
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 option to proceed.

14 Accordingly, the purpose of this Act is to provide a
15 process by which agencies may procure professional services when
16 fewer than three qualified persons respond to an additional
17 solicitation.



1 SECTION 2. 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
10 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:

- 18 (1) The response to the initial notice is inadequate;
- 19 (2) The response to the initial notice does not result in
20 adequate representation of available sources;
- 21 (3) New needs for professional services arise; or



1 (4) Rules adopted by the policy board so specify.
2 The chief procurement officer may specify a uniform format for
3 statements of qualifications. Persons may amend these
4 statements by filing a new statement prior to the date
5 designated for submission.

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

15 The committee shall review and evaluate all submissions and
16 other pertinent information, including references and reports,
17 and prepare a list of qualified persons to provide these
18 services. Persons included on the list of qualified persons may
19 amend their statements of qualifications as necessary or
20 appropriate. Persons shall immediately inform the head of the
21 purchasing agency of any change in information furnished which



1 would disqualify the person from being considered for a contract
2 award.

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

17 (e) The selection criteria employed in descending order of
18 importance shall be:

19 (1) Experience and professional qualifications relevant to
20 the project type;



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



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

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



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

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

- 15 (1) The names of the persons submitted under subsection
16 (g);
- 17 (2) The name of the person or organization receiving the
18 award;
- 19 (3) The dollar amount of the contract;
- 20 (4) The name of the head of the purchasing agency or
21 designee making the selection; and



1 (5) Any relationship of the principals to the official
2 making the award.

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

10 (k) In cases of awards made under this section,
11 nonselected professional service providers may submit a written
12 request for debriefing to the chief procurement officer or
13 designee within three working days after the posting of the
14 award of the contract. Thereafter, the head of the purchasing
15 agency shall provide the requester a prompt debriefing in
16 accordance with rules adopted by the policy board. Any protest
17 by the requester pursuant to section 103D-701 following
18 debriefing shall be filed in writing with the chief procurement
19 officer or designee within five working days after the date that
20 the debriefing is completed.



1 (1) When fewer than three persons qualified under state
2 law respond to an additional notice of need under subsection (b)
3 that has been posted for at least thirty days, the purchasing
4 agency may request the chief procurement officer's approval to
5 proceed under rules adopted by the policy board. The request
6 shall include the dates of all solicitation notices and the
7 names of all persons on the list prepared pursuant to subsection
8 (c), if any. Submissions shall then be evaluated by the
9 selection committee in accordance with subsections (d), (e), and
10 (f); provided that:

11 (1) If two persons qualified under state law respond to
12 the additional notice, the selection committee shall
13 rank them based on the criteria in subsection (e). If
14 both persons hold the same qualifications, the
15 selection committee shall rank the persons in a manner
16 that ensures equal distribution of contracts between
17 them. The ranking shall be sent to the head of the
18 purchasing agency for negotiations conducted in the
19 manner set forth in subsection (h). The rankings of
20 the selection committee shall not be overturned
21 without due cause;



1 (2) If only one person qualified under state law responds
2 to the additional notice, the selection committee
3 shall first evaluate the person's qualifications and
4 may then send the name to the head of the purchasing
5 agency to negotiate a contract at a fair and
6 reasonable price; and
7 (3) If no response is received to the additional notice,
8 the head of the purchasing agency may determine that
9 there is only one source for the required service and
10 engage in direct negotiations with a qualified person.
11 For any contract to be awarded, the purchasing agency
12 shall issue a "Notice of Sole Source" at least seven
13 days prior to awarding a contract. Persons may file a
14 written objection to the issuance of a contract within
15 seven days. Rules of the policy board shall provide
16 for the disposition of objections, including a written
17 summary of the disposition. The written
18 determination, any objection, past performance
19 evaluations relied upon, and a written summary of the
20 disposition of any objection shall be included in the
21 contract file. The written determination shall



1 contain the information required by the rules of the
2 policy board."

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

6 SECTION 4. New statutory material is underscored.

7 SECTION 5. This Act shall take effect on June 30, 3000.

8



H.B. NO. 1184
H.D. 1

Report Title:

Procurement; Professional Services; Ranking; Qualified Persons

Description:

Provides a process by which agencies may procure professional services when fewer than three qualified persons respond to an additional solicitation. Effective 6/30/3000. (HD1)

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