

GENERAL SERVICES

Purchasing and Supply

Procurement of Professional and Consultant Services

This policy supersedes Policy 7418.2.

I. PURPOSE

To outline procedures governing the selection of and negotiations for professional and consultant services.

II. DEFINITIONS

A. Professional Services

The term “professional services” means, any type of professional services that may be legally performed only pursuant to a certificate or license from a state examining board issued under the provisions of Title 54 of the Code of Virginia, and any other type of similar contractual service (including consultants), required by Fairfax County Public Schools but not furnished by its own employees, that is in its nature so unique that it should be obtained by negotiation on the basis of demonstrated competence and qualification for the type of professional service required and at fair and reasonable compensation rather than by competitive sealed bidding processes. The following professional services- accounting, actuarial, architecture, land surveying, landscape architecture, law, medicine, optometry, dentistry, pharmacy, and professional engineering shall be procured as set forth in Virginia Code Section 11-37 in the definition of competitive negotiation at paragraph 3(a), and in accordance with this policy.

B. Firm

The term “firm” means any individual, partnership, corporation, association, or other legal entity permitted by law to practice in the state of Virginia or any other individual, firm, partnership, corporation, association, or other legal entity qualified to perform professional services.

C. Compensation

The term “compensation” means the total amount paid by Fairfax County Public Schools for a single professional services contract, including expenses when applicable.

D. Department

The term “department” means that unit of organization managed by an assistant superintendent or a cluster director or, only in the case of other units reporting directly to the Division Superintendent, managed by a director.

E. Department Head

The term “department head” means the assistant superintendent or cluster director or director in charge of a department, as defined above.

III. EXCEPTIONS

A. All professional (including consultant) services shall be procured in accordance with procedures outlined in the following sections except as noted below:

1. Capital Construction and Related Architectural Engineering Services

Capital construction and related architectural and engineering services are the direct responsibility of the School Board, in accordance with Section 22.1-79 of the Code of Virginia and are not subject to this policy.

2. Legal Services

Contract for legal services, expert witnesses, and other services associated with litigation or regulatory proceedings are not subject to this policy.

3. Emergency

In the case of a public emergency validated by the Division Superintendent, a contract may be awarded without competitive negotiation; however, written documentation setting forth the basis for the emergency shall be included in the contract file.

4. Single Source

Upon a determination in writing by the purchasing agent or the Division Superintendent or his or her designee that the required professional and consultant services are available only through a single source, they may be procured directly from that source.

5. Small Purchase Procedures

Professional and consultant services estimated to cost less than \$5,000 may be procured without competitive negotiation. Every effort shall be made by the department head requiring such services to rotate these procurements where multiple qualified sources are available.

B. Procurement of professional (including consultant) services involving an individual as opposed to all other firms shall be done in a manner to ensure that contracts for these

services will not undermine the merit system of employment or subvert pay limitations or competitive employment procedures.

- C. Any professional services that involve direct contact with individual students cannot be obtained under this policy. These services must be obtained under an employment contract through the Department of Human Resources.
- D. All personal services not exempted and not meeting the definition of professional and consultant services shall be acquired through the purchasing procedures established in the Fairfax County purchasing resolution.

IV. SELECTION ADVISORY COMMITTEE

- A. Compensation of \$100,000 or more
 - 1. When selecting a firm for professional services and the compensation for such professional services is estimated to exceed \$100,000, the Division Superintendent shall appoint a Selection Advisory Committee composed of three or more staff members to recommend to the Division Superintendent and the School Board those professional services firms that should be retained by Fairfax County Public Schools.
 - 2. At the time that the Selection Advisory Committee is formed, the Department of Purchasing and Supply Management of the Fairfax County government will appoint a staff member to serve on the committee in an advisory role.
 - 3. All proposed contracts shall be approved by the School Board prior to final execution. Full and adequate explanation of firm selection criteria and fee determination shall be presented with the contract in such form as required by the Division Superintendent.
- B. Compensation between \$30,000 and \$100,000
 - 1. When selecting a firm for professional services, and the compensation for such professional services is estimated to be more than \$30,000 but less than \$100,000, the Division Superintendent or his or her designee shall appoint a Selection Advisory Committee composed of three or more members of management to recommend to him or her those professional services firms that should be retained by Fairfax County Public Schools.
 - 2. At the time that the Selection Advisory Committee is formed, the Fairfax County Department of Purchasing and Supply Management will appoint a staff member to serve on the committee in an advisory role.
 - 3. All proposed contracts shall be approved by the Division Superintendent. Full and adequate explanation of firm selection criteria and fee determination shall be presented with the contract in such form as required by the Division Superintendent.
- C. Compensation Less Than \$30,000

When selecting a firm for professional services, and the compensation for such professional services is estimated to be less than \$30,000, the department head shall appoint a Selection Advisory Committee composed of three or more principal staff members to recommend to the department head those professional services firms that are to be retained by Fairfax County Public Schools.

V. PUBLIC ANNOUNCEMENT AND QUALIFICATIONS PROCEDURES

A. Announcement

On each occasion when professional services are requested to be purchased, such requirement will be announced in a uniform and consistent manner. Requirements in which the compensation for such professional services is estimated to be less than \$30,000 may be accomplished without public announcement, but will, whenever possible, be done by using available lists and other known sources to make a selection from at least three candidates.

B. Qualifications

Fairfax County Public Schools shall encourage firms engaged in the lawful practice of their professions, who desire to provide professional services to Fairfax County Public Schools, to submit annually a statement of qualifications and performance data in such a manner as is prescribed by the Fairfax County Department of Purchasing and Supply Management DPSM.

