.

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Reference: Section 2. ASSESSMENT. Please provide an adjectival rating for the following questions (the adjectival rating is defined above. In addition, please provide comments to substantiate the assigned rating. At a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).

1. Technical (Quality of Product and/or Service):

- **Quality of technical data/report preparation;**
- **Met quality standards specified for technical performance;**
- **Timeliness/effectiveness of contract problem resolution without extensive customer guidance; and**
- **Adequacy/effectiveness of quality control program and adherence to contract quality assurance requirements (without adverse effect on performance).**

****Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).**

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)		None. GCA respectfully requests that the language be deleted.	<p>This section asks that a contractors performance be rated as satisfactory, unsatisfactory, or not applicable and includes ratings on standards, schedule, financial management, labor management, customer satisfaction, safety, and emergency situations.</p> <p>GCA appreciates SPO’s attempts to remain objective, but because Section 2 of the proposed Contractor Past Performance Assessment is not required under Act 188 and anything other than the use of facts inherently includes subjectivity, GCA requests that the section be removed from the form. Remaining as objective as possible is critical to prevent unethical behavior in state procurement.</p>
UH Systems		"Quality of Work"	<p>Most projects do not deliver technical data or report preparation. Using broader language to evaluate the overall quality of work on a good, service, or project is more applicable and useful.</p>

Subcontractors Association of Hawaii (SAH)	<p>Item #3 - Separate "<u>contract problem resolution</u>" and "<u>extensive customer guidance</u>":</p> <p><u>Were problems resolved in a timely and effective manner?</u></p> <p><u>If customer guidance was offered, was it accepted and followed?</u></p>	
Subcontractors Association of Hawaii (SAH)	<p>Item #4</p> <p>Delete ["without adverse effect on performance"]</p>	<p>Delete ["without adverse effect on performance"]</p> <p>We are not clear as to what is adverse or not adverse.</p>
Board of Water Supply - C&C HNL	<p>"Please [provide and adjectival rating for the following questions (the adjectival rating is defined above)] rate the contractor's project performance for each of the following items, according to the above guidance...At a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U), <u>or Satisfactory (S) where there were corrected problems or justified failures.</u>"</p>	<p>Clarifies that the rating system to be used and requires notation when a Satisfactory rating is given in instances of corrected problems or justified failures so evaluators can do a further review of the question.</p>

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Reference: Section 2. ASSESSMENT. 2. Schedule/Timeliness of Performance (for Goods, Services, & Construction):

- **Complied with contract delivery/completion schedules including any significant intermediate milestones. (If liquidated damages were assessed or the schedule was not met, please address below)**

****Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).**

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)		None. GCA respectfully requests that the language be deleted.	<p>This section asks that a contractors performance be rated as satisfactory, unsatisfactory, or not applicable and includes ratings on standards, schedule, financial management, labor management, customer satisfaction, safety, and emergency situations.</p> <p>GCA appreciates SPO’s attempts to remain objective, but because Section 2 of the proposed Contractor Past Performance Assessment is not required under Act 188 and anything other than the use of facts inherently includes subjectivity, GCA requests that the section be removed from the form. Remaining as objective as possible is critical to prevent unethical behavior in state procurement.</p>
UH Systems		Add new critiera as follows: "Timely submittal all necessary and required close out documents."	Many agencies struggle with closing out a project because close-out documents are not timely delivered. This criterion will assist with timely closing projects.
Subcontractors Association of Hawaii (SAH)		<p>Add to #2, a separate question:</p> <p><u>Was there a delay in completion schedules due to circumstances beyond the control of the contractor such as shipping strike, supply chain issues, or manufacturers inability to fulfill contracts.</u></p>	

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Adds additional qualifications:

Ability to manage delays, including requesting and substantiating any time extensions.

Adds additional categories to assess timeliness of performance.

Ability to manage the project schedule, including maintaining and updating the project schedule.

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Reference: Section 2. ASSESSMENT. 3. Cost/Financial Management (for Goods, Services, & Construction):

- Met the terms and conditions with the contractually agreed price(s);
- Contractor's timeliness and accuracy in submitting monthly invoices with appropriate back-up documentation, monthly status reports/budget variation reports, compliance with established budgets and avoidance of significant and/or unexplained variances (under runs or overruns);
- Contractor managed and tracked costs accurately; and
- Rate Contractor's financial management abilities to pay subcontractors/suppliers timely.

****Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).**

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)		None. GCA respectfully requests that the language be deleted.	<p>This section asks that a contractors performance be rated as satisfactory, unsatisfactory, or not applicable and includes ratings on standards, schedule, financial management, labor management, customer satisfaction, safety, and emergency situations.</p> <p>GCA appreciates SPO's attempts to remain objective, but because Section 2 of the proposed Contractor Past Performance Assessment is not required under Act 188 and anything other than the use of facts inherently includes subjectivity, GCA requests that the section be removed from the form. Remaining as objective as possible is critical to prevent unethical behavior in state procurement.</p>
C&C HNL Dept. of Budget & Fiscal Services for DDC	Contractor Past Performance Assessment form, Section 2, Assessment, Question 3, Cost/Financial Management, fourth line item	(Delete this assessment item.)	Agency administering construction is unlikely to have information necessary to rate contractor's financial management abilities to pay subcontractors/suppliers timely.

Subcontractors Association of Hawaii (SAH)

Item #1

Add: Met the terms and conditions within the contractually agreed prices (add) including approved changes.

Subcontractors Association of Hawaii (SAH)

Item #4

Change "abilities" to "practices".
Rate Contractor's financial management [~~abilities~~]
practices by paying subcontractors/suppliers within the required time.

Comment: Most of the time there is an ability to pay but not a willingness to pay.

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Reference: Section 2. ASSESSMENT. 4. Management/Personnel/Labor (for Goods, Services, & Construction):

- **Management of suppliers, materials, and/or labor force, including subcontractors;**
- **Managed Government-Owned Property;**
- **Implemented changes in requirements and/or priority; and**
- **Transitioned personnel and operations when taking over from the incumbent Contractor.**

****Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).**

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)		None. GCA respectfully requests that the language be deleted.	<p>This section asks that a contractors performance be rated as satisfactory, unsatisfactory, or not applicable and includes ratings on standards, schedule, financial management, labor management, customer satisfaction, safety, and emergency situations.</p> <p>GCA appreciates SPO’s attempts to remain objective, but because Section 2 of the proposed Contractor Past Performance Assessment is not required under Act 188 and anything other than the use of facts inherently includes subjectivity, GCA requests that the section be removed from the form. Remaining as objective as possible is critical to prevent unethical behavior in state procurement.</p>
C&C HNL Dept. of Budget & Fiscal Services for DDC	Contractor Past Performance Assessment form, Section 2, Assessment, Question 4, Management/Personnel/Labor, second line item	(Delete this assessment item.)	Contractor management of government-owned property is typically not applicable to construction contracts.
C&C HNL Dept. of Budget & Fiscal Services for DDC	Contractor Past Performance Assessment form, Section 2, Assessment, Question 4, Management/Personnel/Labor, third line item	(Delete this assessment item.)	Transitioning of personnel and operations when taking over from the incumbent contractor is typically not applicable to construction contracts.
UH Systems	This item references a transition from an incumbent Contractor. We are not familiar with this kind of situation and are unable to comment on its value or appropriateness.	None.	
Board of Water Supply - C&C HNL		“Manage e ment of Government-Owned Property”	Grammatical correction, and clarification that the rating is for the Contractor’s management of government-owned property, and not just whether or not such property was managed.

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Reference: Section 2. ASSESSMENT. 5. Customer Satisfaction (for Goods, Services, & Construction):

- Contractor cooperated in dealing with your staff (including resolving disagreements/disputes; responsiveness to administrative reports, businesslike and communication); and
- Overall customer satisfaction.

****Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).**

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)		None. GCA respectfully requests that the language be deleted.	<p>This section asks that a contractors performance be rated as satisfactory, unsatisfactory, or not applicable and includes ratings on standards, schedule, financial management, labor management, customer satisfaction, safety, and emergency situations.</p> <p>GCA appreciates SPO’s attempts to remain objective, but because Section 2 of the proposed Contractor Past Performance Assessment is not required under Act 188 and anything other than the use of facts inherently includes subjectivity, GCA requests that the section be removed from the form. Remaining as objective as possible is critical to prevent unethical behavior in state procurement.</p>

C&C HNL Dept. of Budget & Fiscal Services for DDC	Contractor Past Performance Assessment form, Section 2, Assessment, Question 5, Customer Satisfaction, entire section	(Delete this section.)	"Customer satisfaction" does not apply to the construction contractor when the construction project is administered by an agency other than the agency that owns and operates the facility. For example, Honolulu Department of Design and Construction administers capital improvement projects for other departments that own and operate facilities. The user agency's (customer's) input needs to be incorporated into the plans and specifications, which is what the construction contractor is required to comply with.
Board of Water Supply - C&C HNL		"Contractor cooperated in dealing with your staff (including resolving disagreements/disputes; responsiveness to administrative reports; <u>communicating in a [;] businesslike and <u>timely manner</u> [communication]</u>)"	Grammatical correction/clarification, and adding in timeliness as a factor for consideration.

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Reference: Section 2. ASSESSMENT. 6. Safety/Security (for Goods, Services, & Construction):

- Contractor maintained and/or exceeded an environment of safety, adhere to its approved safety plan, and respond to safety issues? (Includes: following the user's rules, regulations, and requiremenets regarding housekeeping, safety, correction of noted deficiencies, etc.); and
- Contractor complied with all security requirements for the project and personnel security requirements.

****Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).**

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)		None. GCA respectfully requests that the language be deleted.	<p>This section asks that a contractors performance be rated as satisfactory, unsatisfactory, or not applicable and includes ratings on standards, schedule, financial management, labor management, customer satisfaction, safety, and emergency situations.</p> <p>GCA appreciates SPO's attempts to remain objective, but because Section 2 of the proposed Contractor Past Performance Assessment is not required under Act 188 and anything other than the use of facts inherently includes subjectivity, GCA requests that the section be removed from the form. Remaining as objective as possible is critical to prevent unethical behavior in state procurement.</p>
Subcontractors Association of Hawaii (SAH)	Inquiry: If a subcontractor on the job is cited by HIOSH for deficiencies, does the general (prime) contractor get a "U" rating?	Reword to: Contractor maintained and/or exceeded an <u>OVERALL</u> environment of safety ...".	Comment: HIOSH has 1700 pages of safety standards. Anyone can be cited for even a minor violation.

