



**STATE OF HAWAII  
STATE PROCUREMENT OFFICE**

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July 17, 2014

PROCUREMENT CIRCULAR NO. 2014-09

TO: Office of the Governor, Chief of Staff  
Office of the Lieutenant Governor, Chief of Staff  
Executive Department Heads  
Hawaii State Public Library System, State Librarian

Chief Procurement Officers (CPOs):

Department of Education, Superintendent  
University of Hawaii, President  
Office of Hawaiian Affairs, Chairperson of the Board  
Hawaii Health Systems Corporation, President and Chief Executive Officer  
Judiciary, Administrative Director of the Courts  
Senate, President  
House of Representatives, Speaker

Counties of Hawaii, Kauai, Maui, and City & County of Honolulu

Executive Branch, Finance Director  
Legislative Branch, Chairperson of the County Council  
Board/Departments of Water Supply, Manager/Chief Engineer  
Honolulu Authority for Rapid Transportation, Executive Director

FROM: Sarah Allen, Administrator

A handwritten signature in black ink, appearing to read "Sarah Allen".

SUBJECT: Guidance to Conducting Professional Services Method of Procurement

The purpose of this Circular is to replace Procurement Circular No. 2009-06 dated July 19, 2009 and to provide guidance to conducting Professional Services method of procurement pursuant to HRS §103D-304. The Professional Services method of procurement mirrors the Qualifications-Based Selection (QBS) method, which is a procurement process established by the United States Congress as a part of the *Brooks Act* as a process for public agencies to use for the selection of architectural and engineering services for public construction projects. It is a competitive process whereby consulting firms submit qualifications to a procuring entity, who evaluate and select the most qualified firm, and then negotiate the project scope of work, schedule, budget, and consultant fee. **Price is not considered until the most qualified firm is selected.**

**KEY ISSUES IN THIS CIRCULAR:**

- **When To Use Professional Services Method of Procurement**
- **What Information Is Required To Be Included in the Public Notice**
- **Who Can Serve as a Review or Selection Committee Member**
- **What Can Be Listed as the Fourth Evaluation Criterion**
- **What Are the Options When There Are Less Than the Minimum Three Qualified Persons**
  - **UPDATE: Use of Alternative Method of Procurement (Waiver)**

**WHEN TO USE PROFESSIONAL SERVICES METHOD OF PROCUREMENT**

Professional services method of procurement is one of the six (6) methods of procurement pursuant to HRS 103D. Procuring personnel have the responsibility to select the appropriate method to purchase their necessities and adhere to the mandatory requirements within each method. If more than one method may be utilized, select the best method. The chart below notates when the Professional Services method **shall** be used and when the method **may** be used. For purchases that do not fulfill the requirements within the “Optional” bullets below, select another method of procurement.

MANDATORY	OPTIONAL
<p>➤ Procurement of design professional services furnished by licensees under chapter 464—architects, engineers and surveyors shall be conducted through Procurement of Professional Services pursuant to HRS §103D-304 or Emergency Procurements pursuant to HRS §103D-307. Note: Prior Circular excluded surveyors as “design professionals.”</p>	<p>➤ Procurement of professionals as defined in HRS §103D-104 -</p> <ul style="list-style-type: none"> <li>• Services within the scope of real property appraisal, law, medicine, accounting, dentistry, public finance bond underwriting, public finance bond investment banking;</li> <li>• Any other practice defined as professional by the laws of this State;                             <ul style="list-style-type: none"> <li>- HRS chapter 415A-2 "Professional service" means any service which lawfully may be rendered only by persons licensed under chapters 442, 448, 453, 455, 457, 459, 461, 463E, 465, 466, 471, and 605, and section 554-2;"</li> </ul> </li> <li>• Positions described in The Professional and Scientific Occupation Series contained in the United States Office of Personnel Management’s Qualifications Standards Handbook. Link to handbook: <a href="http://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/#url=List-by-Occupational-Series">http://www.opm.gov/policy-data-oversight/classification-qualifications/general-schedule-qualification-standards/#url=List-by-Occupational-Series</a></li> </ul> <p>May also utilize all other methods of procurement.</p>

**WHAT INFORMATION IS REQUIRED TO BE INCLUDED IN THE PUBLIC NOTICE?**

At minimum, before the beginning of each fiscal year, the head of the purchasing agency (HOPA) shall publish a notice inviting persons engaged in providing professional services which the agency anticipates needing in the next fiscal year, to submit current statements of qualifications and expressions of interest to the agency. Additional notices may be published as necessary. The chart below identifies what information must be included in a public notice for professional services.

MINIMUM REQUIREMENTS	RECOMMENDED
<p>➤ Identification of the professional class or category as specified in Statutes or Rules or listed in The Professional and Scientific Occupation Series contained in the United States Office of Personnel Management’s Qualifications Standards Handbook.</p> <p><b>Examples:</b></p> <ul style="list-style-type: none"> <li>○ Applicants for professional services within the scope of public finance bond investment banking</li> <li>○ Psychologist licensed under HRS chapter 465</li> <li>○ Notice to Prospective Applicants for Professional Services for the following:               <ul style="list-style-type: none"> <li>- Architects</li> <li>- Landscape Architects</li> <li>- Engineers</li> <li>- Surveyors</li> </ul> </li> <li>○ Applicants able to respond to positions within Zoology Series, 0410 as listed in the United States Office of Personnel Management Qualifications Standards Handbook</li> <li>○ Interested applicants for Professional Services – Contract Price/Cost Analysts GS-1102-11 as listed in the United States Office of Personnel Management Qualifications Standards Handbook</li> </ul>	<ul style="list-style-type: none"> <li>➤ Where and when the solicitation will be available;</li> <li>➤ How long the solicitation will be available;</li> <li>➤ Term the list will be used;</li> <li>➤ When and where submittals are to be received;</li> <li>➤ Mandatory evaluation criteria;</li> <li>➤ Period of performance;</li> <li>➤ Relevant and recent past performance references.</li> </ul> <p><i>Pursuant to HAR §3-122-16.3 the public notice shall invite persons to submit <b>Statements of Qualifications</b> that may include but not be limited to:</i></p> <ul style="list-style-type: none"> <li>➤ The name of the firm or person, the principal place of business, and location of all of its offices;</li> <li>➤ The age of the firm and its average number of employees over the past years;</li> <li>➤ The education, training, and qualifications of key members of the firm;</li> <li>➤ The names and phone numbers of up to five clients who may be contacted, including at least two for whom services were rendered during the preceding year;</li> <li>➤ Any promotional or descriptive literature which the firm desires to submit.</li> </ul>

