

SPO 115 - Professional Services

Good morning and welcome, thank you for joining us for today's webinar on professional services. I'm Donna Tsuruda-Kashiwabara with State Procurement Office. The handouts are posted if you're having problems accessing it. It will always be available at our website under the training session. Not to worry if you can't get a copy of it today. If you just follow along you will be able to take your notes and then refer back to it when you can get the handout.

Okay so professional services are defined in HRS section 103D-104 are limited to those listed professions by definitions. Those services such as architecture, landscape architecture, etc. are defined as professional by the laws of the state. For example, HRS 464 which are designed professionals and others that I will share with you in the next slide under 415A or the professional and scientific occupations or as contained in the United States office of personnel management qualification standards handbook. And then we can also refer to the circular that SPO has put out 2009-06 for the list of professions.

Here is the statute on 104. So this is basically the definition and I'm not going to read this off to you.

And then this is the definition for those fall within the 464, which is the design professionals.

And this is continuation. I want to make a note here that professional surveyor is part of 464. In the procurement circular, it states that the surveyors do not need to comply with this method of procurement so that needs to be amended. If you're procuring for professional surveyor or land surveyor, these types of services are also required to be procured to the 304 process, which is professional services.

So here are the other professions that fall within 415A. So if you're procuring for these services, you may use the professional services method of procurement as opposed to the professions under 464, which are the designed professionals where you must the 304 process.

So here is the snapshot of the professional services listed in the United States office of personnel management qualification standards handbook. So if it is listed here then you may use the professional services method of procurement and here is the address to link to this personnel management standards handbook. Okay so, when you're procuring professional services other than design professions. You can use any of the methods of procurement. So you can use professional services- 304 process. You can use competitive sealed bidding- 302, competitive sealed proposals- 303, sole source, small purchase and emergency. You can use any of these methods. However if you determine that the 304 process is how you decide to procure for it then that would be your decision as the procurement officer.

So for design professionals you must use the 304 process. The statute says that for those professions that fall under chapter 464, those services furnished by licensees under this chapter shall be procured pursuant to this section or the 307, which is emergency procurement. So as it says here, no other methods are allowed except if you're procuring for the design/build in which you would normally use RFP process. So the design/build would include services of the professional under the 464 chapter in addition to the construction. That is the only time that you would not follow 464.

So what would happen at the beginning year at minimum is that the department would determine what are they procuring for annually. So for public works they require services for the designed professionals. So they put out an annual notice. Each year the head of the purchasing agency shall publish a notice inviting persons engaged in providing professional services, which the agency anticipates meeting. So in

SPO 115 - Professional Services

the public case of work they put out an annual notice to invite applicants, to provide the current state of qualifications, and expressions of interest to the agency and that's at minimum. And if there's additional needs then additional notices can be put out. Or if there is no response or inadequate response then another notice can be put out. But at minimum, an annual notice would be posted on a notices site.

So the notice would include the specific professional service that is being requested, the term that the list will be used, where and when to submit the qualifications, and then the list of mandatory evaluation criteria that will be considered for selection and then lastly any additional important factors.

So here are examples, location and number of offices, age of the firm, education, references and any other literature. In their request, this is what they would include in the notice.

So here is an example that DBEDT put out. As you can see this is a very specific one and not an annual list because the notice is calling out for qualified architects and engineers for design services for mobile loading dock at the foreign trade zone. So they list their scope here and include where to submit it. As you can see very specific to the profession of architects and engineers.

This example is one of an annual notice This is put out by the DOD and it list the particular professional services and it talks about requiring these services for their fiscal year CIP projects. So they include here a list of what's required for them to be submitted and where to submit it. It goes on to explain in descending order, and this is what is required by the statute, the criteria. So at this point they just describe any other criteria as determine because this is an annual list. So the annual is just the qualifications list. And as their needs arise for specific projects then the criteria will be part of the selection as the individual projects come up. So for example, if they were doing a project specific to a location, then the criteria would also include familiarity with the area perhaps on Maui. Maui County for example.