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“Contractor maintained and/or exceeded an environment of safety, adhered to its approved safety plan, and responded to safety issues[?]. (Includes: following the user’s rules, regulations, and requirements regarding housekeeping, safety, correction of noted deficiencies, etc.)”

Grammatical corrections.

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Reference: Section 2. ASSESSMENT. 7. General (for Goods, Services, & Construction):

- Responded to emergency and/or urgent situations (including notifying HOPA, Project Manager, or Procurement Officer in a timely manner regarding urgent contractual issues).

****Please share your experience, at a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U).**

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)		None. GCA respectfully requests that the language be deleted.	<p>This section asks that a contractors performance be rated as satisfactory, unsatisfactory, or not applicable and includes ratings on standards, schedule, financial management, labor management, customer satisfaction, safety, and emergency situations.</p> <p>GCA appreciates SPO's attempts to remain objective, but because Section 2 of the proposed Contractor Past Performance Assessment is not required under Act 188 and anything other than the use of facts inherently includes subjectivity, GCA requests that the section be removed from the form. Remaining as objective as possible is critical to prevent unethical behavior in state procurement.</p>
C&C HNL Dept. of Budget & Fiscal Services for DDC	Contractor Past Performance Assessment form, Section 2, Assessment, Question 7, General, first line item	... (including notifying _____, Project Manager, or Procurement Officer in a timely manner regarding urgent contractual issues)	Write out "HOPA"

PC2023-07, Past Performance Database Assessment Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: Section 3. CONTRACTOR COMMENTS.

- Contractor Name;
- Procuring Agency Name; and
- Comments, Rebuttals, or Additional Information from the Contractor.

****Please cite specific assessment criteria you are providing comments, rebuttals, or additional information to.**

Pursuant to HAR section 3-122-115.01(c)(1)(D), Contractor shall review the Contractor past performance assessment form within 10 working days, from the date of notification of the contractor past performance assessment, and submit comments, rebutting statements, or additional information, or the Contractor past performance assessment form shall be considered accepted by the contractor.

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)	Section 3, which states, "Pursuant to HAR section 3-122-115.01(c)(1)(D), Contractor shall review the Contractor past performance assessment form within 10 working days, from the date of notification of the contractor past performance assessment, and submit comments, rebutting statements, or additional information, or the Contractor past performance assessment form shall be considered accepted by the contractor."	Pursuant to HAR section 3-122-115.01(c)(1)(D), Contractor shall review the Contractor past performance assessment form within 20 working days, from the date of notification of the contractor past performance assessment, and submit comments, rebutting statements, or additional information, or the Contractor past performance assessment form shall be considered accepted by the contractor.	To mirror the suggested alternative language provided for the relevant subparagraph.
Subcontractors Association of Hawaii (SAH)		ADD TO THE TOP OF SECTION 3, IN BOLD: MUST BE COMPLETED WITHIN TEN (10) WORKING DAYS FROM NOTIFICATION.	
Subcontractors Association of Hawaii (SAH)	<p>Inquiry on flow of information:</p> <ol style="list-style-type: none"> 1.Procuring agency completes form (Section) 2.Contractor comments (Section 2) 3.Procurement Officer determination (Section 4) <p>Does the contractor have an opportunity to comment on the Procurement Officer's (#3} determination?</p>		

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“Pursuant to HAR section 2-122-115.01(c)(1)(D)...rebutting statements, or additional information. ~~or~~ If the Contractor fails to do so, the Contractor past performance assessment form shall be considered accepted by the contractor.”

Provides clarity regarding consequences of the Contractor’s failure to timely responds to the form.

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Reference: Section 4. PROCUREMENT OFFICER DETERMINATION.

- **Comments from Procuring Agency.**

Pursuant to HAR sections 3-122-115.02(c)(2)(B), The procurement officer shall update the past performance database system with any contractor comments; (c)(2)(C), The final determination on the contractor’s past performance assessment shall be the decision of the head of the purchasing agency or designee.

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
General Contractors Association of Hawaii (GCA)	Section 4, which states, “As a Buyer/Contract Administrator/Project Manager, etc. of the Procuring Agency listed above, I approve the responses to the statements and ratings about the performance of the Company/Contractor listed above on the project identified in Section 2 of this Contractor Past Performance Assessment.”	As a Buyer/Contract Administrator/Project Manager, etc. of the Procuring Agency listed above, I approve Section 1 – General Information about the performance of the Company/Contractor listed above on the project identified therein.	To reflect the suggested amendment of deleting Section 2 of the Assessment in its entirety.
General Contractors Association of Hawaii (GCA)	Section 4, which states, “Pursuant to HAR sections 3-122-115.02(c)(2)(B), The Procurement officer shall update the past performance database system with any contractor comments; (c)(2)(C), The final determination on the contractor’s past performance assessment shall be the decision of the head of the purchasing agency or designee.”	Pursuant to HAR sections 3-122-115.02(c)(2)(B), The Procurement officer shall update the past performance database system with any contractor comments.	To mirror the suggested alternative language provided for the relevant subparagraph, which concerns language that allows the head of the purchasing agency or designee to make the final determination
General Contractors Association of Hawaii (GCA)	Section 4, which states, “As a Procurement Officer of the Procuring Agency listed above, I approve the responses to the statements and ratings about the performance of the Company/Contractor listed above on the project identified in Section 2 of this Contractor Past Performance Assessment.”	As a Procurement Officer of the Procuring Agency listed above, I approve the Section 1 – General Information about the performance of the Company/Contractor listed above on the project identified therein.	To reflect the suggested amendment of deleting Section 2 of the Assessment in its entirety.
Board of Water Supply - C&C HNL		“Pursuant to HAR sections 2-122-115.02(c)(2)(B), t he procurement officer shall update the past performance database system <u>taking into consideration [with]</u> any contractor comments; (c)(2)(C). The final determination on the contractor’s past performance assessment shall be the decision of the head of the purchasing agency or designee <u>shall be final and not subject to any appeal. HAR §3-122-115.01 (c)(2)(C)</u> ”	Clarifies that the decision of the head of the purchasing agency or designee is not subject to appeal. Clarifies that the procurement officer’s updates should take the contractor comments into consideration, and not simply repeat them.

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Miscellaneous Feedback/Comments

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Leadervation Learning	This form seems fair and comprehensive		
Jared Scott LLC	It would be beneficial for our company to receive these reports for our own data.		
MGA Architecture	MGA Architecture has no additional updates to provide for the proposed rules or assessment. PM looked at both and said that he has no additional feedback and that we are on the right track.		
Southwest Business - Hawaii Operations	Reporting back with no issues		
County of Maui	The form requests a lot of information, seemingly more so than the law requires. There is a concern that this will lead to a lot of subjective rather than objective responses and may open ourselves up to unnecessary protests and legal challenges.		
Cisco	The new Past Performance Assessment is a positive step forward to track performance and award the vendors providing top quality performance. We are glad to see there is a rebuttal/comment process built into the new policy as this will provide an avenue to address errors or miscommunications.		
C&C HNL Dept. of Budget & Fiscal Services for DDC	It is strongly advised to have 3 (three) different and distinct forms: one for products, one for services, and one for construction. This would allow each form to be specific to the type of contract and much more useful and meaningful. The currently proposed form is too general with many entries that would be "N/A" for construction contracts.		
C&C HNL Dept. of Budget & Fiscal Services for DDC	Contractor Past Performance Assessment form, Section 2, Assessment, introductory instructions, second sentence	At a minimum, provide comments to substantiate any rating that is checked Unsatisfactory (U) or Satisfactory (S)	Providing comments only for Unsatisfactory (U) ratings might lead evaluators toward a Satisfactory (S) rating to avoid writing comments.
C&C HNL Dept. of Budget & Fiscal Services for BFS	Agencies requested different forms for goods, services and construction.		
C&C HNL Dept. of Budget & Fiscal Services for BFS	Section 2. Assessment, Items 1, 2, 3, 4, 5, 6, and 7 specific criteria under each section.	In general our suggestion is to revise this section to keep the general categories of assessment but remove all the separate criteria under each. Make each major category either "Satisfactory", "Unsatisfactory", or "N/A" and then allow the agency include the specific, actual examples of contractual non-compliance in those categories that led to an unsatisfactory rating, when given.	Since it is impossible to name every criteria to be assess for each major category it might be best to allow the agency to take responsibility for providing the exact examples of the actual action/inaction and circumstances that led to an "unsatisfactory" rating in any of the major categories.
DOTAX	No concerns or edits from DOTAX. Thank you.		
ABC Hawaii Chapter	There is not presently any definition pertaining to a project's completion date.	N/A	While a definition of "completion date" may not be necessary, the Assessment should expressly state that a contractor will not be penalized or have its work deemed "unsatisfactory," in the event that an actual completion date occurs after the estimated completion date, so long as the actual date of completion is delayed as a result of, and pursuant to, approved change orders. In short, the contractor should not be faulted for circumstances beyond its control.

