



GOV. MSG. NO. 1291

EXECUTIVE CHAMBERS
KE KE'ENA O KE KIA'ĀINA

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA

July 3, 2023

The Honorable Ronald D. Kouchi
President of the Senate,
and Members of the Senate
Thirty-Second State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki
Speaker, and Members of the
House of Representatives
Thirty-Second State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

This is to inform you that on July 3, 2023, the following bill was signed into law:

HB1184 HD1 SD1 CD1

RELATING TO PROCUREMENT.
ACT 188

Sincerely,

Josh Green, M.D.
Governor, State of Hawai'i

HOUSE OF REPRESENTATIVES
THIRTY-SECOND LEGISLATURE, 2023
STATE OF HAWAII

H.B. NO. 1184
H.D. 1
S.D. 1
C.D. 1

A BILL FOR AN ACT

RELATING TO PROCUREMENT.

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

1 SECTION 1. The legislature finds that the procurement of
2 professional services pursuant to section 103D-304, Hawaii
3 Revised Statutes, currently requires a selection committee to
4 rank a minimum of three persons based on the selection criteria
5 and send the ranking to the head of the purchasing agency to
6 begin negotiations. This requirement was upheld in *Asato v.*
7 *Procurement Policy Board*, 322 P.3d 228 (Haw. S. Ct. 2014).
8 However, when an agency procures professional services and does
9 not receive the requisite number of responses, it must continue
10 to re-solicit. This forces the procuring official to continue
11 expending time and resources to fulfill the solicitation and, if
12 the requisite number of responses is never received, leaves the
13 agency no options to proceed.

14 Accordingly, the purpose of this Act is to allow agencies
15 to rank fewer than three persons for professional services when
16 fewer than three qualified persons respond to the solicitation



1 or request to use alternative procurement procedures when no
2 qualified person responds to the solicitation.

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

5 "**§103D-304 Procurement of professional services.** (a)

6 Professional services shall be procured in accordance with
7 sections 103D-302, 103D-303, 103D-305, 103D-306, or 103D-307, or
8 this section; provided that design professional services
9 furnished by licensees under chapter 464 shall be procured
10 pursuant to this section or section 103D-307. Contracts for
11 professional services shall be awarded on the basis of
12 demonstrated competence and qualification for the type of
13 services required, and at fair and reasonable prices.

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

21 (1) The response to the initial notice is inadequate;



1 (2) The response to the initial notice does not result in
2 adequate representation of available sources;

3 (3) New needs for professional services arise; or

4 (4) Rules adopted by the policy board so specify.

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

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

18 The committee shall review and evaluate all submissions and
19 other pertinent information, including references and reports,
20 and prepare a list of qualified persons to provide these
21 services. Persons included on the list of qualified persons may



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

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

20 (e) The selection criteria employed in descending order of
21 importance shall be:



- 1 (1) Experience and professional qualifications relevant to
2 the project type;
- 3 (2) Past performance on projects of similar scope for
4 public agencies or private industry, including
5 corrective actions and other responses to notices of
6 deficiencies;
- 7 (3) Capacity to accomplish the work in the required time;
8 and
- 9 (4) Any additional criteria determined in writing by the
10 selection committee to be relevant to the purchasing
11 agency's needs or necessary and appropriate to ensure
12 full, open, and fair competition for professional
13 services contracts.
- 14 (f) The selection committee shall evaluate the submissions
15 of persons on the list prepared pursuant to subsection (c) and
16 any other pertinent information [~~which~~] that may be available to
17 the agency, against the selection criteria. The committee may
18 conduct confidential discussions with any person who is included
19 on the list prepared pursuant to subsection (c) regarding the
20 services [~~which~~] that are required and the services they are
21 able to provide. In conducting discussions, there shall be no



1 disclosure of any information derived from the competing
2 professional service offerors.

