

JAN 18 2023

---

---

# A BILL FOR AN ACT

RELATING TO THE PROCUREMENT OF PROFESSIONAL SERVICES.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 103D-304, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "§103D-304 Procurement of professional services. (a)  
4 Professional services shall be procured in accordance with  
5 sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or  
6 this section; provided that design professional services  
7 furnished by licensees under chapter 464 shall be procured  
8 pursuant to this section or section 103D-307. Contracts for  
9 professional services shall be awarded [~~on the basis of~~] based  
10 on demonstrated competence and qualification for the type of  
11 services required, and at fair and reasonable prices.

12           (b) At a minimum, before the beginning of each fiscal  
13 year, the head of each purchasing agency shall publish a notice  
14 inviting persons engaged in providing professional services  
15 which the agency anticipates needing in the next fiscal year, to  
16 submit current statements of qualifications and expressions of  
17 interest to the agency. Additional notices shall be given if:



- 1           (1) The response to the initial notice is inadequate;
- 2           (2) The response to the initial notice does not result in
- 3           adequate representation of available sources;
- 4           (3) New needs for professional services arise; or
- 5           (4) Rules adopted by the policy board so specify.

6 The chief procurement officer may specify a uniform format for  
7 statements of qualifications. Persons may amend these  
8 statements by filing a new statement prior to the date  
9 designated for submission.

10           (c) The head of the purchasing agency shall designate a  
11 review committee consisting of a minimum of three persons with  
12 sufficient education, training, and licenses or credentials for  
13 each type of professional service which may be required. In  
14 designating the members of the review committee, the head of the  
15 purchasing agency shall ensure the impartiality and independence  
16 of committee members. The names of the members of the review  
17 committee established under this section shall be placed in the  
18 contract file.

19           The committee shall review and evaluate all submissions and  
20 other pertinent information, including references and reports,  
21 and prepare a list of qualified persons to provide these



1 services. Persons included on the list of qualified persons may  
2 amend their statements of qualifications as necessary or  
3 appropriate. Persons shall immediately inform the head of the  
4 purchasing agency of any change in information furnished [~~which~~]  
5 that would disqualify the person from being considered for a  
6 contract award.

7 (d) Whenever during the course of the fiscal year the  
8 agency needs a particular professional service, the head of the  
9 purchasing agency shall designate a selection committee to  
10 evaluate the statements of qualification and performance data of  
11 those persons on the list prepared pursuant to subsection (c)  
12 along with any other pertinent information, including references  
13 and reports. The selection committee shall be comprised of a  
14 minimum of three persons with sufficient education, training,  
15 and licenses or credentials in the area of the services  
16 required. In designating the members of the selection  
17 committee, the head of the purchasing agency shall ensure the  
18 impartiality and independence of committee members. The names  
19 of the members of a selection committee established under this  
20 section shall be placed in the contract file.



1 (e) The selection criteria employed in descending order of  
2 importance shall be:

3 (1) Experience and professional qualifications relevant to  
4 the project type;

5 (2) Past performance on projects of similar scope for  
6 public agencies or private industry, including  
7 corrective actions and other responses to notices of  
8 deficiencies;

9 (3) Capacity to accomplish the work in the required time;  
10 and

11 (4) Any additional criteria determined in writing by the  
12 selection committee to be relevant to the purchasing  
13 agency's needs or necessary and appropriate to ensure  
14 full, open, and fair competition for professional  
15 services contracts.

16 (f) The selection committee shall evaluate the submissions  
17 of persons on the list prepared pursuant to subsection (c) and  
18 any other pertinent information which may be available to the  
19 agency, against the selection criteria. The committee may  
20 conduct confidential discussions with any person who is included  
21 on the list prepared pursuant to subsection (c) regarding the



1 services which are required and the services they are able to  
2 provide. In conducting discussions, there shall be no  
3 disclosure of any information derived from the competing  
4 professional service offerors.