UH Systems	Section 1. General Information Instructions	Please complete form, by providing the information requested below, for whom the Contractor has provided or is currently providing <u>goods</u> , services, and/or construction specified herein.	Replace the word "products" with "goods" to be consistent with terminology in HRS Chapter 103D.
UH Systems		For Section's 2's Factors 1-7, add an overall rating of S or U to each section; and add an overall finding range of S or U for the contractor based on the majority rating of S or U for each section.	<p>The evaluation criteria set forth in Sections 1, 2, 3, 4, 5, 6, and 7 are specific points that relate to each section. However, an overall score for each section is helpful when using it as a reference for other/future projects.</p> <p>Additionally, there is an even greater benefit to providing an overall final rating of S or U for a project, especially when using it as a basis for determining whether a contractor is the lowest responsive, responsible bidder. A final rating and sub-section ratings will mitigate against misinterpreting the severity and weight of an individual rating of S or U, because it allows agencies to provide an overall, balanced score when considering the totality of a project.</p>
Subcontractors Association of Hawaii (SAH)	Is there a good or bad reason to include the names of those who performed the rating?	<p>Modifications to the CONTRACTOR PAST PERFORMANCE ASSESSMENT</p> <ul style="list-style-type: none"> oDelete Section 2 beginning with the page entitled "CONTRACTOR PAST PERFORMANCE ASSESSMENT GUIDANCE" (4 pages total). oRename and reposition the current 'Section 4' so that it becomes 'Section 3' and provide guidance to agencies regarding the types of information which should be documented in Section 3. oRename and reposition the current 'Section 3' so that it becomes 'Section 4' and: <ul style="list-style-type: none"> oProvide guidance to Contractors regarding the nature of rebuttals and additional information to be provided. oAdd fields for the Name, Title, Signature, and Date of the Contractor's respondent, including the requirement that the person signing the form must have the authority to sign on behalf of the company/contractor/vendor. 	
DAGS-PWD			

Building Industry Association of Hawaii (BIA-Hawaii)

My name is Max Lindsey, Government Relations Committee Chair of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.

BIA Hawaii is in receipt of the survey sent by the Board soliciting comments on the proposed amendments to Hawaii Administrative Rules Chapter 3-122 relating to Contractor's Past Performance. BIA Hawaii offers the following comments on proposed amendments to the HAR and the Contractor Past Performance Assessment Form.

BIA Hawaii has reviewed, is in agreement with, and echo the comments provided by the General Contractor's Association ("GCA") in their letter to you dated June 15, 2023. We share GCA's concerns on limiting any subjectivity to the evaluation process, and that the amendments to the HAR follow the parameters set forth by the legislature in Act 188. The deletions and alternative language provided by GCA are required to conform with the parameters set forth by the legislature in Act 188, reduce the potential for subjectivity in the evaluation process, and allow agencies to make their own determinations of past performance based upon their evaluation of the facts from the perspective of both the prior procurement officer and the contractor.

In addition to the comments above, BIA Hawaii is concerned that nothing in the proposed administrative rule revisions provides a mechanism for the Contractor to appeal a decision by the agency which it believes is not justified. Without the ability to challenge the decision of the purchasing agency to an administrative agency or judicial body for a final adjudication, an assessment of alleged poor performance by the head of the purchasing agency or designee could effectively turn into a debarment situation for contractors without the right of due process. We do not see anything in the proposed rule amendments that addresses this situation and provides Contractor's with appropriate due process rights to have erroneous poor performance evaluations taken off their record.

Thank you for the opportunity to share our comments and concerns.

The County of Hawaii Purchasing Division is not comfortable with the current draft of rules or the draft assessment form moving forward.

Comments on draft rules 3-122-155.01:

- Define Procurement Officer. Normally, it is the Project Manager/Administrator who manages the contract once procurement is complete. The Procurement Officer is not involved in the day-to-day administration of the contract. The Procurement Officer would need this information from the project/contract lead.
- 1 (A) Define project completion. Is this after final payment?
- 1 (8) Please confirm we can legally attach/post documents such as notice to cure.
- 1 (E) Five working days is too short. A minimum of 10 is requested.
- 1 (F) Final payment cannot be withheld. Suggest removal.
- 2 (A) Define substantial.

Overall comments:

- This requirement will require significant resources to track, develop and enter comments.
- The requirements should be kept to a minimum as the form is way too subjective and strays far from the original HRS requirements. Suggest keeping the assessment to the information required in the HRS.
- A better understanding of the database is requested and the ability of the database to do some automatic notifications. This may alleviate some of the tracking and administrative time concerns.
- A discussion/guidance is requested explaining how this information will be used in subsequent solicitations. Will Past Performance reviews result in suspensions or debarment from doing business with State/County agencies? Would one "unsatisfactory" allow the agency to disqualify a bid (on low bid solicitations)? Are there mandatory disqualifications? How do we remain consistent in the use of the database?
- Does any of this put the County at risk legally? What kind of liability do we face?

Thank you for the recognition of our agency as a stakeholder and the opportunity to voice our concerns and feedback on how past performance should be evaluated and implemented into a database, that will be used state-wide by all public agencies.

County of Hawaii

County of Hawaii - Department of Public Works

The assessment is burdensome as drafted. COH DPW would suggest a simplified version with easy to identify objective measurements as required by Act 188, SLH 2021.

Hawaii Administrative Rules Feedback from Departments/Agencies/CPO Jurisdictions/Vendors
Procurement Circular 2023-07: Procurement Policy Board Request
Past Performance Hawaii Administrative Rules and Assessment Pursuant to Act 188, Session Laws of Hawaii 2021

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-1, Definitions, for definition of "Recent," which states, "means performance information in which the performance has occurred within 5 years or as determined by the procurement officer that is closely connected and appropriate to consider for the type of requirement being solicited or evaluated."

Footnote i: "Recent" time periods for consideration may be different according to the type of requirement, however the Contractor Past Performance Assessment Report shall only be available on the database for three years. If the procurement officer determines that the requisition justifies seeking past performance information that is older than three years (i.e., by request of the offeror or the chief procurement officer), then they may seek specific contract files from the contracting agency which would contain the assessment report information.

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner		""Recent" means performance information which has a logical connection with the matter under consideration by occurring within the applicable time span. Such time span shall be 5 years or as determined by the procurement officer."	Modified the wording for clarity and to clearly distinguish recency from relevancy.
C&C HNL Dept. of Budget & Fiscal Services for HFD		"Recent" means performance information in which all or a portion of the performance has occurred within 5 years or as determined by the procurement officer that is closely connected and appropriate to consider for the type of requirement being solicited or evaluated."	The definition of "recent" should be more flexible to account for projects that may take longer than 5 years to complete.
C&C HNL Dept. of Budget & Fiscal Services for DDC		"Recent" time periods for consideration may be different according to the type of requirement. The Contractor Past Performance Assessment Report shall only be available on the database for five years. If the procurement officer determines that the requisition justifies seeking past performance information that is older than five years (i.e., by request of the offeror or the chief procurement officer), then they may seek specific contract files from the contracting agency which would contain the assessment report information.	Because the definition of "Recent" means the performance has occurred within 5 years, which is reasonable, it makes no sense for Contractor Past Performance Assessment Reports to be available on the database for only 3 (three) years. The Assessment Reports should be available on the database for a minimum of 5 (five) years.
UH Systems		None. UH respectfully requests deleting this item.	UH was unable to locate the use of the term "Recent" outside of the definition section. Therefore, we question whether the definition of "recent: is necessary.
Subcontractors Association of Hawaii (SAH)		We believe that the term "recent" should be defined as job performance within the <u>last ten (10) years</u> as opposed to the proposed [five (5)].	As you aware construction has a "long tail" and five (5) years may not be sufficient, particularly on large projects. Ten (10) years would certainly lend itself to a more comprehensive evaluation.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-1, Definitions, for definition of "Relevant," which states, "means performance information that is similar in size, scope, and complexity to the requirement being solicited or evaluated."

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner		""Relevant" means performance information which has a logical connection with the matter under consideration by relating to the size, scope, and/or complexity history to be considered."	Modified the wording for clarity and to clearly distinguish recency from relevancy.
C&C HNL Dept. of Budget & Fiscal Services for HFD		"Relevant" means performance information that is similar in size, scope, and complexity to include, but not limited to, dependencies, budget restraints, and stakeholder involvement to the requirement being solicited or evaluated."	The term complexity is vague in comparison to "size" and "scope." Additional verbiage for clarification.
Board of Water Supply - C&C HNL		Change the definition of "Relevant" to "means performance information that is similar in size, scope, type, kind, or [and] complexity to the requirement being solicited or evaluated."	By requiring "relevant" to mean performance of similar size, scope, and complexity, it could preclude consideration of bad performances on smaller, simpler tasks even if they were of a similar type. Adding type and kind to the list of similarities, and changing "and" to "or," will allow the Procurement Officer to exercise discretion to consider of a wider scope of past projects.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-33, Bid evaluation and award, subsection (a) which states, "The award shall be made to the lowest responsive, responsible bidder as determined by the procurment officer pursuant to Subchapter 13.5, Contractor's Past Performance Assessment and shall be based on the criteria set forth in the invitation for bids."

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
DAGS-CSD	What is the process and timeframe to check the past performance database before award? Long process or retrieval time may delay award of a contract.		
C&C HNL Dept. of Budget & Fiscal Services for BFS		Delete the addition of "as determined by the procurement officer pursuant to Subchapter 13.5, Contractor's Past Performance Assessment.."	Responsibility is more than past performance and the database as provided in HRS §103D-310.

C&C HNL Dept. of Budget & Fiscal Services for DFM

SECTION 4. Section 103D-302, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:
“(f) Bids shall be evaluated based on the requirements set forth in the invitation for bids. These requirements may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose. 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, [and] total or life cycle costs[-], and the bidder’s past performance, if available. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.”

“Bid evaluation and award: (a) The award shall be made to the lowest responsive, Responsible bidder or offeror ~~as determined by the procurement officer pursuant to Subchapter 13.5, Contractor’s Past Performance Assessment~~ and shall be based on the criteria set forth in the invitation for bids.”

Justification: Reason No. 1: Section 4 of Act 188 SLH 2021, Amended HRS 103D-302 subsection (f) (snippet to side). Subsection (f) of HRS 103D-102 correlates to HAR 3-122-33 subsection (b). The modification proposed for HAR Section 3-122-33 (a) does not reflect the modified subsection (f) of HRS 103D-302. A modification of HRS 3-122-33 (b) is needed instead and reflected in the alternative language above.

Reason No. 2: The additional language of “as determined by the procurement officer pursuant to Subchapter 13.5, Contractor’s Past Performance Assessment” to Section (a) presents ambiguity. From our perspective, the additional language makes it appear that the procurement officer is determining the bidder’s responsibility pursuant to Subchapter 13.5; however Subchapter 13.5 as presented in the Procurement Circular No. 2023-07 does not provide guidance for the procurement officer in determining the bidder’s responsibility. Subchapter 13.5 as presented in Circular No. 2023-07 primarily focuses on the following: 1) what the past performance assessment must contain (3-122-115.01 (b), and 2) the process for creating/finalizing the past performance assessment (3-122-115.01 (c)).

