



TITLE: Acquisition of Consultant Professional Services

NUMBER: BCC-26

CANCELS ~~December 13, 2014~~ July 12, 2016

APPROVED: July ~~12, 2016~~ 12, 2020

ORIGINATOR: Purchasing Services

REVIEW: July ~~12, 2019~~ 12, 2021

## POLICY

### I. OBJECTIVE

To prescribe policy for the selection process and acquisition of consultant professional services as defined by § 287.055, Florida Statutes.

### II. REFERENCES AND DEFINITIONS

- A. §287.055, Florida Statutes - "Consultants' Competitive Negotiation Act".
- B. §287.017, Florida Statutes - Purchasing Categories, Threshold Amounts.
- C. Board – Brevard County Board of County Commissioners
- D. Design-Build Firm - A firm who holds a current certificate of registration under Chapter 489 to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or holds a current certificate of registration under Chapter 481 to practice architect or landscape architecture; or a firm who holds a current certificate as a registered engineer under Chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.
- E. Design Criteria Package - Concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information so as to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design build contract.
- F. Professional Services - Those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping as defined by the laws of the State, or those services performed by an

architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his/her professional employment or practice.

- G. Agency - The state or state agency, municipality, or political subdivision, a school district or a school board. The term "agency" does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under §380.06 or §§163.3220-163.3243 of Florida Statutes.
- H. Firm – Any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.
- I. Selection Committee – A committee appointed by the Board to evaluate and rate firms desiring to perform professional services for the County. The committee may be comprised of a County Commissioner in whose district the project is located or designee, County Manager or designee, the Department Director or designee, and staff employees having knowledge and interest in the project.
- J. Negotiating Committee – A committee appointed by the Board to negotiate a contract for professional services. The committee shall be comprised of the County Manager or designee, Department Director or designee, and staff members of County government having knowledge and interest in the project requiring professional services. The County Attorney (or his designee) may be directed to assist the negotiating committee, but shall not be a member of the negotiating committee.
- K. Designee – When used in this Policy, any title such as Board of County Commissioners, County Manager, or Department Director is presumed to include that person's official designee as if the Policy read "Board of County Commissioners or designee."
- L. §286.011, Florida Statutes – Florida Government in the Sunshine Law requiring meetings be open to the public.
- M. Compensation – The amount paid by the Board for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.
- N. Continuing Contract – A contract for professional services entered into in accordance with all the procedures of Reference A., between an agency and a firm, whereby the firm provides professional services to the County for projects in which the estimated construction costs do not exceed ~~\$2,000,000~~\$4,000,000 per project or for study activity when the fee for such professional services does not exceed ~~\$200,000~~\$500,000 per, study, or for work of a specified nature as outlined in the contract required by the agency with the contract being for a fixed term or with no time limitation except that the contract shall provide a termination

clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

- O. Negotiate (or any form of the word) – To conduct legitimate arm’s length discussions and conferences to reach an agreement on a term or price. The term does not include presentation of flat-fee schedules with no alternatives or discussion.
- P. Project – A study or planning activity described in the public notice under Section III.B. A project may include:
  - 1. A grouping of minor construction, rehabilitation, or renovation activities.
  - 2. A grouping of substantially similar construction, rehabilitation, or renovation projects.
- Q. Brevard County Board of County Commissioners Procurement Policy BCC-25 – Specifies directives for procurement activities.

### III. DIRECTIVES

#### A. PROJECT REQUIREMENTS DETERMINATION

Details of recommended projects shall be submitted to the Board for consideration. If approved, the Board minutes shall reflect approval of the project, method of financing, and appointment of a selection committee.

