WHEREAS, in an effort to ensure that state contracts are awarded to responsible bidders or offerors through the state procurement process, the Legislature has expressed its interest in increased accountability for performance on state contracts to efficiently utilize taxpayer dollars; and

WHEREAS, the Hawaii Public Procurement Code currently allows agencies to include past performance requirements in bid proposals under section 103D-302(f), Hawaii Revised Statutes, under the invitation for bids process, which is commonly known as low bid; and

WHEREAS, under section 103D-302(f), Hawaii Revised Statutes, an invitation for bids may set the requirements to determine qualifications and criteria for a project; in other words, the agency may set the criteria and qualifications for the bidder in its bid specifications, which could include such criteria as past performance, recent project history, and any other qualifications an agency may find necessary; and

WHEREAS, agencies have been reluctant to incorporate past performance requirements in their bid specifications due to the difficulty of quantifying, evaluating, and administering past performance criteria; and

WHEREAS, in 2013, the Legislature adopted Senate Concurrent Resolution No. 92, S.D. 2 (2013) establishing the Procurement Task Force; and
WHEREAS, the Procurement Task Force convened under the 
authorization of Senate Concurrent Resolution No. 92, S.D. 2 
from 2013 through part of 2015 and one of the issues discussed 
included how to address poorlyperforming contractors; and 

WHEREAS, in 2014, the Legislature adopted House Concurrent 
Resolution No. 176 (2014), which required the State Procurement 
Office to study past performance of government contractors; and 

WHEREAS, reported in Report on the Study on Past 
Performance Consideration in Hawaii Contracting, pursuant to 
House Concurrent Resolution No. 176 (2014), the State 
Procurement Office offered suggestions for legislation on this 
issue, but none were implemented due to problems with the 
proposed amendments and lack of funding to implement such 
programs; and 

WHEREAS, after these two initiatives, participating 
government agencies and private industry stakeholders agreed 
that the issue of past performance needed further discussion 
before an approach with potential unintended consequences was 
codified; and 

WHEREAS, as a result, in 2015, in an effort to continue 
discussions the Legislature passed Act 182, Session Laws of 
Hawaii 2015, to extend the Procurement Task Force and request 
that the Task Force specifically identify and propose amendments 
to the Hawaii Public Procurement Code, if any, regarding 
statewide past performance standards and processes in public 
works projects; and 

WHEREAS, the Comptroller did not convene the Task Force as 
mandated by Act 182, Session Laws of Hawaii 2015, parties never 
met to discuss statewide past performance standards and 
processes in public works projects as directed by the 
Legislature, and there has not been any follow-up since; and 

WHEREAS, in an effort to promote economy, efficiency, 
effectiveness, and impartiality in public procurement, it is 
important to identify whether amendments to the Hawaii Public 
Procurement Code are necessary to address poorlyperforming
contractors or whether the current Procurement Code provides adequate tools to assess a contractor’s past performance; now, therefore,

BE IT RESOLVED by the House of Representatives of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2018, that the Comptroller is requested to reestablish the Procurement Task Force initiated pursuant to Senate Concurrent Resolution No. 92 (2013) to study the issue of past performance in the procurement process; and

BE IT FURTHER RESOLVED that the Comptroller, or the Comptroller’s designee, is requested to serve as chair of the Task Force; and

BE IT FURTHER RESOLVED that the Comptroller is requested to solicit representatives from the following entities to serve on the Task Force, provided that those persons designated shall be knowledgeable of procurement procedures and issues within their respective organizations:

1. The State Procurement Office;
2. The University of Hawaii;
3. The Department of Education;
4. The Office of Hawaiian Affairs;
5. The Department of Transportation;
6. A county procurement department;
7. A county board or department of water supply;
8. The semi-autonomous public transit agency of the City and County of Honolulu;
9. The Subcontractors Association of Hawaii; and
10. The General Contractors Association of Hawaii; and
BE IT FURTHER RESOLVED that the Task Force is requested to identify proposed amendments, if any, to the Procurement Code that will address poorly-performing contractors through the use of past performance criteria in determining awards for state contracts; and

BE IT FURTHER RESOLVED that members of the Task Force are requested to serve without compensation; and

BE IT FURTHER RESOLVED that the Task Force is requested to submit its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2020; and

BE IT FURTHER RESOLVED that the Legislative Reference Bureau is requested to assist the Task Force in drafting proposed legislation; provided that the Task Force submits its request for proposed legislation, if any, to the Legislative Reference Bureau no later than November 1, 2019; and

BE IT FURTHER RESOLVED that the Task Force shall be dissolved on June 30, 2020; and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the Governor, Attorney General, Comptroller, Chief Procurement Officer, Director of Transportation, Superintendent of Education, Administrator of the Office of Hawaiian Affairs, President of the University of Hawaii System, Director of the Legislative Reference Bureau, the Mayor of each county, the board or department of water supply of each county, Subcontractors Association of Hawaii, and General Contractors Association of Hawaii.

OFFERED BY:

MAR - 9 2018