Reason No. 3: Following Reason No. 2, if determining the bidder’s responsibility is the intent of the added text, the determination should be pursuant to or based on the definition of a “Responsible bidder or offeror” as defined by the HRS.

ABC Hawaii Chapter

“Bid evaluation and award: (a) The award shall be made to the lowest responsive, Responsible bidder or offeror as determined by the procurement officer pursuant to Subchapter 13.5, Contractor’s Past Performance Assessment and shall be based on the criteria set forth in the invitation for bids.”

The proposed language should be stricken insofar as the Act already provides for a definition of “Responsible bidder or offer,” and that definition accounts for the substance of what is being proposed, to wit, that bid evaluations and awards are subject to the responsibility determination standards adopted by the Procurement Policy Board. In addition, the definition, as proposed, suggests that the procurement officer determines, pursuant to Subchapter 13.5, whether a contractor is a “responsible bidder,” but Subchapter 13.5 does not necessarily provide for that. Instead, Subchapter 13.5 controls the Assessment process, and disputes pertaining to the same, which, as we understand it, is merely a component of the “responsible bidder” analysis.

Building Industry Association of Hawaii (BIA-Hawaii)

The award shall be made to the lowest responsive, responsible bidder, based on the criteria set forth in the invitation for bids and shall take into consideration the Contractor's Past Performance pursuant to Subchapter 13.5, Contractor's Past Performance Assessment.

Nothing in the proposed amendments links Contractor's past performance to whether or not the Contractor is a responsible or responsive bidder. The HARs provide guidance on what it means to be a responsive and responsible bidder which remain unmodified by the new Subchapter 13.5. Nothing in subchapter 13.5 talks about responsiveness or responsibility, it merely discusses the process for filing out the Contractor's Past Performance Assessment form.

Board of Water Supply - C&C HNL

The award shall be made to the lowest responsive, responsible bidder as determined by the procurement officer pursuant to Subchapters 13 and 13.5 [~~Contractor's Past Performance Assessment~~] and shall be based on the criteria set forth in the invitation for bids.

As written, it seems to provide that responsiveness and responsibility are determined entirely by the Contractor Past Performance Assessment form. The proposed language will clarify that it is determined in accordance with Subchapters 13 and 13.5.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-33, Bid evaluation and award, subsection (d)(5) to be changed to (d)(4) to correct typo found.

"Any bidder's offering which does not meet the acceptability requirements shall be rejected as nonresponsive."

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
DAGS-CSD		Shouldn't this be "not responsible" vice "nonresponsive?"	<p>Pleas refer to the Federal Acquisition Regulation (FAR), parts 9.1, Responsible Prospective Contractors and 14.3 Responsiveness of Bids.</p> <p>Responsiveness refers to compliance of material aspects within the invitation for bids. Responsible includes consideration of a satisfactory performance record.</p>

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance asesment, subsection (a), which states, "Except for any contract entered into pursuant to sections 103D-305 or 103D-307, HRS or as directed by the chief procurement officer, all state and county procurement officers or agents shall complete a contractor past performance assessment form approved by the procurement policy board."

Footnote ii: Although it is not required, it is recommended that a new clause of consent to assessment and evaluation process should be included in the solicitation and the contract’s general conditions, identifying the process by which the contractor specifically consents to the process of performance assessment, review, finalization, and posting of final Contractor Past Performance Assessment to be accessible for future solicitation evaluations as a condition of award for applicable methods of procurement.

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
County of Maui	Can we get clarification on who the procurement officer is? The concern is that it should be the project managers who are responsible as they are directly involved in the management of their contracts, and not our procurement staff. Having to rely on their word and going back and forth for each assessment for the hundreds of procurements not done under HRS 103D-305 and 307 will take a lot of attention and man power, severely reducing the efficiency of our extremely small staff.		
DAGS-CSD	Please confirm the past performance system will not be applicable to small contracts not awarded through Invitation for Bid (IFB) procedures. Processing of contractor's evaluations of small procurements, not IFBs, would be a considerable burden on the procurement staff.		
General Contractors Association of Hawaii (GCA)	HAR section 3-122-115.01 footnote ii	None. GCA respectfully requests that the language be deleted.	It adds an unnecessary requirement to the past performance database. The footnote itself specifically states that it is not required and at no point during the legislative hearings was there a discussion of having a clause of consent as a condition of award.

C&C HNL Dept. of Budget & Fiscal Services for BFS	"Except for any contract entered into pursuant to sections 103D-304, 103D-305 or 103D-307, HRS"	Past Performance Assessment form does not contemplate 103D-304 as an option to submit an assessment of a consultant
UH Systems	Except for any other contract entered into prior to July 1, 2024 or pursuant to sections 103D-305 or 103D-307, HRS, all State and County Procurement Officers shall complete a Contractor Performance Assessment Form approved by the Procurement Policy Board.	UH recommends an effective date of July 1, 2024 as many agencies have old contracts which would be difficult to perform a fair and accurate assessment.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisdictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance assessment, subsection (b), which states, "The contractor past performance assessment shall include information contained in Act 188, SLH 2021."

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Board of Water Supply - C&C HNL		N/A; Recommend striking the above language.	This section seems unnecessary and confusing if what is required is to complete the attached Contractor Past Performance Assessment. Since that is already required pursuant to Section (a), this section is superfluous.
County of Hawaii - Department of Public Works		<p>The contractor past performance assessment shall include the information contained in Act 188, SLH <u>2021, which is stated as follows:</u></p> <p><u>(A)The name of the state contractor;</u></p> <p><u>(B)The date of the project;</u></p> <p><u>(C)The size of project;</u></p> <p><u>(D)A brief description of the project;</u></p> <p><u>(E)The responsible managing employees for the project;</u></p> <p><u>(F)Whether or not the project was timely completed;</u></p> <p><u>(G)The project's authorized budget; and</u></p> <p><u>(H)The positive and negative difference between the final cost of the project and the project's authorized budget, including the reasons for the difference, if any.</u></p>	Having the required information clearly stated in the rule is recommended because it will eliminate the extra step of having to research Act 188, SLH 2021 for persons unfamiliar with the act's content.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance asesment, subsection (c)(1)(A), which states, "The contractor past performance assessment process shall include the following:

(1) Procurement officers shall prepare the contractor past performance assessment form at the end of the contract, or more frequently as designated by the chief procurement officer or designee:

(A) Procurement officer shall begin preparing the contractor past performance assessment form prior to the contract completion and shall enter information into an electronic past performance database system;"

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner		Procurement officers shall submit the contractor past performance assessment form at the end of the contract, or more frequently as designated by the chief procurement officer or designee:	Keeping it "prepare" is confusing because the very next paragraph says that the procurement officer shall begin preparing the contractor past performance assessment form prior to contract completion. When does preparation start?"
County of Maui	Is there a specific reason for having to fill out a form and then taking that information and inputting it into the database?		
DAGS-CSD	Many of Central Services Division's (CSD) service contracts are for an initial year with bilateral options to extend the contract for 4 additional 12-month periods. Each period is a separate contract. CSD evaluates each contractor's performance prior to award of an extension. Please confirm that CSD can award extension contracts without having to submit a performance evaluation for the current year that has yet to be concluded.		

C&C HNL Dept. of Budget & Fiscal Services for DDC	Procurement officer shall prepare the contractor past performance assessment form and shall enter the information into the state procurement office's electronic past performance database system within 60 days after contract requirements are completed by the contractor or the contractor is terminated;	When the procurement officer begins preparing the contractor past performance assessment form is irrelevant. The contractor's work needs to be completed for the assessment to be complete. In practice, counties will need time to complete and review the forms at various levels from the project manager up through the division and department levels before the form is approved and finalized by the procurement officer and entered into the database.
ABC Hawaii Chapter	<p>“The contractor past performance assessment process shall include the following: (1) Procurement officers shall prepare complete the contractor past performance assessment form at the end of the contract, or more frequently earlier as designated by the chief procurement officer or designee, and shall enter the information contained in the completed contractor past performance assessment form into an electronic past performance database system; (A) Procurement officer shall begin preparing the contractor past performance assessment form in conjunction with the start of the contract prior to contract completion and shall enter information into an electronic past performance database system[.]”</p>	The suggested language seeks to simplify and clarify the applicable processes. The suggested language also seeks to ensure that that procurement officers are engaged with a particular project from the start of a contract to ensure to greater a degree of accountability and understanding when issuing a completed Assessment.
UH Systems	Procurement Officer shall enter information into an electronic past performance database system prior to contract completion.	It is not necessary for administrative rules to dictate when a procurement officer begins to prepare a past performance assessment form. It is more appropriate for the rules to provide a deadline for when a form needs to be entered into a system.
Subcontractors Association of Hawaii (SAH)	Inquiry- Why is preparation of the assessment form necessary " <u>prior</u> " to contract completion?	

Board of Water Supply - C&C HNL

“Procurement officers shall ~~[prepare]~~ complete the contractor past performance assessment form . . . “

It will provide clarity to ensure that the form is completed, as what is meant by “prepare’ is ambiguous.

Aviat U.S., Inc.