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

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



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

12 (i) If, after ten business days, fewer than three
13 qualified persons respond to the additional notice of need
14 posted pursuant to subsection (b), the purchasing agency may
15 submit a request to the head of the purchasing agency, except as
16 provided in paragraph (3), for approval to proceed under this
17 subsection. Submissions shall be evaluated by the selection
18 committee in accordance with subsection (e); provided that:

19 (1) For two qualified persons, the selection committee
20 shall rank the qualified persons based on the criteria
21 in subsection (e). If both persons hold the same



1 qualifications, the selection committee shall rank the
2 persons in a manner that ensures equal distribution of
3 contracts among persons holding the same
4 qualifications. The ranking shall be provided to the
5 head of the purchasing agency for negotiations
6 conducted in the manner set forth in subsection (h).
7 The rankings of the selection committee shall not be
8 overturned without due cause;

9 (2) For one qualified person, the selection committee
10 shall first evaluate the person's qualifications and
11 may then provide the name of the person to the head of
12 the purchasing agency to negotiate a contract at a
13 fair and reasonable price. If the head of the
14 purchasing agency determines in writing that either
15 the price of the offer received is not fair and
16 reasonable, or that the qualifications of the offeror
17 are not adequate to meet the procurement needs, the
18 head of the purchasing agency may request approval
19 from the chief procurement officer to proceed as if no
20 person had responded;



1 (3) If no qualified person responds, the head of the
2 purchasing agency may determine in writing that the
3 need for the service continues and that there is no
4 time for resolicitation or that resolicitation would
5 likely be futile; provided that when making this
6 determination, consideration shall be given to time
7 constraints and competition in the marketplace;
8 provided further that:

9 (A) In the event of this determination, the head of
10 the purchasing agency shall submit a written
11 request to the chief procurement officer for
12 approval to engage in direct negotiations with a
13 qualified person. The written request shall be
14 made on a "Notice of No Interest" form provided
15 by the chief procurement officer and shall
16 include the following:

17 (i) The date of the solicitation notice and the
18 estimated dollar amount of the contract; and
19 (ii) The names of persons on the list, including
20 the situation in which no person responds;
21 and



1 (B) If the requirements of subparagraph (A) are met,
2 negotiations may proceed; provided that:
3 (i) The chief procurement officer shall post a
4 copy of the request on an internet site
5 accessible to the public for seven days;
6 (ii) Any objections to the request shall be
7 submitted in writing and received by the
8 chief procurement officer within the seven-
9 day public posting period; and
10 (iii) The chief procurement officer has approved
11 the request, after considering the
12 circumstances of each individual case; and
13 (4) The determinations required by this subsection shall
14 be final and conclusive unless the determinations are
15 clearly erroneous, arbitrary, capricious, or contrary
16 to law.
17 [~~(i)~~] (j) Contracts awarded under this section for \$5,000
18 or more shall be posted electronically within seven days of the
19 contract award by the chief procurement officer or designee and
20 shall remain posted for at least one year. Information to be
21 posted shall include, but not be limited to:



- 1 (1) The names of the persons submitted under subsection
2 (g) [~~+~~] or (i);
- 3 (2) The name of the person or organization receiving the
4 award;
- 5 (3) The dollar amount of the contract;
- 6 (4) The name of the head of the purchasing agency or
7 designee making the selection; and
- 8 (5) Any relationship of the principals to the official
9 making the award.
- 10 [~~(j)~~] (k) Contracts for professional services of less than
11 the limits in section 103D-305, may be negotiated by the head of
12 the purchasing agency, or designee, with at least any two
13 persons on the list of qualified persons established pursuant to
14 subsection (c). Negotiations shall be conducted in the manner
15 set forth in subsection (h), with ranking based on the selection
16 criteria of subsection (e) as determined by the head of the
17 agency.
- 18 [~~(k)~~] (l) In cases of awards made under this section,
19 nonselected professional service providers may submit a written
20 request for debriefing to the chief procurement officer or
21 designee within three working days after the posting of the



1 award of the contract. Thereafter, the head of the purchasing
2 agency shall provide the requester a prompt debriefing in
3 accordance with rules adopted by the policy board. Any protest
4 by the requester pursuant to section 103D-701 following
5 debriefing shall be filed in writing with the chief procurement
6 officer or designee within five working days after the date that
7 the debriefing is completed."

8 SECTION 3. This Act does not affect rights and duties that
9 matured, penalties that were incurred, and proceedings that were
10 begun before its effective date.

11 SECTION 4. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its approval.

APPROVED this 3rd day of July , 2023



GOVERNOR OF THE STATE OF HAWAII



HB No. 1184, HD 1, SD 1, CD 1

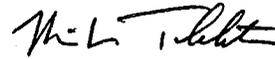
THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 2, 2023
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-Second Legislature of the State of Hawaii, Regular Session of 2023.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAI'I

Date: May 2, 2023
Honolulu, Hawai'i 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-Second Legislature of the State of Hawai'i, Regular Session of 2023.


President of the Senate


Clerk of the Senate