

JUSTIFICATION SHEET

DEPARTMENT: Accounting and General Services.

TITLE: A BILL FOR AN ACT RELATING TO PROCUREMENT OF PROFESSIONAL SERVICES.

PURPOSE: To specifically authorize the Procurement Policy Board to promulgate administrative rules to provide an effective procurement process for situations where a review committee receives less than three qualified persons' submittals to provide professional services under specific selection criteria.

MEANS: Amend section 103D-304, Hawaii Revised Statutes.

JUSTIFICATION: The Procurement Policy Board has authority and responsibility to adopt rules governing the procurement of professional services. The 2014 Hawaii Supreme Court case of Asato v. Procurement Policy Board, found that the legislature specifically intended for a minimum of three qualified professional service providers to be available in order to proceed with procurement pursuant to section 103D-304. However, the alternative methods of procurement noted in the Asato case are not practicable or advantageous to the state: there is often not enough time to resolicit; redefining the scope of services is inappropriate if proper acquisition planning accurately defined the scope; emergency procurement is not intended to be utilized for ineffective solicitations; and small purchase procurement does not address the specific circumstances of professional services. Allowing for the Procurement Policy Board to adopt rules that provide an alternative procurement process with oversight, as was provided in Hawaii Administrative Rules section 3-122-66,

waiver to requirement for procurement of professional services, is justified as being in the best interest of the state to provide realistic processes for appropriate and efficient acquisition planning and implementation.

Impact on the public: None

Impact on the department and other agencies:

Agencies that procure for professional services (within the scope of the practice of architecture, landscape architecture, professional engineering, land surveying, real property appraisal, law, medicine, accounting, dentistry, public finance bond underwriting, public finance bond investment banking, or any other practice defined as professional by the laws of this State or the professional and scientific occupation series contained in the United States Office of Personnel Management's Qualifications Standards Handbook) pursuant to section 103D-304, Hawaii Revised Statutes, will be authorized to utilize alternative methods of procurement pursuant to adopted rules of the Procurement Policy Board. The Procurement Policy Board will have authority to reinstate Hawaii Administrative Rules section 3-122-66, Waiver to requirement for procurement of professional services, as an appropriate method of managing situations where the names of less than three qualified persons are submitted pursuant to Hawaii Revised Statutes section 103D-304(g). Therefore, procurement officers will be authorized to proceed with an alternative method of procurement.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED

AGENCIES: Any State and county agencies that procure for professional services under the procurement code (i.e. Department of Public Works, Department of Transportation, Department of Health, Department of the Attorney General, Department of Budget and Finance, etc.)

EFFECTIVE DATE: Upon approval.

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A BILL FOR AN ACT

RELATING TO PROCUREMENT OF PROFESSIONAL SERVICES.

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

1 SECTION 1. The purpose of this act is to authorize the
2 procurement policy board to promulgate administrative rules
3 pursuant to Section 103D-202, Hawaii Revised Statutes, to
4 provide an effective procurement process for situations where a
5 review committee receives less than three qualified persons'
6 submittals to provide professional services pursuant to Section
7 103D-304, Hawaii Revised Statutes.

8 SECTION 2. Section 103D-304, Hawaii Revised Statutes, is
9 amended by amending section (g) to read as follows:

10 “(g) The selection committee shall rank [~~a minimum of~~
11 ~~three~~] the qualified persons based on the selection criteria,
12 pursuant to procedures adopted by the policy board, and send a
13 minimum of the top three ranking qualified persons' files to the
14 head of the purchasing agency. The contract file shall contain
15 a copy of the summary of qualifications for the ranking of each
16 of the persons provided to the head of the purchasing agency for
17 contract negotiations. If more than one person holds the same

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1 qualifications under this section, the selection committee shall
2 rank the persons in a manner that ensures equal distribution of
3 contracts among the persons holding the same qualifications.
4 The recommendations of the selection committee shall not be
5 overturned without due cause. Notwithstanding the above, if the
6 selection committee cannot provide a list of at least three
7 qualified persons based on the selection criteria, negotiations
8 may be conducted in accordance with rules adopted by the policy
9 board."

10 SECTION 3. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

BY REQUEST

Report Title:

Procurement; Professional Services; Minimum Three Qualified

Description:

Authorizes the procurement policy board to create rules addressing situations of less than three qualified persons for procurement of professional services. Effective upon approval.

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

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