#### B. PUBLIC ADVERTISEMENT OF NEED FOR SERVICES AND EXCEPTIONS

All Board approved requirements for professional services shall be publicly advertised as outlined in Procurement Policy BCC-25. The advertisement shall be published once in a newspaper of general paid circulation, which is published at least five (5) days a week in the County. The advertisement shall appear at least fourteen (14) days prior to the last day set for the day of required submittal. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

- 1. Allowable exceptions to public advertisement include:
  - a. Projects involving a ~~Board-certified~~Board-certified public emergency.
  - b. There shall be no public advertisement requirement or utilization of the selection process for projects in which the agency is able to reuse existing plans from a prior project. However, public advertisement for any plans which are intended to be reused at some future time shall contain a statement which provides that the plans are subject to reuse.

2. With regard to paragraph 1 above, a competitive environment shall be utilized when feasible and practical.
3. A good faith estimate shall be provided in determining whether the proposed activity meets the threshold amounts referred to in this paragraph.

C. NON-COMPETITIVE SELECTION

In cases of planning/study activities estimated to cost is Category Two as defined in §287.017 F.S., or less, the Department Director shall submit the recommendation to the County Manager or his designee to approve the recommendation for non-competitive selection or to appoint a selection committee for further evaluation of qualified firms. However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, all proposals shall be rejected and the procurement reinitiated under Section III.E. A competitive environment shall be utilized when feasible and practical.

D. COMPETITIVE SELECTION

1. Appointment and Quorum Requirements of Selection Committee

The Board or County Manager will appoint a selection committee to review and evaluate the statement of qualifications and performance data. A County Commissioner may serve on the selection committee. A majority of the appointed selection committee shall constitute a quorum for all selection transactions.

2. Notification of Need for Service

- a. The Architect/Engineer Evaluation Criteria and scoring sheet attached or a similar scoring sheet shall be the sole means of "short listing" firms who have submitted qualification packages and shall be provided to each interested party prior to their submittal. The selection committee shall review the submittals of the prospective consultants to determine which prospective consultants meet the necessary specific qualifications. Standard Form 330 (combines SF 254 and SF 255) attached may be utilized, or a format outlined in notice, for submittal of qualifications by prospective consultants.
- b. For publicly announced requirements, Purchasing Services, upon notification from the responsible Department/Office Director, shall publish a notice in a newspaper of general circulation in Brevard County and shall indicate how interested consultants may apply for consideration. Trade journals or trade magazines may also be utilized for public advertisement for consultant services. Electronic posting of competitive opportunities shall be posted on the Brevard County

Purchasing Website and the County's electronic Internet posting site at [www.myvendorlink.com](http://www.myvendorlink.com) and [www.DemandStar.com/supplier](http://www.DemandStar.com/supplier).

Florida Statutes requires reasonable notice of public meetings, such as selection/negotiating sessions with consultants. The notice will include the committee name and purpose, location of meeting, date and time of meeting, and required statements outlined under Sections 4 of Administrative Order AO-50, Notification and Site Selection of Public Meetings/Hearings for Compliance with the Americans with Disabilities Act (ADA) and the Florida Accessibility Code (FAC). A copy of the notice of public meeting shall be posted at the Purchasing Services Bulletin Board and County/Purchasing Website and in accordance with Administrative Order AO-50, Notification and Site Selection of Public Meetings/Hearings for Compliance with the Americans with Disabilities Act (ADA) and the Florida Accessibility Code (FAC).

The Chairman of the selection/negotiations committee will ensure a record of the meeting is maintained, either through a written or recorded method.

### 3. Certifications of Consultants

- a. Any firm or individual desiring to provide professional services to the County must first be certified by the County as qualified pursuant to law and the regulations of the County. The County shall make a finding that the firm or individual with whom [its](#) contracts is fully qualified to render the required services. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual. The selection committee shall review statements of qualification and performance data submitted in response to the public announcement and shall select, in order of preference, no fewer than three (3) firms deemed to be the most highly qualified, if at least three (3) firms respond to the announcement. Consultant certification criteria shall include but may not be limited to ability of professional personnel; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads; and volume of work previously awarded, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. Attachment 1 shall be utilized for evaluation and scoring to short list prospective firms for public presentations. The higher the score the more qualified the firm.
- b. The selection committee may observe public presentations and conduct discussions with the firms pertaining to the firms' qualifications, approach to the project, and ability to furnish the required service. Each selection committee member shall rate each firm/individual observed through

personal presentations by assigning the top firm number 1, the second ranked firm number 2, etc. If interviews are not conducted, the ratings applied during the "short-list" phase will determine the rank order of firms for negotiation.