So when you take a look at this notice which was put out by the DOT, it's saying that the DOT is seeking qualified consultant to provide transportation planning. So in this particular notice, it doesn't describe what the profession is. It's only describing what the description of scope of work or task that will be required. So in this case, the DOT should have said that they require services either in engineering services to provide these services as planning services.

And in this next example, again by the DOT, they're asking for qualified construction management firms. But again, they're not describing what the profession is but they're only describing what the professional would be performing as far as construction management services as there is no profession as construction manager or construction administrator.

Okay so once the notice is put out and all the applications have come in, the HOPA would determine those who would fit on the review committee. The review committee would consist of minimum of three persons with sufficient education, training, and licenses or credentials for each type of professional service which may be required. In designating the members of the review committee, the HOPA shall ensure impartiality and independence of each committee member. So each committee member would need to sign an attestation which is the SPO form 24 or similar to ensure that they will be reviewing with the understanding that they would not disclose any of the information, that it will be done impartially and independently, and their names will become public once the award has been made.

SPO 115 - Professional Services

So here is the snapshot of what the attestation form looks like and it is available on our website. As you can see, the bullets - I have no personal business or any other relationship that will influence my decision, I agree not to disclose, and that my name will become public. And they would sign their name at the bottom of this attestation and this goes into the contract file.

So the names of the members of the review committee, and this is approved by the HOPA, will be placed on the contract file and the review committee will review and evaluate all submissions and other pertinent information including references and reports and prepare a list of qualified persons to provide these services. Persons included on the list of qualified persons may amend their statements of qualifications as necessary or appropriate. So the applicants can come in and say this is my updated information. The review committee can be made up non-government employees. There's no limit to the number of the government employees as compared to RFP process. But no deputy or equivalent appointed position may serve as a member.

So then the selection committee can be made up of the same people as long as they have the same credentials to serve on the committee. So whenever during the course of the fiscal year, the agency needs a particular service. The HOPA shall designate this selection committee to evaluate the statements of qualifications and performance data of those persons on that list that was made up by the review committee and then they can request additional pertinent information and even have discussions with those on the qualified list. But again the selection committee shall be comprised of a minimum of three persons with sufficient education, training, and licenses or credentials in the area of the services required. So again, in designating the members of the committee the HOPA shall ensure the impartiality and independence of the committee members and these names again will be approved by the HOPA and be placed in the contract file. Same as the review committee, no deputy or equivalent appointed positions may serve on the selection committee.

And they also will be required to sign the attestation that I've showed you earlier.

So the selection committee will prepare the criteria to evaluate the submission but in descending order per the statute in order of importance would be experience and the professional qualifications relevant to the project type and second past performance on projects of similar scope and then the third the capacity to accomplish the work in the required time. So then the fourth criteria would be any additional criteria determined by the selection committee to be relevant to the purchasing agency's needs or necessary and appropriate to ensure full and open fair competition for these professional services that are required. So if you require a Hawaii based contractor that could be a criteria. Again, as I have mentioned to you familiarity with the project location. Say if it was on a neighbor island. If you were doing a specific project perhaps building a correction of facility so you're looking for expertise in maybe security electronics. Again this will be very specific, the fourth criteria, to the project. So it will be very project specific.

So the selection committee shall evaluate the submissions of persons on the list prepared and any other pertinent information. And as I've mentioned to you, you may conduct confidential discussions with any of these persons, but during the discussions there should be no disclosure of any information derived from the competing professional service offers. So the selection committee shall rank a minimum of three persons based on the selection criteria and then send the ranking to the HOPA. And this information as far determination of the ranking shall be placed in the procurement file. So the recommendations to the selection committee shall not be overturned by the HOPA without due cause.