5 (g) The selection committee shall rank a minimum of three  
6 persons based on the selection criteria and send the ranking to  
7 the head of the purchasing agency. The contract file shall  
8 contain a copy of the summary of qualifications for the ranking  
9 of each of the persons provided to the head of the purchasing  
10 agency for contract negotiations. If more than one person holds  
11 the same qualifications under this section, the selection  
12 committee shall rank the persons in a manner that ensures equal  
13 distribution of contracts among the persons holding the same  
14 qualifications. The recommendations of the selection committee  
15 shall not be overturned without due cause.

16 (h) The head of the purchasing agency or designee shall  
17 negotiate a contract with the first ranked person, including a  
18 rate of compensation which is fair and reasonable, established  
19 in writing, and based upon the estimated value, scope,  
20 complexity, and nature of the services to be rendered. If a  
21 satisfactory contract cannot be negotiated with the first ranked



1 person, negotiations with that person shall be formally  
2 terminated and negotiations with the second ranked person on the  
3 list shall commence. The contract file shall include  
4 documentation from the head of the purchasing agency, or  
5 designee, to support selection of other than the first ranked or  
6 next ranked person. Failing accord with the second ranked  
7 person, negotiations with the next ranked person on the list  
8 shall commence. If a contract at a fair and reasonable price  
9 cannot be negotiated, the selection committee may be asked to  
10 submit a minimum of three additional persons for the head of the  
11 purchasing agency to resume negotiations in the same manner  
12 provided in this subsection. Negotiations shall be conducted  
13 confidentially.

14 (i) Contracts awarded under this section for \$5,000 or  
15 more shall be posted electronically within seven days of the  
16 contract award by the chief procurement officer or designee and  
17 shall remain posted for at least one year. Information to be  
18 posted shall include, but not be limited to:

19 (1) The names of the persons submitted under subsection  
20 (g);



1           (2) The name of the person or organization receiving the  
2           award;

3           (3) The dollar amount of the contract;

4           (4) The name of the head of the purchasing agency or  
5           designee making the selection; and

6           (5) Any relationship of the principals to the official  
7           making the award.

8           (j) Contracts for professional services of less than the  
9           limits in section 103D-305, may be negotiated by the head of the  
10          purchasing agency, or designee, with at least any two persons on  
11          the list of qualified persons established pursuant to subsection  
12          (c). Negotiations shall be conducted in the manner set forth in  
13          subsection (h), with ranking based on the selection criteria of  
14          subsection (e) as determined by the head of the agency.

15          (k) In cases of awards made under this section,  
16          nonselected professional service providers may submit a written  
17          request for debriefing to the chief procurement officer or  
18          designee within three working days after the posting of the  
19          award of the contract. Thereafter, the head of the purchasing  
20          agency shall provide the requester a prompt debriefing in  
21          accordance with rules adopted by the policy board. Any protest



1 by the requester pursuant to section 103D-701 following  
2 debriefing shall be filed in writing with the chief procurement  
3 officer or designee within five working days after the date that  
4 the debriefing is completed.

5 (1) A purchasing agency may use a list of qualified  
6 persons for a particular professional service prepared pursuant  
7 to subsection (c) for up to three years from the date that it  
8 was prepared when soliciting for the same professional service.  
9 When a purchasing agency uses a previously prepared list of  
10 qualified persons, it may waive any requirement for the  
11 professional service providers on the list to submit an updated  
12 list of qualifications and expressions of interest for at least  
13 three years from the date that the previously prepared list was  
14 created."

15 SECTION 2. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

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

18

INTRODUCED BY: 



# S.B. NO. 146

**Report Title:**

Procurement; Professional Services; List of Qualified Persons

**Description:**

Allows procuring agencies to use a list of qualified persons for a particular professional service for up to three years. Allows purchasing agencies to waive any requirement for professional service providers who are on a prepared list of qualified persons to submit an updated list of qualifications and expressions of interest for at least three years from the date that the prepared list was created.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