(A) Procurement officer shall begin preparing the contractor past performance assessment form prior to contract completion and shall complete and enter information into an electronic past performance database system no later than ten (10) days after project completion date;

Contractor past performance assessment form is required to be completed prior to final payment. As such, such form should be completed within a reasonable period of time after project completion for final payment to avoid any delays in payment to Contractor.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance assessment, subsection (c)(1)(B), which states, "The contractor past performance assessment process shall include the following:

(1) Procurement officers shall prepare the contractor past performance assessment form at the end of the contract, or more frequently as designated by the chief procurement officer or designee:

(B) Procurement officer who rates a vendor an unsatisfactory performance assessment is required to document the action (i.e., notice to cure) used to notify the vendor of the contractual deficiencies;"

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner		Procurement officer who rates a vendor as Unsatisfactory is required to document the action (i.e., notice to cure) used to notify the vendor of the contractual deficiencies;	Modified the wording for clarity. There are only two ratings? Is that sufficient?
County of Maui	<p>If a contractor gets an unfavorable assessment, do they have any recourse through the DCCA/OAH to appeal the final determination of the Purchasing Agency?</p> <p>Are all documented corrective actions going to be posted to the database? Are we allowed to post notice to cure publicly?</p>		
DAGS-CSD	<p>A contractor may provide a wide range of products/services. If that contractor is Unsatisfactory for one product/service, will that contractor be eligible for an award for an unrelated product/service?</p> <p>As a point of information, most Central Services Division's contracts have a provision stating that "the State reserves the right to contact references. The State reserves the right to reject any Offeror who has performed unsatisfactorily on other jobs of a nature similar to those required by this IFB."</p>		

General Contractors Association of Hawaii (GCA)	None. GCA respectfully requests that the language be deleted.	Allowing a procurement officer to rate a vendor as unsatisfactory is inherently subjective and beyond the requirements of Act 188 (2021).
ABC Hawaii Chapter	<p>“The contractor past performance assessment process shall include the following: ... (B) Procurement officer who rates a vendor contractor as unsatisfactory in any part of the contractor’s performance assessment is required to document the action (i.e., notice to cure) used to notify the vendor contractor of the purported contractual deficiencies, and otherwise document efforts undertaken by the contractor to address, dispute, or remedy the purported contractual deficiencies[.]”</p>	<p>The suggested language seeks to harmonize terms (by replacing “vendor” with “contractor”) and clarify that procurement officers are required to document the basis for, and contractor response to, any part of an Assessment identified as “unsatisfactory.” This will ensure greater transparency in the process and afford a contractor a fuller record upon which it can refer or rely in the event it seeks to dispute an Assessment after final submission.</p>
Board of Water Supply - C&C HNL	<p>“...is required to document the action (e.g. [i.e.], notice to cure) used to notify the vendor...”</p>	<p>Will provide grammatical clarity; i.e. should be changed to e.g. unless a notice to cure is the only permitted way to document unsatisfactory performance.</p>

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance asesment, subsection (c)(1)(C), which states, "The contractor past performance assessment process shall include the following:

(1) Procurement officers shall prepare the contractor past performance assessment form at the end of the contract, or more frequently as designated by the chief procurement officer or designee:

(C) Agency assessments of contractor past performance shall be provided to the contractor as soon as practicable after completion of the assessment. The contractor shall receive a notification when an assessment is ready for comment;"

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner		Agency assessments of contractor past performance shall be provided to the contractor as soon as practicable after completion of the assessment. The contractor shall receive a notification when an assessment is ready for comment (" Contractor Notification ")	Are the agency assessments made available to the contractor within an online system? How is it made available?
County of Maui	Are we responsible for notifying the contractor of their assessment, or will that be done automatically by the database upon the submission of the assessment from the Agency? Will we get notified by the system when a contractor responds to their assessment?		

“The contractor past performance assessment process shall include the following: ... (C) Agency assessments of contractor past performance shall be provided to the contractor as soon as practicable after completion of the assessment, **and no later than five working days from the date of completion of the assessment.** The contractor shall receive a notification when an assessment is ready for comment, **and the Agency shall document its confirmation that the contractor in fact received notification that the assessment was ready for comment[.]”**

The suggested language seeks to add a timeframe upon which the Agency must act to notify a contractor of a completed Assessment. The suggested language also seeks to add the requirement that the Agency confirm a contractor’s receipt of notification. This serves two purposes – first, it acts to keep the Agency accountable; and second, it provides for a cleaner record in the event of a contractor dispute.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance asesment, subsection (c)(1)(D), which states, "The contractor past performance assessment process shall include the following:

(1) Procurement officers shall prepare the contractor past performance assessment form at the end of the contract, or more frequently as designated by the chief procurement officer or designee:

(D) Contractor shall review the contractor past performance assessment form within 10 working days from the date of notification of the contractor past performance assessment and submit comments, rebutting statements, or additional information, or the contractor past performance assessment form shall be considered accepted by the contractor;"

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner		Contractor shall review the contractor past performance assessment form and provide any feedback ("Contractor Feedback") within ten (10) working days from the date of Contractor Notification. If no contractor feedback is received, the contractor past performance assessment form shall be considered accepted by the contractor;	Modified the wording for clarity. How are contractor comments provided? Online? Via email?
General Contractors Association of Hawaii (GCA)		Contractor shall review the contractor past performance assessment form within 20 working days from the date of notification of the contractor past performance assessment and submit comments, rebutting statements, or additional information, or the contractor past performance assessment form shall be considered accepted by the contractor;	We suggest 20 working days to align with the time allowed in federal procurement.

Cisco	Contractor shall review the contractor past performance assessment form within 30 working days from the date of notification of the contractor past performance assessment and submit comments, rebutting statements, or additional information, or the contractor past performance assessment form shall be considered accepted by the contractor;	10 days to review the past performance assessment would be a challenge especially if we disagree with the findings as we would have to track down the correct people, understand the issues and overview of the project, and provide the rebutting statements and additional information. 30 days will provide contractors with the correct amount of time to conduct this investigation and provide valuable information.
ABC Hawaii Chapter	“The contractor past performance assessment process shall include the following: ... (D) Contractor shall review the contractor past performance assessment form within 10 working days from the date of notification of the contractor past performance assessment and submit comments, rebutting statements, or additional information, or the contractor past performance assessment form shall be considered accepted by the contractor, so long as the Agency and/or procurement officer has/have otherwise complied with its/their obligations as set forth in § 3-122-115.01(c)(1)[.] ”	The suggested language provides additional incentive for strict compliance with the statutory rules.
Board of Water Supply - C&C HNL	“Contractor shall review [the] a completed Contractor past performance assessment form and provide any comments, rebutting statements, or additional information within 10 working days. If the Contractor fails to do so, the Contractor past performance assessment form shall be considered accepted [by the contractor]; ”	It will provide clarity on the process for evaluation of the Contractor Past Performance Assessment, and for the consequences of a Contractor failing to timely provide further statements.

County of Hawaii - Department of Public Works

Revising the specific timeframes in HAR Section 3-122-115.0(l)(D), and (E) to 20 working days.

20 working days is a more reasonable amount of time for the Contractor to be able to provide a rebuttal to a negative assessment and the State/County to provide a response to the rebuttal.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance asesment, subsection (c)(1)(E), which states, "The contractor past performance assessment process shall include the following:

(1) Procurement officers shall prepare the contractor past performance assessment form at the end of the contract, or more frequently as designated by the chief procurement officer or designee:

(E) Procurement officer shall submit a copy of the final contractor past performance asesment form in the agency's contract file and electronically in the past performance database system within five working days of receipt;"

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner		Procurement officer shall review Contractor Feedback and submit the final contractor past performance assessment form ("Final Assessment") within five (5) working days from receipt of Contractor Feedback. The Final Assessment shall be placed in the agency's contract file and submitted electronically in the past performance database system;	Modified wording for clarity. Does the procurement officer have the ability to modify ratings based on the Contractor Feedback?
County of Maui	Will the general public have access to the database? Will vendors/contractors be able to look up each other's assessments?		
C&C HNL Dept. of Budget & Fiscal Services for DDC		Procurement officer shall submit a copy of the final contractor past performance assessment form in the agency's contract file and electronically in the past performance database system within 60 days after contract requirements are completed by the contractor or the contractor is terminated;	This shall be consistent with the proposed language revision for section 3-122-115.01(c)(1)(A), or the two sections shall be consolidated into a single paragraph.

ABC Hawaii Chapter	<p>“The contractor past performance assessment process shall include the following: ... (E) No sooner than 10 working days after a contractor past performance assessment form is deemed accepted by the contractor, and no later than 15 working days after a contractor past performance assessment form is deemed accepted by the contractor, the Procurement officer shall submit a copy of the final contractor past performance assessment form in the agency’s contract file and electronically in the past performance database system within five working days of receipt[.]”</p>	<p>The suggested language ensures that entry of an Assessment in the Database cannot be undertaken before a contractor is given a complete opportunity to review the contents of the Assessment and potentially claim a dispute. The suggested language also removes “within five working days of receipt” because it was not clear what the timeframe was referring to.</p>
Board of Water Supply - C&C HNL	<p>“ . . . within five working days of receipt <u>of the contractor’s response, or within fifteen days of the notification if the contractor does not respond;</u>”</p>	<p>It will provide clarity on the timelines in the Contractor Past Performance Assessment process, particularly if the Contractor does not timely respond.</p>
County of Hawaii - Department of Public Works	<p>Revising the specific timeframes in HAR Section 3-122-115.01(I)(D), and (E) to 20 working days.</p>	<p>20 working days is a more reasonable amount of time for the Contractor to be able to provide a rebuttal to a negative assessment and the State/County to provide a response to the rebuttal.</p>

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance assessment, subsection (c)(1)(F), which states, "The contractor past performance assessment process shall include the following:

(1) Procurement officers shall prepare the contractor past performance assessment form at the end of the contract, or more frequently as designated by the chief procurement officer or designee:

(F) The final contractor past performance assessment form is required prior to making a final payment."

