
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 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 the agency anticipates needing in the next fiscal year, to
18 submit current statements of qualifications and expressions of
19 interest to the agency. Additional notices shall be given if:

20 (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 may be required. In
13 designating the members of the review committee, the head of the
14 purchasing agency shall ensure the impartiality and independence
15 of committee members. The names of the members of the review
16 committee established under this section shall be placed in the
17 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 would disqualify the person from being considered for a contract
5 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 may be available to the
- 17 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 are required and the services they are able to
- 21 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 is fair and reasonable, established
17 in writing, and based upon the estimated value, scope,
18 complexity, and nature of the services to be rendered. If a
19 satisfactory contract cannot be negotiated with the first ranked
20 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 thirty days fewer than three qualified
13 persons respond to the additional notice of need posted pursuant
14 to subsection (b), the purchasing agency may submit a request to
15 the chief procurement officer for approval to proceed under this
16 subsection. The request shall include the dates of all
17 solicitation notices and names of qualified persons on the list
18 prepared pursuant to subsection (c). The following submissions
19 shall be evaluated in accordance with subsections (d), (e), and
20 (f):



- 1 (1) For two qualified persons, the selection committee
2 shall rank the qualified persons based on the criteria
3 in subsection (e). If both persons hold the same
4 qualifications, the selection committee shall rank the
5 persons in a manner that ensures equal distribution of
6 contracts among persons holding the same
7 qualifications. The ranking shall be sent to the head
8 of the purchasing agency for negotiations conducted in
9 the manner set forth in subsection (h). The rankings
10 of the selection committee shall not be overturned
11 without due cause;
- 12 (2) For one qualified person, the selection committee
13 shall first evaluate qualifications and may then send
14 the name of the person to the head of the purchasing
15 agency to negotiate a contract at a fair and
16 reasonable price; and
- 17 (3) For a situation in which no qualified person responds,
18 the chief procurement officer may determine in writing
19 that there is no time for resolicitation or that
20 resolicitation would likely be futile; provided that
21 when making this determination, consideration shall be



1 given to time constraints, competition in the
2 marketplace, and whether the additional potential cost
3 of preparing, soliciting, and evaluating competitive
4 responses is expected to exceed the benefits normally
5 associated with solicitations. If such determination
6 is made, the purchasing agency may engage in direct
7 negotiations with a qualified person. For any
8 contract to be awarded, the purchasing agency shall
9 post a "Notice of No Interest Received and Intent to
10 Directly Negotiate" on an internet website accessible
11 to the public for seven days. Any objections shall be
12 submitted in writing and received by the chief
13 procurement officer within seven days from the date
14 the notice was posted. The chief procurement officer
15 shall place the "Notice of No Interest Received and
16 Intent to Directly Negotiate" request on hold, review
17 the objection, and provide a written determination to
18 the person submitting the objection. All documents
19 relating to the objection, including written summary
20 of the disposition of the objection, shall be kept
21 with the procurement file;



1 (4) The determinations required by this subsection shall
2 be final and conclusive unless they are clearly
3 erroneous, arbitrary, capricious, or contrary to law.

4 [~~(i)~~] (j) Contracts awarded under this section for \$5,000
5 or more shall be posted electronically within seven days of the
6 contract award by the chief procurement officer or designee and
7 shall remain posted for at least one year. Information to be
8 posted shall include, but not be limited to:

9 (1) The names of the persons submitted under subsection

10 (g);

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

13 (3) The dollar amount of the contract;

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

16 (5) Any relationship of the principals to the official
17 making the award.

18 [~~(j)~~] (k) Contracts for professional services of less than
19 the limits in section 103D-305, may be negotiated by the head of
20 the purchasing agency, or designee, with at least any two
21 persons on the list of qualified persons established pursuant to



1 subsection (c). Negotiations shall be conducted in the manner
2 set forth in subsection (h), with ranking based on the selection
3 criteria of subsection (e) as determined by the head of the
4 agency.

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

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

19 SECTION 4. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 5. This Act shall take effect on July 1, 2112.



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. Effective July 1, 2112. (SD1)

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

