

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 adopt 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 that there be a minimum of three qualified professional service providers ranked in order to proceed with procurement pursuant to section 103D-304. The Asato case noted alternative methods of procurement (small purchases pursuant to section 103D-305, sole source pursuant to section 103D-306, or emergency pursuant to section 103D-307) available to address situations of less than three qualified persons, however, there are no alternatives available for professional services by licenses under chapter 464 (professional engineers, architects, surveyors and landscape architects) other than emergency procurement (section 103D-307), pursuant to section 103D-304(a). Alternative methods of procurement that are available to other professional services in certain circumstances are often 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.

This act will allow the Procurement Policy Board to adopt rules that provide an alternative procurement process for professional services with oversight in a realistic process 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 section 103D-304(g), Hawaii Revised Statutes. Procurement officers will be authorized to

proceed with an alternative method of procurement with less than three qualified persons.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: All state and county agencies that procure for professional services under the procurement code.

EFFECTIVE DATE: Upon approval.

DRAFT

\_\_\_ .B. NO. \_\_\_

---

---

# 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 adopt administrative rules pursuant  
3 to section 103D-202, Hawaii Revised Statutes, to provide an  
4 effective procurement process for situations where a review  
5 committee receives less than three qualified persons' submittals  
6 to provide professional services pursuant to section 103D-304,  
7 Hawaii Revised Statutes.

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

10           "(g) The selection committee shall [~~rank a minimum of~~  
11 ~~three~~] evaluate the qualified persons based on the selection  
12 criteria and send a minimum of the top three rank[ing]ed  
13 qualified persons' names to the head of the purchasing agency.  
14 In the event there are less than three qualified persons, the  
15 head of the purchasing agency may proceed with qualified persons  
16 pursuant to administrative rules adopted by the procurement  
17 policy board. The contract file shall contain a copy of the

\_\_\_\_.B. NO.\_\_\_\_

1 summary of qualifications for the ranking of each of the persons  
2 provided to the head of the purchasing agency for contract  
3 negotiations. If more than one person holds the same  
4 qualifications under this section, the selection committee shall  
5 rank the persons in a manner that ensures equal distribution of  
6 contracts among the persons holding the same qualifications.  
7 The recommendations of the selection committee shall not be  
8 overturned without due cause. Notwithstanding the above, if the  
9 selection committee cannot provide a list of at least three  
10 qualified persons based on the selection criteria, negotiations  
11 may be conducted in accordance with rules adopted by the policy  
12 board."

13 SECTION 3. Statutory material to be repealed is bracketed  
14 and stricken. New statutory material is underscored.

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

16  
17  
18  
19

INTRODUCED BY: \_\_\_\_\_

BY REQUEST

**Report Title:**

Procurement; Professional Services; Minimum Three Qualified

**Description:**

Authorizes the procurement policy board to adopt 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.*

DRAFT