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner		Delete in its entirety.	Final payment to the contractor should not be tied to anything outside of the contractual SOW. Moreover, payment should not be tied to an event that is entirely outside of the contractor's control.
DAGS-PWD/CMB		The final contractor past performance assessment form is <u>NOT</u> required prior to making a final payment.	Final payment shall be made upon completion of contract performance and shall not be conditioned upon filing of the contractor's past performance assessment that is a government function, not a contractor's. Late final payment because of performance assessment disputes with the contractor will expose the state to liability of contract breach from nonpayment.
County of Maui	<p>There is concern with the timeline as it relates to assessment process and final payment. There are various types of contract and multiple departments involved, with contracts originating from various departments at various times. Due to the extremely high volume of contracts in general, attempting to coordinate with multiple departments to complete the assessment and to hold off on final payment until that is done in a timely manner, may not be realistic.</p> <p>What happens if an assessment is not completed for a given contract? What happens if a department submits for final payment and it is paid without all involved departments verifying first that the final assessment has been submitted?</p>		

General Contractors Association of Hawaii (GCA)	None. GCA respectfully requests that the language be deleted.	There was no discussion during the legislative process or within Act 188 (2021) that mentioned the form as a condition for final payment. Contractor payment could be held up due to a delay in completing the past performance assessment and at no fault of the contractor.
C&C HNL Dept. of Budget & Fiscal Services for DDC	(Delete this requirement.)	It makes no sense and is inherently unfair to hold the contractor hostage to completion and submittal of the assessment form, which they have no control over.
C&C HNL Dept. of Budget & Fiscal Services for BFS	Delete entire sentence.	Under all of our contracts we are contractually required to pay our contractors, vendors and consultants if they perform the work. We do not believe it would be legal to withhold or delay payment to a contractor for the government's inability to timely perform a past performance assessment. Since the State and county agencies are responsible for administering and completing this process we cannot penalize or delay contractor's payment for our actions/inaction.
ABC Hawaii Chapter	"The contractor past performance assessment process shall include the following: ... (E) The final contractor past performance assessment form is required prior to making a final payment. However, final payment shall not be delayed so long as the failure to complete the final contractor past performance assessment form is not due to any fault of contractor. "	The suggested language clarifies that the contractor should not have its final payment delayed if failure to complete the Assessment is not due to any fault of the contractor.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisdictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance assessment, subsection (c)(2)(A), which states, "The contractor past performance assessment process shall include the following:

(2) Contractor's past performance assessment form dispute process:

(A) Contractor shall submit a request with substantial evidence to the procurement officer for reconsideration within 10 working days from the date of notification of the past performance assessment;"

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner	<p>How is this different than the typical contractor review process which is also afforded 10 working days? Would the contractor need to distinguish its intent to dispute the report vs. provide a normal review?</p>		
DAGS-CSD	<p>If a contractor's past performance assessment is in dispute, will it be visible on the database. If visible, how will it be considered in the award determination process?</p>		
General Contractors Association of Hawaii (GCA)		<p>Contractor shall submit a request to the procurement officer for reconsideration within 20 working days from the notification of the past performance assessment.</p>	<p>“substantial evidence” is not defined and it is unclear what would meet the threshold of submitting substantial evidence. The contractor should submit a request for reconsideration to the procurement officer with evidence. Additionally, we suggest 20 working days to align with the time allowed in federal procurement.</p>

Cisco	Contractor shall submit a request to the procurement officer for reconsideration within 30 working days from the notification of the past performance assessment.	10 days to review a past performance assessment and provide substantial evidence would be a challenge especially if we disagree with the findings as we would have to track down the correct people, understand the issues and overview of the project, and provide the rebutting statements and additional information. 30 days will provide contractors with the correct amount of time to conduct this investigation and provide valuable information.
C&C HNL Dept. of Budget & Fiscal Services for BFS	For HAR §3-122-115.01(c)(2), after HOPA final determination would this process be handled similarly to the "dispute" process in accordance with HRS §103D-703 or is there another administrative remedy contemplated for a contractor's next step if they are still aggrieved by the determination before filing in court?	Contractor shall submit a written request . . . Formal
ABC Hawaii Chapter	"Contractor's past performance assessment form dispute process: (A) In the event that contractor elects to dispute any unsatisfactory performance assessment finding, Contractor shall submit a request with substantial evidence to the procurement officer for reconsideration within 10 working days from the date of notification of the past performance assessment[.]"	The suggested language clarifies the timeframe the contractor has to raise a dispute and removes the arbitrary standard of "substantial" evidence.
Subcontractors Association of Hawaii (SAH)	Inquiry- What is the "substantial evidence" that is to be provided for reconsideration of an assessment? Are there examples?	

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisdictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance assessment, subsection (c)(2)(B), which states, "The contractor past performance assessment process shall include the following:

(2) Contractor's past performance assessment form dispute process:

(B) The procurement officer shall update the past performance database system taking into consideration any contractor comments;"

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner	How is this different than the typical process above where the procurement officer prepares their final report?		
C&C HNL Dept. of Budget & Fiscal Services for HFD		(B) The procurement officer shall update the past performance database system taking into consideration any contractor comments and potential negative impact to the procuring agency; "	Procuring agencies that provide public safety should be consulted when eliminating potential contractors that provide goods and services due to possible negative impacts to critical operational needs due to the extremely limited sources of supply for critical equipment, etc.

ABC Hawaii Chapter

“Contractor’s past performance assessment form dispute process: (B) The procurement officer shall update the past performance database system by submitting a summary of the contractor’s comments in support of its request for reconsideration into the past performance database, and further identify and describe any evidence submitted in support of the same. ¶the procurement officer shall also taking into consideration any contractor comments, and the procurement officer shall modify its assessment, or parts thereof, if appropriate and in light of contractor comments and/or evidence in support of the same[.]”

The suggested language ensures a complete record by procurement officers to summarize contractor arguments/comments directly into the Database. The suggested language also requires procurement officers to take remedial action, if warranted, without having to prolong the dispute process.

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisidictions/Vendors

Reference: HAR section 3-122-115.01, Contractor past performance assessment, subsection (c)(2)(C), which states, "The contractor past performance assessment process shall include the following:

(2) Contractor's past performance assessment form dispute process:

(C) The final determination on the contractor's past performance assessment shall be the decision of the head of the purchasing agency or designee."

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Gartner	Again, how is this process initiated compared to the regular process since both are on the same timeline?		
DAGS-CSD	Will trade associations, labor unions, and other contractor affiliated groups be able to participate in the contractor's past performance assessment form dispute process? Is this final determination protestable?		
General Contractors Association of Hawaii (GCA)		None. GCA respectfully requests that the language be deleted.	GCA is concerned with language that allows the head of the purchasing agency or designee to make the final determination. GCA believes that this opens the door for subjectivity and the potential for unethical procurement. Instead, the facts should be reported and any potential reviewer should make their own determination given the facts presented.
ABC Hawaii Chapter		"Contractor's past performance assessment form dispute process: (C) <i>In the event that the procurement officer does not modify its assessment, or parts thereof, in light of contractor comments and/or evidence, the procurement officer shall submit the past performance assessment form, and a summary of the contractor's dispute, to the head of the purchasing agency or its designee. Thereafter, and no later than 10 working days after submission of the dispute, the head of the purchasing agency or its designee shall issue a final determination on the contractor's past assessment, and such final determination shall set forth, in writing, the basis or bases for its reasoning in support of the final determination.</i> "	The suggested language ensures transparency of process and affords a contractor a complete understanding of any unfavorable Assessment.

<p>Building Industry Association of Hawaii (BIA-Hawaii)</p>	<p>None. BIA Hawaii concurs with GCA's comment that respectfully requests that the language be deleted.</p>	<p>BIA Hawaii echoes GCA's concern that the language allows the head of the purchasing agency or designee to make the final determination and opens the door for subjectivity and the potential for unethical procurement. Instead, the facts should be reported and any potential reviewer should make their own determination given the facts presented. Additionally, as set forth below, nothing in the proposed language provides the ability of the Contractor to have the decision of the head of the purchasing agency or designee reviewed for challenged for due process concerns.</p>
<p>Board of Water Supply - C&C HNL</p>	<p>"The final determination on the contractor's past performance assessment shall be the decision of the head of the purchasing agency or designee <u>and is not subject to any appeal.</u>"</p>	<p>To provide clarity that the final determination is not subject to any appeal.</p>

PC2023-07, Past Performance Database HAR Feedback from Departments/Agencies/CPO Jurisdictions/Vendors

Miscellaneous Feedback/Comments

Name of Agency or Vendor	General Comments	Suggested Alternative Language	Justification/Explanation for Suggested Language
Leadervation Learning	<p>I like the idea that this document would be collected after completion of a project - provided it is immediately as in ten days.</p> <p>I'd like to raise an important consideration: Minority vendors face racial discrimination when it comes to the collection of references. There are some people who will verbally congratulate you on a job well done, but sabotage future opportunities for you to receive work. It has nothing to do with the quality of work provided or the success of a project and everything to do with limiting access and opportunity; perceived bias about the type of work minority vendors should be doing or how much they should be profiting. Minority vendors are also critiqued more harshly than their white counterparts.</p>	<p>No ready answer as to how to alleviate all aspects of bias in this process but I am grateful for the opportunity to bring this to your attention as it is seldom raised or acknowledged.</p>	
Jared Scott LLC	<p>I think that this is a great policy to ensure that quality of work is validated and documented and see no problems with it.</p>		
ClarusTec, Inc.	<p>We have read through the Procurement Circular 2023-07: Procurement Policy Board Procurement Review Request: Past Performance HARs and Assessment, and understand the norms broadly.</p> <p>The State of Hawaii, may assess our capabilities at its own discretion.</p> <p>Kindly note that CLARUSTEC's experience and competency is within Information Technology Staffing and Project Consulting spectrum.</p>		
MGA Architecture	<p>MGA Architecture has no additional updates to provide for the proposed rules or assessment. PM looked at both and said that he has no additional feedback and that we are on the right track.</p>		
Southwest Business - Hawaii Operations	<p>Reporting back with no issues</p>		
County of Maui	<p>Is there a specific process for applying responses from the past performance dataset to a selection for a future solicitation?</p> <p>Will unsatisfactory assessments result in that contractor being suspended from bidding? If so, how many does it take and how long would they be suspended for? Is there anything stopping a contractor from setting up a new LLC and submitting bids under that name?</p>		
DAGS-CSD	<p>Suggest investigate the possibility to integrate the results of the past performance database into the Department of Commerce and Consumer Affairs (DCCA) process for their Certificate of Good Standing and/or the State Procurement Office's Certificate of Vendor Compliance. Currently, both programs must be checked before an award can be made. Incorporation of past performance into these processes will relieve procurement officers from making additional checks in order to award contracts. Also, oversight of the past performance database process will be administered by an established agency.</p>		
Cisco	<p>HAR Section 3-122-33.2, "lowest responsive, responsible bidder" HAR Section 3-122-33.4.e., "lowest responsive, responsible bidder"</p>	<p>Change all references to "best value, responsible bidder"</p>	<p>Being on budget is a requirement for a SAT rating, but sample 2 suggests that pricing increases due to Change Orders should not affect the performance rating. This could be a good idea if the State creates the Change Order request or increases the Scope, but what about the 90% of Change Order requests generated by the contractor? Somehow the State needs to make sure they are protected from contractors that only bid what is <u>explicitly</u> stated in an RFP (so they will technically be the "lowest acceptable") and then process Change Orders throughout the resulting contract to increase the contract price and to acquire material and labor they knew were required to complete the project/contract from the start. Awarding based on best value can be part of this protection. Stating absolutely everything required in every RFP would add some protection for the State but then even simple RFPs would be hundreds of pages long. Note: processing change orders wastes procurement office resources as well as raising the price of contracts.</p>
Cisco	<p>Cisco does not sell direct and utilizes authorized resellers to sell our solutions. Can the State advise how & whether it will differentiate between the resellers providing services under a contract, and the contractor (Cisco) providing the cloud services, software, etc.? Can the State confirm that if Cisco reseller was not performing on their agreed upon deliverables and end up with a poor performance assessment, Hawaii would enter the assessment against them, and then Hawaii could just opt to go with a different reseller in the future, without impacting Cisco's assessment?</p>		