	<ul style="list-style-type: none"> <li>➤ Any other information specific to the project that would aid in qualifying applicants.</li> </ul>
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**WHO CAN SERVE ON A REVIEW OR SELECTION COMMITTEE?**

The HOPA shall designate review and committee members as those individuals with sufficient education, training, and license or credentials for each type of professional service procured. Personnel should not sit on a review or selection committee which may cause undue influence on the other members of the committee(s). Any concerns regarding conflict of interest or one person taking advantage of a position of power over another person should be raised to the appropriate level of management to ensure a fair procurement. Pursuant to HAR §3-122-69(b), deputy directors or equivalent appointed positions shall not serve on review or selection committees.

ALLOWABLE REVIEW OR SELECTION COMMITTEE MEMBER	HOPA OR ADVISOR ROLE
<ul style="list-style-type: none"> <li>➤ Government employee</li> <li>➤ Non-government employee</li> </ul> <p><b>Note: A committee member does not need to be employed within the department conducting the procurement.</b></p>	<ul style="list-style-type: none"> <li>➤ Deputy Director</li> <li>➤ Executive Director of an attached agency—serves as HOPA</li> <li>➤ Supervisor to other committee member(s)</li> <li>➤ Procurement Officer responsible for the procurement</li> </ul>

**WHAT CAN BE LISTED AS ADDITIONAL EVALUATION CRITERIA (4<sup>TH</sup> CRITERION IN DESCENDING ORDER OF IMPORTANCE) TO RANK OFFERORS?**

Purchasing personnel have the obligation to conduct thorough acquisition planning to determine specific needs that are reasonable within the industry. Market research and price analyses are a couple of examples that should be considered prior to conducting procurement. The selection criteria utilized to rank applicants shall be in descending order of importance as 1) Experience and professional qualifications relevant to the project type; 2) Past performance on projects of similar scope for public agencies or private industry; 3) Capacity to accomplish the work in the required time; and 4) Any additional criteria relevant to the purchasing agency’s needs or other conditions required to determine the applicant qualified to provide needed services. The fourth criterion shall not include items that would part of the contract negotiations conducted by the HOPA, such as the rate of compensation, which is based on the estimated value, scope, complexity and nature of the services that are to be received. The chart below provides examples of allowable criteria in ranking applicants during the Professional Services procurement.

ALLOWABLE 4 <sup>TH</sup> CRITERION	NEGOTIATED BY HOPA
<ul style="list-style-type: none"> <li>➤ Location and number of offices</li> <li>➤ Affiliation with professional organizations within the industry</li> <li>➤ Age of the firm, average number of employees</li> <li>➤ Education, training, and qualifications of key members of the firm</li> <li>➤ Awards, accolades, recognition within the industry</li> </ul>	<ul style="list-style-type: none"> <li>➤ Rate of compensation</li> <li>➤ Price (consultant fee)</li> <li>➤ Proposal to fulfill scope of work</li> <li>➤ Schedule or timeline</li> <li>➤ Budget</li> </ul>

**WHAT ARE THE OPTIONS WHEN THE SELECTION COMMITTEE CANNOT PROVIDE A LIST OF A MINIMUM THREE PERSONS\* TO THE HOPA TO CONDUCT NEGOTIATIONS?**

**UPDATE: Alternative Method of Procurement (Waiver)**

When deciding what to do if the minimum three persons cannot be ranked, the purchasing personnel must put out another notice if: 1) the response to the initial notice is inadequate, 2) the response to the initial notice does not result in adequate representation of available source; or new needs for the professional services arise. If, after releasing a proper public notice(s), and **less than the minimum three persons cannot be obtained**, the following options are allowed. Note: The Hawaii Supreme Court invalidated the waiver to requirement for procurement of professional services pursuant to HAR 3-122-66). Additionally, there is no exemption available for professional services where there is less than three qualified persons as would be available for other enumerated circumstances pursuant to HRS 103D-102(b)(4).

\*Pursuant to HAR section 3-120-2 Definitions, "Persons" means individuals, partnerships, corporations, associations, or public or private organizations or any character other than a governmental body.

ALLOWABLE OPTIONS	NOT ALLOWED
<ul style="list-style-type: none"> <li>➤ Select another method of procurement (exception for purchases of design services)</li> <li>➤ Broaden scope of work</li> <li>➤ Re-solicit</li> </ul>	<ul style="list-style-type: none"> <li>➤ Alternative method of procurement pursuant to HAR §3-122-66</li> <li>➤ Request for Procurement Exemption from HRS 103D (Professional Services only)</li> </ul>

Procurement personnel may contact the listed State Procurement Office (SPO) staff or you may contact me at [Sarah.Allen@hawaii.gov](mailto:Sarah.Allen@hawaii.gov) or phone at 587-4700.

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