- c. The committee shall maintain this summary listing of the rank order of the firms being evaluated, present their recommendations of the three most qualified firms to the Board if at least three (3) firms respond to the announcement, and request appointment of a negotiating committee to negotiate a contract. Should the County be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the County determines to be fair, competitive, and reasonable, negotiations with that firm shall be formally terminated. The County shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the County shall terminate negotiations. The County shall then undertake negotiations with the third most qualified firm.

#### E. CONTRACT NEGOTIATION

1. The negotiating committee shall be appointed by the Board. The committee shall be comprised of the County Manager or his designee, Department Directors or designees, and staff members of County government having knowledge and interest in the project requiring professional services. A majority of the negotiating committee shall constitute a quorum for contract negotiations. The negotiating committee shall negotiate a contract with the most qualified firm for professional services at compensation, which is determined to be fair and reasonable. The County Attorney (or his designee) shall be assigned to assist the committee in its negotiations, but shall not be a member of the negotiating committee.
2. For all lump-sum or cost-plus fixed fee contracts exceeding Category 4 as defined in §287.017 F.S., the firm awarded the contract must execute a truth-in-negotiation certificate stating that the wage rates and other factual unit costs are accurate, complete, and current, at the time of contracting. Any contract requiring this certificate shall contain a provision that the original contract price and any additions shall be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or non-current wage rates and other factual unit costs. All such contract adjustment shall be made within one (1) year following the end of the contract.
3. Each contract shall contain a prohibition against contingent fees as follows: "The architect (or registered land surveyor or professional engineer, as applicable) warrant that he has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered land surveyor, or professional engineer as applicable) to solicit or

secure this agreement and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered land surveyor or professional engineer, as applicable) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this agreement.

F. REJECTIONS OF ALL PROPOSALS

The Board shall reserve the right to reject all proposals and re-issue the notice of need for professional services.

G. PRECEDENCE OF FLORIDA STATUTES AND FEDERAL/STATE GRANT GUIDELINES

In the case of any contradictions, irregularities or ambiguities between the procedures established in this policy and §287.055, Florida Statutes, also known as the Consultants' Competitive Negotiation Act, requirements directed in §287.055, F.S., applicable federal laws, as well as grant guidelines and provisions, or any other applicable Statute shall apply.

H. CONTRACT ADMINISTRATION

1. When a contract has complied with the acquisition process set forth in this policy and has been approved and executed by the Board, the Board delegates authority to the County Manager, or designee, to execute individual amendments, addenda, or task order increases when under \$100,000 and greater than or equal to \$50,000; Assistant County Manager when under \$50,000 and greater than or equal to \$25,000; and Department Director when under \$25,000, when each is within the budgeted amount for the project.
2. Amendments, addenda or task order increase amounts are to be considered individually and not cumulatively for the purpose of determining approval authority.
3. Splitting of amendments, addenda or task order increases to circumvent established approval authority thresholds is prohibited.
4. In the case of continuing consultant contracts, all amendments, addenda, and task order increases shall comply with the limitations for continuing consultant contracts as set forth herein and in §287.055, Florida Statutes.

IV. RESERVATION OF AUTHORITY

The Board reserves the right to amend or modify this policy at any time.

Attest:

Board of County Commissioners  
Brevard County, Florida

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SCOTT ELLIS, CLERK

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~~Jim Barfield, Chairman~~ Bryan Andrew Lober,  
Chair

Approved by the Board of County  
Commissioners on July ~~21~~<sup>12</sup>, 20~~16~~<sup>20</sup>.