C. Accreditation of Firms

Fairfax County Public Schools shall determine that the firm to be employed is fully qualified to render the required service. Among the factors to be considered in making this determination are the capabilities, adequacy of personnel, past record, and experience of the firm.

VI. SELECTION AND NEGOTIATION PROCESS

A. The Selection Advisory Committee for each proposed project shall evaluate the current statement of qualifications and performance data on file with DPSM, together with those that may be submitted by other firms regarding the project.

B. The committee shall select no less than three firms, if available, deemed to be most qualified to perform the required services after considering such factors as the ability of professional personnel; past performance; ability to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded by Fairfax County Public Schools. The object shall be to effect an equitable distribution of contracts among qualified forms, provided, however, that such distribution does not violate the principle of selection of the most qualified forms and consideration of their ability to meet time requirements.

- C. Fairfax County Public Schools, with the aid of the Selection Advisory Committee and DPSM, shall negotiate a proposed contract with the highest qualified firm for the professional services required. The firm deemed to be the most or best qualified will be required to disclose its fee structure during negotiation. If a satisfactory proposed contract cannot be negotiated with the highest qualified firm, negotiations with the firm will be formally terminated. Negotiations shall then be undertaken with the second most qualified firm. Failing accord with the second most qualified firm, negotiations shall be terminated with that firm. Negotiations shall then be initiated with the third most qualified firm and so on until a satisfactory proposed contract is agreed upon.
- D. Should a satisfactory proposed contract not be negotiated with any of the selected approved firms, additional firms, in order of their competence and qualification, shall be selected and negotiations entered into as outlined above.
- E. All proposed contract for professional services, in which compensation to be paid exceeds \$100,000, shall be approved by the School Board prior to final execution. Full and adequate explanation of firm selection criteria and fee determination shall be presented with the contract in such a form as required by the Division Superintendent.
- F. All proposed contracts for professional services, in which the compensation to be paid is more than \$30,000 but less than \$100,000, shall be approved by the Division Superintendent prior to final execution. Full and detailed explanation of firm selection criteria and determination shall be presented with the contract in such form as required by the Division Superintendent.
- G. All proposed contract for professional services, in which the total compensation to be paid is less than \$30,000, shall be approved by the department head prior to final execution. Full and detailed explanation of firm selection criteria and fee determination shall be presented with the contract.
- H. For all cost-plus-a-fixed-fee professional services contracts, Fairfax County Public Schools shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that the wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional services contract under which such a certificate is required shall contain a provision that the original contract price and any addition thereto shall be adjusted to exclude any significant sums for which Fairfax County Public Schools determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustments shall be made within three years following the end of the contract.

VII. CONTRACT MODIFICATIONS

- A. A contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25 percent of the amount of the contract or \$10,000, whichever is greater, without the advance written approval of the purchasing. In no event may the amount of

any contract, without adequate consideration, be increased for any purpose, including, but not limited to, relief of an offeror from the consequences of an error in its bid or offer.

- B. Amendments to professional and consultant services contracts must be approved in the following manner:
1. For those amendments exceeding \$30,000 in value, the Division Superintendent must approve the amendment.
 2. For those amendments exceeding \$100,000 in value, the Division Superintended must notify the School Board of his or her approval.
 3. Contract amendments that cause the total value of the contract to exceed the next required approval level will require approval at the next level. For example, if the original contract value was \$75,000 (approved by the Division Superintendent) and an amendment for \$50,000 is submitted resulting in the \$100,000 threshold being exceeded, approval by the School Board will be required.

VIII. PROHIBITION AGAINST CONTINGENT FEES

Each contract entered into by Fairfax County Public Schools for professional services shall contain a provision against contingent fees as follows: "The architect, registered land surveyor, professional engineer, or consultant (as applicable) warrants that he or she has not employed any company or person other than the bona fide employee working for the architect, land surveyor, professional engineer, or consultant to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company or corporation, individual or firm, other than a bona fide employee working solely for the architect, registered land surveyor, professional engineer, or consultant any favor, commission, percentage, gift, or any other compensation contingent upon or resulting from the award or making of this or any other agreement." In the event of breach of this provision, Fairfax County Public Schools shall have the right to terminate this or any other agreement with this firm or individual without liability, and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

IX. CONFLICT OF INTEREST

The provisions of the State and Local Government Conflict of Interest Act, Article IV of the Virginia Public Procurement Act entitled "Ethics in Public Contracting" are incorporated herein by reference, and all bidding documents shall incorporate appropriate reference to these provisions.

X. AUDITS

All contracts for professional services shall include a provision permitting in-progress auditing and post-auditing by Fairfax County Public Schools or its agent. Post-auditing, if any, shall be completed within three years of final payment.

XI. ADMINISTRATIVE PROVISIONS

- A. Nothing in this policy shall affect the validity or affect any contractual services contract in existence at the effective date thereof.
- B. Any policies in conflict herewith or inconsistent with the provisions of this policy are hereby repealed.
- C. If any provision, section, subsection, paragraph, phrase, clause, or word of this policy or any rule or regulation adopted hereunder is held to be invalid, the remainder of this policy or of such rules and regulations adopted hereunder, other than that which was held invalid, shall not be affected thereby.

XII. UNAUTHORIZED PURCHASES

Any contract for professional and consultant services entered into by any Fairfax County Public Schools employee outside the provisions of this policy shall be of no effect and void. Contract not in conformance with the provision of this policy up to \$25,000 may be approved by the Division Superintendent, upon receipt of a written report and recommendation by the Fairfax County purchasing agent. All others must be presented to the School Board for review and approval.

Legal Reference: Code of Virginia, §2.1-639.1,2,6,9
§11-72 through 11-80

Policy

Adopted: July 1, 1986

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