Infinium Interiors	<p>I applaud the idea of attempting to prevent low-ball bidders from winning contracts that they would then underperform on, causing issues and problems for the State of Hawaii, its taxpayers, and other businesses involved. However, I am concerned that the proposed policy may lead to abuse by placing emphasis in the wrong area.</p> <p>I believe this policy, as it is written, will disproportionately affect small businesses. Specifically, it will harm those businesses that, through no action of their own or within their control, are considered low or poor performing. Examples where a vendor may, somewhat unfairly and even arbitrarily be identified as low or poor performing, include:</p> <ul style="list-style-type: none"> • Delays caused by a third party, such as a manufacturer or freight service. • Products received damaged or faulty. • Opinion that a product is not as ordered. • Etc. <p>Larger companies may have the resources to remedy these situations, whereas small businesses are beholden to the supply chain and risk being unfairly blamed for issues outside of their scope and control. In a real sense this policy would be an additional administrative burden on small businesses.</p> <p>As a commercial furniture dealer, I believe that we play a small but important role in providing offices and organizations with the tools they need to work safely and efficiently. During Covid we were deemed "essential" and as such furnished the offices of one of the State's largest health plan providers along with a new medical office building in West Oahu. As we all know, Covid was and continues to be a major disruptor to supply chains, delaying manufacturing, deliveries and costs. Most clients understood the problem and were patient. Lead times have since come back down to nearly normal levels, but we still see pockets of delay. Clients in 2023 are less understanding, perceiving the supply chain problem to have been resolved. Some clients will direct their frustrations to us, the vendor.</p> <p>I would also be remiss if I didn't point out the opportunity for bad actors, abuse, or other deleterious but unintended consequences. Just referencing our industry, there are only a handful of dealers in the State and four of them on the NASPO contract. Should one or more of the dealers receive negative ratings that put them at a disadvantage in bid scenarios it would absolutely skew the State business in favor of the remaining dealers. Considering the ability to pick winners and losers through this proposed new policy the incentives are both perverse and unassailable.</p> <p>In many circumstances I would be in favor of implementing a well-considered policy and revising as necessary. As someone who is on the ground in this particular industry, I can assure you that this policy will likely not work as intended and has the potential to adversely affect small businesses, including layoffs and business closings. This will also result in an artificial winnowing of options available for the State, resulting in higher costs, less satisfaction, and lower competition in the long run.</p> <p>Thank you for the opportunity to share my perspectives on this new proposed procurement References to "procurement officer", "HOPA", and "Chief Procurement Officer."</p>
C&C HNL Dept. of Budget & Fiscal Services for BFS	<p>Responsibility for actions under the proposed rules will differ under a centralized purchasing organization. We request all references to "procurement officer", HOPA", and "Chief Procurement Officer" include the words "or delegate" to accommodate for these differences b/t State de-centralized v. centralized procurement groups.</p>
DOTAX	<p>No concerns or edits from DOTAX. Thank you.</p>
ABC Hawaii Chapter	<p>Hawaii's procurement process can only function as intended if contracts are awarded pursuant to objective selection criteria. And, while it is understood that a "performance database" (the Database) must be implemented pursuant to Act 188 of the 2021 Session Laws of Hawaii (the Act),¹ the Legislature made clear the Database was intended to "routinely capture[] contractor performance... in a structured and uniform way[.]" See Ex. 1 at 669 ("SECTION 1") (emphasis added).</p> <p>Stated differently: the Database is meant to be a repository for information that can be objectively considered, absent favoritism, to ensure that public contracts are awarded to responsible contractors. But based on our review of the proposed amendments to Chapter 3-122, HAR, we have grave concerns that the Database could be misused, contrary to legislative intent, and that the objectivity so fundamental to procurement processes may be undermined.</p> <p>The primary concern is that the amendments seem to elevate the subjective discretion of the procurement officer over objective criteria. They also fail to explain how information stored in the Database will be used, and what safeguards will be in place to ensure that awards will continue to be based on an objective metric rather than the whims of a procurement officer.</p> <p>For example, the proposed addition to § 3-122-33(a) provides that an award shall be made to the lowest responsive, responsible bidder "as determined by the procurement officer pursuant to Subchapter 13.5, Contractor's Past Performance Assessment." What does this mean? Does the procurement officer have absolute discretion to determine whether any particular bidder is "responsible?" The proposed addition of subchapter 13.5, HAR, contemplates completion of a "past performance assessment form" (the Assessment), but nothing indicates how, or to what degree, an Assessment will impact the determination of whether a contractor is considered a "Responsible bidder or offeror," as defined by the Act. If a procurement officer concludes that a contractor is "unsatisfactory" in one or more areas of an Assessment, does that mean the contractor necessarily lacks "the integrity and reliability that will assure good faith performance," thereby precluding a finding that the contractor is a responsible bidder for future jobs? As drafted, each procurement officer will be in a position to implement these rules differently, and potentially undermine, or eliminate, any true objective procurement process.</p> <p>Relatedly, the dispute mechanism (as set forth in § 3-122-115.01(2) of the proposed amendments) is problematic where it is unknown what a "final determination" will entail. Will it solely provide that a contractor is "unsatisfactory" pursuant to the Assessment? Or will the head of the purchasing agency (or its designee) expressly find that a contractor lacks "the integrity and reliability that will assure good faith performance"? If the latter, will the reasons or bases upon which the purchasing agency (or designee) relied in concluding that a contractor was not responsible be included in the "final determination"? And will the contractor have any recourse if it is later determined, through litigation or otherwise, that the purported bases for an unsatisfactory Assessment are proven to have been incorrect?</p> <p>The point here is that too much remains vague, and the proposed amendments provide for too much subjective discretion in the awarding of contracts. Accordingly, to maintain the sanctity of the procurement process, and to ensure that all contractors have equal rights to bid fairly and competitively, we respectfully request that the Procurement Policy Board consider the language recommendations set forth below.</p>
UH Systems	<p>Recommend limiting the use of the term "past performance" to only when referencing the past performance database.</p> <p>Subchapter 13.5 requires agencies to complete a past performance evaluation based on the <u>current</u> contract (as opposed to the past). Therefore, references to completing a performance assessment should not be made to indicate it is for the "past."</p>

DAGS supports key elements of the intent of Act 188, SLH 2021, as stated at the top of page 3 of the May 18, 2023, Procurement Policy Board Meeting Minutes and paraphrased below:

- ☒ To increase accountability, enhance performance, and utilize taxpayer dollars more efficiently, and
- ☒ To address concerns that public contracts may be awarded without regard to poor past performance
- ☒ To mitigate repeated inefficiencies and substandard work.

We also support our Comptroller's desire to take a fresh look at Past Performance and have SPO staff focus its limited resources moving forward.

With regard to past performance, we have the following concerns:

1. The evaluation of past performance for professional services and construction procurements are much more complex and different than for goods and services procurements.
2. In its research on what other states and the federal government are doing for past performance (as cited on page 4 of the May 18, 2023, Procurement Policy Board Minutes), there is no evidence that SPO's consultant considered information crucial to determining what might be most effectively and practicably implemented in Hawaii (i.e., the review should include in-depth analysis of differences between the programs and their respective degrees of efficacy, staffing levels, agency size, organization, processes, etc.).
3. If other State agencies are like DAGS, we have staffing issues and are trying to make the most efficient use of our time and efforts. We have concerns that the proposed process will significantly impact the demands on existing staff without obvious benefits.
4. Similarly, the rules (as currently proposed) have the potential to significantly impact the Contractor's resources without benefit to the Contracting Agency.
5. Some of the proposed exclusions based upon the type of procurement method may actually eliminate useful information. For example:
 - ☒ It seems inadvisable that small purchase construction procurements (<\$250,000) be exempt from the consideration of past performance, when the possibility of poor performance exists there as well.
 - ☒ For small purchases of goods and services and sole source procurements, why wouldn't an agency want to know if a vendor performed poorly on past contracts?
 - ☒ For emergency procurements, a poorly performing contractor could make an already difficult situation much worse.
6. As proposed, this will significantly increase the number of protests received post-award. Although §103D-318 indicates that decisions are 'final and conclusive' it leaves room for argument, in the form of protests, that the decision made was 'clearly erroneous, arbitrary, capricious, or contrary to law'. This is because judgement (i.e. subjectivity) is required to determine what information from the database is to be considered when making a determination of responsibility (i.e. what is recent, relevant, of similar complexity, etc.). This is especially true for construction, where the size, relevance, or complexity of projects is subject to interpretation.
7. Act 188, SLH 2021 (please see the Attachment), does not require that the final performance assessment form be finalized prior to making final payment. This requirement should be deleted because it: 1) unfairly penalizes the contractor when work on the project has already been completed; and 2) discourages contractors from providing feedback on the assessment. The effect of an agency's delay to complete the final performance assessment should not penalize the contractor, who has no control over this requirement.
8. If the goal is to prevent awards made to contractors with poor past performance and substandard work, and to increase the efficiency and use of taxpayer dollars, the requirement to evaluate contractors who have performed satisfactorily on a project is both inefficient and unnecessary. The procurement code already contains a method of procurement for the consideration of past performance (§103D-303 – Competitive Sealed Proposals) in which contractors will 'put their best foot forward' and provide positive past performance information.
9. HRS §103D-329 uses the term "state contractors". Without definition, this term is subject to a number of interpretations (i.e. contractors/vendors within the State of Hawaii, contractors on jobs for the counties within the State of Hawaii as well as the State of Hawaii, construction contractors licensed under HRS Chapter 444, companies licensed to do business within the State of Hawaii, etc.). This term should be carefully defined so that its interpretation is both consistent and appropriate.
10. The HRS does not mandate an evaluation form. We note that the only mention of a 'performance evaluator' in the HRS is in §103D-320 – Retention of procurement records, evaluations. This section merely mandates retention of performance evaluations if they exist; it does not mandate that such records have to be generated if they don't exist. This is similar to retention of a personnel file write-up: if a write-up exists, it shall be retained, if there is no write-up, there is no requirement to create and retain one. Also, due to the inherent subjectivity of an evaluation form, it should be eliminated.

