
HOUSE CONCURRENT RESOLUTION

REQUESTING THE COMPTROLLER TO REESTABLISH THE PROCUREMENT TASK
FORCE INITIATED PURSUANT TO SENATE CONCURRENT RESOLUTION
NO. 92, S.D. 2 (2013) TO STUDY THE ISSUE OF PAST
PERFORMANCE IN THE PROCUREMENT PROCESS.

1 WHEREAS, in an effort to ensure that state contracts are
2 awarded to responsible bidders or offerors through the state
3 procurement process, the Legislature has expressed its interest
4 in increased accountability for performance on state contracts
5 to efficiently utilize taxpayer dollars; and
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7 WHEREAS, the Hawaii Public Procurement Code currently
8 allows agencies to include past performance requirements in bid
9 proposals under section 103D-302(f), Hawaii Revised Statutes,
10 under the invitation for bids process, which is commonly known
11 as low bid; and
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13 WHEREAS, under section 103D-302(f), Hawaii Revised
14 Statutes, an invitation for bids may set the requirements to
15 determine qualifications and criteria for a project; in other
16 words, the agency may set the criteria and qualifications for
17 the bidder in its bid specifications, which could include such
18 criteria as past performance, recent project history, and any
19 other qualifications an agency may find necessary; and
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21 WHEREAS, agencies have been reluctant to incorporate past
22 performance requirements in their bid specifications due to the
23 difficulty of quantifying, evaluating, and administering past
24 performance criteria; and
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26 WHEREAS, in 2013, the Legislature adopted Senate Concurrent
27 Resolution No. 92, S.D. 2 (2013) establishing the Procurement
28 Task Force; and



1 WHEREAS, the Procurement Task Force convened under the
2 authorization of Senate Concurrent Resolution No. 92, S.D. 2
3 from 2013 through part of 2015 and one of the issues discussed
4 included how to address poorly-performing contractors; and
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6 WHEREAS, in 2014, the Legislature adopted House Concurrent
7 Resolution No. 176 (2014), which required the State Procurement
8 Office to study past performance of government contractors; and
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10 WHEREAS, reported in *Report on the Study on Past*
11 *Performance Consideration in Hawaii Contracting*, pursuant to
12 House Concurrent Resolution No. 176 (2014), the State
13 Procurement Office offered suggestions for legislation on this
14 issue, but none were implemented due to problems with the
15 proposed amendments and lack of funding to implement such
16 programs; and
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18 WHEREAS, after these two initiatives, participating
19 government agencies and private industry stakeholders agreed
20 that the issue of past performance needed further discussion
21 before an approach with potential unintended consequences was
22 codified; and
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24 WHEREAS, as a result, in 2015, in an effort to continue
25 discussions the Legislature passed Act 182, Session Laws of
26 Hawaii 2015, to extend the Procurement Task Force and request
27 that the Task Force specifically identify and propose amendments
28 to the Hawaii Public Procurement Code, if any, regarding
29 statewide past performance standards and processes in public
30 works projects; and
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32 WHEREAS, the Comptroller did not convene the Task Force as
33 mandated by Act 182, Session Laws of Hawaii 2015, parties never
34 met to discuss statewide past performance standards and
35 processes in public works projects as directed by the
36 Legislature, and there has not been any follow-up since; and
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38 WHEREAS, in an effort to promote economy, efficiency,
39 effectiveness, and impartiality in public procurement, it is
40 important to identify whether amendments to the Hawaii Public
41 Procurement Code are necessary to address poorly-performing
42 contractors or whether the current Procurement Code provides



1 adequate tools to assess a contractor's past performance; now,
2 therefore,

3
4 BE IT RESOLVED by the House of Representatives of the
5 Twenty-ninth Legislature of the State of Hawaii, Regular Session
6 of 2018, the Senate concurring, that the Comptroller is
7 requested to reestablish the Procurement Task Force initiated
8 pursuant to Senate Concurrent Resolution No. 92 (2013) to study
9 the issue of past performance in the procurement process; and
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11 BE IT FURTHER RESOLVED that the Comptroller, or the
12 Comptroller's designee, is requested to serve as chair of the
13 Task Force; and
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15 BE IT FURTHER RESOLVED that the Comptroller is requested to
16 solicit representatives from the following entities to serve on
17 the Task Force, provided that those persons designated shall be
18 knowledgeable of procurement procedures and issues within their
19 respective organizations:
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- 21 (1) The State Procurement Office;
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- 23 (2) The University of Hawaii;
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- 25 (3) The Department of Education;
- 26
- 27 (4) The Office of Hawaiian Affairs;
- 28
- 29 (5) The Department of Transportation;
- 30
- 31 (6) A county procurement department;
- 32
- 33 (7) A county board or department of water supply;
- 34
- 35 (8) The semi-autonomous public transit agency of the City
36 and County of Honolulu;
- 37
- 38 (9) The Subcontractors Association of Hawaii; and
- 39
- 40 (10) The General Contractors Association of Hawaii; and



1 BE IT FURTHER RESOLVED that the Task Force is requested to
2 identify proposed amendments, if any, to the Procurement Code
3 that will address poorly-performing contractors through the use
4 of past performance criteria in determining awards for state
5 contracts; and
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7 BE IT FURTHER RESOLVED that members of the Task Force are
8 requested to serve without compensation; and
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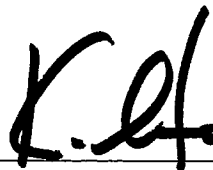
10 BE IT FURTHER RESOLVED that the Task Force is requested to
11 submit its findings and recommendations, including any proposed
12 legislation, to the Legislature no later than twenty days prior
13 to the convening of the Regular Session of 2020; and
14

15 BE IT FURTHER RESOLVED that the Legislative Reference
16 Bureau is requested to assist the Task Force in drafting
17 proposed legislation; provided that the Task Force submits its
18 request for proposed legislation, if any, to the Legislative
19 Reference Bureau no later than November 1, 2019; and
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21 BE IT FURTHER RESOLVED that the Task Force shall be
22 dissolved on June 30, 2020; and
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24 BE IT FURTHER RESOLVED that certified copies of this
25 Concurrent Resolution be transmitted to the Governor, Attorney
26 General, Comptroller, Chief Procurement Officer, Director of
27 Transportation, Superintendent of Education, Administrator of
28 the Office of Hawaiian Affairs, President of the University of
29 Hawaii System, Director of the Legislative Reference Bureau, the
30 Mayor of each county, the board or department of water supply of
31 each county, Subcontractors Association of Hawaii, and General
32 Contractors Association of Hawaii.
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OFFERED BY: _____



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