
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. 1994).
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 by amending subsection (g) to read as follows:

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. If fewer than three
8 qualified persons respond to a solicitation that has been posted
9 for at least thirty days and in accordance with subsection (b),
10 with qualifications assessed in accordance with subsection (c),
11 the purchasing agency shall:

12 (1) Post another solicitation for at least another thirty
13 days, which may be identical or modified; or

14 (2) Publish a notice that the agency intends to move
15 forward with ranking fewer than three persons;

16 provided that submissions shall be evaluated by the review
17 committee and selection committee in accordance with subsections
18 (c), (d), (e), and (f); provided further that if two qualified
19 persons respond to the solicitation, the selection committee
20 shall rank them based on the criteria in subsection (e) and send
21 the ranking to the head of the purchasing agency. If no



1 qualified person responds to a solicitation, the agency may
2 request permission to use alternative procurement procedures.

3 For any situation of ranking fewer than three persons, the
4 purchasing agency shall issue a notice of the intent to award a
5 contract for five working days. The notice shall include the
6 date, period, and tracking number of the solicitation notice or
7 notices, name or names of the respondents, name of the proposed
8 awardee, and protest procedures; provided that protests pursuant
9 to section 103D-701 shall be filed in writing with the chief
10 procurement officer or designee within five working days after
11 the notice is issued.

12 The contract file shall contain a copy of the summary of
13 qualifications for the ranking of each of the persons provided
14 to the head of the purchasing agency for contract negotiations.
15 If more than one person holds the same qualifications under this
16 section, the selection committee shall rank the persons in a
17 manner that ensures equal distribution of contracts among the
18 persons holding the same qualifications. The recommendations of
19 the selection committee shall not be overturned without due
20 cause."



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

4 SECTION 4. New statutory material is underscored.

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

6

INTRODUCED BY: *Madie K. Nelson*

JAN 24 2023



H.B. NO. 1184

Report Title:

Procurement; Professional Services; Ranking; Qualified Persons

Description:

Allows agencies to rank fewer than three persons for professional services when fewer than three qualified persons respond to the solicitation or request to use alternative procurement procedures when no qualified person responds to the solicitation.

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