SPO 115 - Professional Services

So then the HOPA shall negotiate or he may determine to delegate this responsibility to the designee to conduct the negotiation with the first rank person. So the negotiations will include rate of compensation which is fair and reasonable, the scope of work and the nature of the services to be rendered. And if a satisfactory contract cannot be negotiated with the first ranked, then the negotiations will continue on with the second ranked. If more than one person holds the same qualifications (so there will be a tie for first ranked), the committee shall rank the person in a manner to ensure equal distribution of contract among the persons holding the same qualifications. So that would be the determination by the department as to how they would equally distribute their work amongst same or similar ranked persons.

So if the HOPA is unable to negotiate a contract even with the top three ranked persons, he may have to go back to the selection committee to ask for an additional three names and then the process will continue. So once it's been determined and the negotiations is complete the notice of award shall be posted on, it says here SPO website, but other jurisdictions may have their own place of awarding but it has to be posted within 7 calendar days of the award. So for executive departments, it will be posted on the SPO awards website. For other jurisdictions you may have other locations where this is posted. But for contracts awarded for 5 thousand or more, it shall be posted within 7 days of the contract award. And the notice should include the names of the persons submitted by selection committee, the name or person, the organization receiving the award, the dollar amount, the name of the HOPA and any relationship of the principles to the official making the award.

So if you receive less than or no names to submit to the HOPA here are the recommendations. It's to either put out another notice or maybe consider another method of procurement except for designed services. Obviously I've mentioned that you have to use the 304 process for design services. Or lastly cancel the procurement and decide otherwise as to how you will receive the services. The use of the alternative procurement for professional services is currently in litigation the latest update I've got was that it was heard in the Supreme Court so there is no alternative procurement for this particular method of procurement. So if you received less than three names or no names for which the HOPA can conduct negotiations then you're going to have to do one of these steps in order to fulfill the procurement process for professional services.

So here are options, except again, for design professionals, if the dollar purchase falls within the small purchase threshold (so less than \$100,000) contracts for professional services may be negotiated by the HOPA with at least two persons on the list of qualified persons established by the review committee so the negotiations will be conducted in the same manner that I've explained to you with the minimum of three names starting negotiations with the first ranked and with the second based on the selection criteria the minimum three names. The other option would be to follow small purchase procedures in other words, get three quotes, however not for design services. So you really have three options. Say you're procuring for services of a doctor. Because it's not designed, you can choose one of the methods and because the total dollar amount is less than a \$100,000 in a 12 month period, the HOPA can either negotiate with any two persons on the list or you can file a small purchase and get three quotes. So you have various options with the various methods of procurement except for design professions in which you have to follow the 304 process.

As I've mentioned to you awards for 5 thousand or more have to be posted on a website within 7 days for executive departments and for those actually using the notices site because I know other

SPO 115 - Professional Services

jurisdictions are using our award site. You would go to that hawaii.gov/spo/psa. You would need a log in to post the award.

So this is what it looks like. This is what the log in page looks like for now anyway.

Okay so debriefing. So for those persons that submitted qualification may request a debriefing. So what they need to do is request to the CPO or the designee within 3 working days a request for debriefing and then the HOPA shall provide the debriefing within 7 days of the request. They could also protest. The protest would start 5 days after the notice of award has been posted or 5 days after the debriefing. It could happen at 2 phases within the process.

So what debriefing allows is the non-selected offer to understand the basis for non-selection. So how can they do better next time why they weren't ranked as high and it's really not meant to be a comparison of the other submittals. But to just really overall understand why they weren't selected or ranked as high for this particular procurement.

So you can share with them a summary of the scoresheets. I wouldn't show them the individual score sheets but just the summary. And then of course you would not be disclosing any information that is confidential. So all of this should go into the procurement file.

So after the notice of award is made then everything becomes public. So the list of all the qualify person the screening that the committee had put together, all of that becomes public and then anything that's marked confidential by the other offers shall not be disclosed.

And then if there is contract amendment that is required under the 304 process or professional services, it will require HOPA approval when the increase is \$25,000 or 10% more of the initial contract price.

So we've provided some references for you and then our contact information.