Attachment A:

ATTACHMENT

HRS §103D-310 – Responsibility of Officers. (b) Whether or not an intention to bid is required, the procurement officer shall determine whether the prospective officer has the financial ability, resources, skills, capability, and business integrity necessary to perform the work. For the purpose of making a responsibility determination, the procurement officer shall possess or obtain available information, including past performance, sufficient to be satisfied that a prospective officer meets the applicable standards.

HRS §103D-318 – Finality of determinations. The determinations required by sections 103D-309(a), 103D-309(b), 103D-309(c), 103D-309, 103D-310, 103D-312(a), 103D-315, and 103D-314 shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

HRS §103D-320 – Retention of procurement records; evaluations. All procurement records shall be retained and disposed of in accordance with chapter 84 and records retention guidelines and schedules approved by the comptroller. **Written past performance evaluations for all procurements over the small purchase threshold shall be maintained in the processing department's procurement files and in the statewide past performance database.**

HRS §103D-329 – Past Performance Database (a) No later than December 31, 2023, the state procurement office shall implement and administer a past performance database with regard to state contractors.

(b) The state procurement office shall adopt rules no later than December 31, 2023, pursuant to chapter 91 to establish:

(1) Information required to be included in the past performance database, provided that the information shall include:

- (A) The name of the state contractor;
- (B) The date of the project;
- (C) The size of the project;
- (D) A brief description of the project;
- (E) The responsible managing employees for the project;
- (F) Whether or not the project was timely completed;
- (G) The project's authorized budget; and
- (H) The positive or negative difference between the final cost of the project and the project's authorized budget, including the reasons for the difference, if any;

(2) Procedures to inform a contractor of the information contained in the past performance database about that contractor; and

(3) Procedures for a contractor to correct or respond to the information contained in the past performance database about that contractor.

DAGS-PWD	DAGS proposes that we take a cue from Pennsylvania and develop a Contractor Responsibility Program by collecting information concerning projects where a contractor demonstrated poor performance.	Limit the database to entries documenting poor performance despite providing opportunities to cure	<p>▣This would limit the database input requirements to those projects where a contractor performed poorly, even after being given a 'chance to cure,' making it more manageable for State and County agencies and existing staffing levels.</p> <p>▣Since State and County agencies would be required to document the issuance of 'notices to cure' as well as the results of said notices, this process would give contractors/vendors specific guidance which would help them to: 1) recognize the importance of adherence to the solicitation requirements, make them aware of what agencies consider to be 'poor performance', and 3) give them an opportunity to improve if they want to continue to receive work from State and County agencies.</p> <p>▣The information contained in the database would be limited to factual information documenting poor performance, of the type used to justify suspension/debarment.</p> <p>▣This would support SPO's efforts and responsibilities under HRS §103D-702 regarding the suspension and debarment process and increase both the efficiency and the effectiveness of that process. Having an effective suspension and debarment process would serve as a deterrent to 'poor performing contractors' by making government contracts less attractive and would achieve the legislative goal of precluding repeated awards to 'poorly performing' vendors/contractors (since procurement personnel are required to check these lists prior to award). oTo date, the suspension/debarment listing has been minimal. This doesn't make sense if, as the legislators feel, there are many poorly performing contractors on State contracts. oCurrently, agencies can feel 'siloed' in their efforts to suspend or debar a contractor/vendor. oSPO could use the information in the database to identify contractors and vendors whose performance merits further investigation to determine whether it is appropriate to initiate suspension/debarment processes and to have a broader range of evidence to support their efforts to debar/suspend.</p> <p>▣Agency staff may have more incentive to collect and input information into the database if they see it as being part of a larger effort on the part of the State to suspend/debar contractors who perform poorly and do not take the opportunity to 'cure' identified deficiencies in performance.</p>
DAGS-PWD		Give careful consideration to the point at which the information is made public.	<p>oWe want to avoid the necessity to add volumes of information at the end of the process in the event that poor performance is not remedied to the satisfaction of the agency, which would be an undue burden on personnel. oWe recommend that the system be designed so that the information can be "toggled" to be made public. This would allow agencies to add documentation of poor performance, notices to cure, etc., and to make it public, as deemed appropriate, at the close of the project.</p>
DAGS-PWD		Design the database to maximize its utility to SPO in its efforts toward suspension and debarment of persistent 'poor-performing' vendors/contractors.	
DAGS-PWD	Defer rulemaking until the best path forward has been identified.	Give careful consideration to the point at which a company/vendor/contractor would be considered to be ineligible for award, giving consideration to the importance of consistency between agencies and the goal of minimizing protests filed on the basis of such decisions.	Perhaps SPO might identify the entities whose poor performance rises to the level that they are being considered for investigation to determine if suspension/debarment proceedings may be in order and making that list available for reference by state and county agencies.
Building Industry Association of Hawaii (BIA-Hawaii)	<p>My name is Max Lindsey, Government Relations Committee Chair of the Building Industry Association of Hawaii (BIA-Hawaii). Chartered in 1955, the Building Industry Association of Hawaii is a professional trade organization affiliated with the National Association of Home Builders, representing the building industry and its associates. BIA-Hawaii takes a leadership role in unifying and promoting the interests of the industry to enhance the quality of life for the people of Hawaii. Our members build the communities we all call home.</p> <p>BIA Hawaii is in receipt of the survey sent by the Board soliciting comments on the proposed amendments to Hawaii Administrative Rules Chapter 3-122 relating to Contractor's Past Performance. BIA Hawaii offers the following comments on proposed amendments to the HAR and the Contractor Past Performance Assessment Form.</p> <p>BIA Hawaii has reviewed, is in agreement with, and echo the comments provided by the General Contractor's Association ("GCA") in their letter to you dated June 15, 2023. We share GCA's concerns on limiting any subjectivity to the evaluation process, and that the amendments to the HAR follow the parameters set forth by the legislature in Act 188. The deletions and alternative language provided by GCA are required to conform with the parameters set forth by the legislature in Act 188, reduce the potential for subjectivity in the evaluation process, and allow agencies to make their own determinations of past performance based upon their evaluation of the facts from the perspective of both the prior procurement officer and the contractor.</p> <p>In addition to the comments above, BIA Hawaii is concerned that nothing in the proposed administrative rule revisions provides a mechanism for the Contractor to appeal a decision by the agency which it believes is not justified. Without the ability to challenge the decision of the purchasing agency to an administrative agency or judicial body for a final adjudication, an assessment of alleged poor performance by the head of the purchasing agency or designee could effectively turn into a debarment situation for contractors without the right of due process. We do not see anything in the proposed rule amendments that addresses this situation and provides Contractor's with appropriate due process rights to have erroneous poor performance evaluations taken off their record.</p> <p>Thank you for the opportunity to share our comments and concerns.</p>		
Board of Water Supply - C&C HNL		Add Working day definition to HAR §3-122-1. Definitions: "Working day" means calendar days excluding Saturday, Sunday, and federal and Hawaii State holidays.	It will provide clarity on the definition of a "working day".

The County of Hawaii Purchasing Division is not comfortable with the current draft of rules or the draft assessment form moving forward.

Comments on draft rules 3-122-155.01:

•Define Procurement Officer. Normally, it is the Project Manager/Administrator who manages the contract once procurement is complete. The Procurement Officer is not involved in the day-to-day administration of the contract. The Procurement Officer would need this information from the project/contract lead.

- 1 (A) Define project completion. Is this after final payment?
- 1 (B) Please confirm we can legally attach/post documents such as notice to cure.
- 1 (E) Five working days is too short. A minimum of 10 is requested.
- 1 (F) Final payment cannot be withheld. Suggest removal.
- 2 (A) Define substantial.

Overall comments:

- This requirement will require significant resources to track, develop and enter comments.
- The requirements should be kept to a minimum as the form is way too subjective and strays far from the original HRS requirements. Suggest keeping the assessment to the information required in the HRS.
- A better understanding of the database is requested and the ability of the database to do some automatic notifications. This may alleviate some of the tracking and administrative time concerns.
- A discussion/guidance is requested explaining how this information will be used in subsequent solicitations. Will Past Performance reviews result in suspensions or debarment from doing business with State/County agencies? Would one "unsatisfactory" allow the agency to disqualify a bid (on low bid solicitations)? Are there mandatory disqualifications? How do we remain consistent in the use of the database?
- Does any of this put the County at risk legally? What kind of liability do we face?

Thank you for the recognition of our agency as a stakeholder and the opportunity to voice our concerns and feedback on how past performance should be evaluated and implemented into a database, that will be used state-wide by all public agencies.

The County of Hawai 'i Department of Public Works ("COH DPW") appreciates the opportunity to provide comment on the proposed rules and contractor performance assessment. COH DPW will be greatly affected by this new process because COH DPW is responsible for all County of Hawai 'i construction related procurement. COH DPW does not support the proposed rules as written because the timeframes for completing the assessment process are unreasonable for complex construction contracts. Further, without a full understanding of the database it is difficult to provide meaningful feedback as the database is a crucial part to effectuate the intent of Act 188, SLH 2021, which is to increase accountability, enhance performance, and utilize taxpayer dollars more efficiently by not awarding contracts to poor performers

County of Hawaii

County of Hawaii - Department of Public Works