

SECTION 6: PROFESSIONAL SERVICES CONTRACTS

Competitive Negotiations Process

6.0 Competitive Negotiations Policy

The Board of County Commissioners of Lee County declares it to be in the best interest of the public health, safety and welfare to seek highly qualified, capable and competent individuals and firms to provide professional services to the County. Because of the specialized nature of professional services and because differentials in consultant compensation are only a minor consideration compared to the quality of the professional's work, professional services are exempted from the County's competitive price bidding policy. This procedure is consistent with the provisions of Florida Statutes Sections 287.017 and 287.055.

The Board of County Commissioners has adopted a policy establishing an overall 10% goal for Disadvantaged Business Enterprise (DBE) participation in County services.

The Board of County Commissioners adopted Lee County Ordinance No. 92-22 whereby the County will not select, engage or use on a County project the same professional services firm for both project feasibility planning or study analysis and for project design and/or construction-related services. The provisions of this ordinance may be waived and set aside by the Board of County Commissioners for an identified project on a finding of due cause and upon a favorable vote for waiver by four (4) members of the Board of County Commissioners.

The procedures set forth herein are intended to apply to and be used for the acquisition of professional services for construction projects for such services as architecture, professional engineering, landscape architecture and registered land surveying, as referenced in Chapter 287, Florida Statutes.

The procedures set forth herein shall also serve as a guide, which shall be used as appropriate for the procurement of other professional services over expenditure authorization of \$100,000.00.

In addition to the evaluation criteria contained in Florida Statute Section 287.055(4)(b), consideration will be given to a firm or combination of firms primarily engaged in offering the required Architectural, Landscape Architectural, Engineering or Registered Land Surveying and Mapping Services which have offices located within the political boundaries of Lee County, Florida. To be eligible for the consideration, the submission must document existing in-County/ in-office capability and availability of:

1. Registered architectural, landscape architectural, engineering or registered land surveying and mapping professionals with the design experience pertinent to the type of project.
2. Drawing production/drafting capability.
3. For maximum credit for local office consideration the submission must include in-County capability to perform related functions through either in-house or sub-contract agreements such as:
 - A. Registered Surveying
 - B. Environmental Assessment and Permit

6.0 Competitive Negotiations Policy (Continued)

The consideration will be applied as an additional ranking factor.

The director of the project sponsoring department has authority to waive this consideration where the work is so complex or of such a highly specialized nature as to justify competition from firms outside the County.

6.1 Applications

The procedures outlined in this Section apply to contracts for professional services as referenced in 6.2 and 6.3 below, except in cases of valid public emergencies so certified by the Board of County Commissioners.

6.2 Definitions - For purposes of this Section:

- 6.2.1 "Professional Services for Construction Projects" means professional services within the scope of practice of architecture, engineering, landscape architecture or registered surveying and mapping as referenced in Chapter 287, Florida Statutes, when such services relate to construction projects exceeding \$325,000.00 in estimated construction cost.
- 6.2.2 "Professional Services for Planning or Study related to Construction Projects" means professional services within the scope of practice of architecture, engineering, landscape architecture and registered surveying and mapping as referenced in Chapter 287, Florida Statutes, but limited to planning or study activities at a consultant cost exceeding \$35,000.00.
- 6.2.3 "Professional Legal Services" means professional services rendered by an attorney, serving in the capacity of legal counsel or legal advisor, including but not limited to paralegals (such as court reporters and appraisal services utilized for litigation purposes).
- 6.2.4 "Other Professional Services" means services of a professional or technical nature (other than legal or construction-related services as defined above) required to accomplish program or policy objectives of county government. This shall include but not be limited to, appraisal services required for purposes other than litigation.

6.3 Professional Services Authorization

6.3.1 Professional Services for Construction Projects

- 1) For professional services for construction projects which have been approved by the Board of County Commissioners, and for which detailed scopes have been developed, the director of the project sponsoring department (or designee) is authorized to initiate the procurement process without further approval.

6.3 Professional Services Authorization (Continued)

6.3.1 Professional Services for Construction Projects (Cont.)

- 2) For professional services for construction projects which have not been approved by the Board of County Commissioners, such as M.S.B.U./M.S.T.U projects or minor projects not included in the approved Capital Improvement Program, or for which detailed scopes of service have not been prepared, the written authorization of the County Manager (or designee) is required to initiate the procurement process.

6.3.2 Professional Legal Services

The County Attorney will review all requests for professional legal services to determine whether such services will be provided by members of the County Attorney's staff or by outside firms providing professional legal services. The County Attorney may authorize and establish such procedures as he or she determines are necessary and/or appropriate for the procurement of outside professional legal services.

- 1) Retention of expert witnesses shall be exempt from any formal competitive process.

6.3.3 Other Professional Services

For professional services over expenditure authorization of \$100,000.00 other than (a) professional services for construction projects, or (b) professional legal services, the County Manager, by and through Procurement Management, may authorize and establish appropriate procedures for the procurement of such professional services subject to Board approval of each such professional services agreement.

6.4 Initiating The Procurement of Professional Services

- 6.4.1 To initiate the procurement of professional services for Board approved construction projects, the director of the project sponsoring department (or designee) shall complete and submit to Procurement Management a "Request to Initiate the Competitive Negotiations Process for the Procurement of Professional Services," (Standard Form CMO:037). The request form shall be accompanied by (1) major/minor scope of professional services and a project description.

- 1) Procurement Management will prepare the necessary front-end documents to solicit the Letters of Interest.

- 6.4.2 For construction projects, which have not been specifically approved by the Board of County Commissioners, the approval shall be obtained from the County Manager (or designee) (Standard Form No. CMO:040). Upon approval by the County Manager (or designee), Form No. CMO:037, "Request to Initiate the Competitive Negotiations Process for the Procurement of Professional Services", shall be forwarded to Procurement Management, accompanied by (1) major/minor scope of professional services and a project description.

6.4 Initiating The Procurement of Professional Services (Continued)

- 1) Procurement Management will prepare the necessary front-end documents to solicit the Letters of Interest.
- 6.4.3 To initiate procurement for professional legal services, the director of the project sponsoring department (or designee) will prepare a request describing the services required and submit it to the County Attorney. If the County Attorney determines that outside professional legal services are required, he or she will establish procedures for their procurement and advise the project sponsoring department accordingly.
- 6.4.4 To initiate the procurement of "other professional services," the director of the project sponsoring department (or designee) shall submit a request to Procurement Management for selection of an appropriate process. Procurement Management shall determine and approve the process to be used and advise the director to proceed accordingly. Where statutory requirements apply (e.g. auditing), they must be observed.

6.5 Competitive Negotiations Committee6.5.1 Committee Responsibility and Function

The Competitive Negotiations Committee shall be responsible for evaluating the qualifications and capabilities of consultants who have submitted Letters of Interest in response to the County's announcement soliciting such Letters. Evaluation may include such activity as is deemed appropriate by the Committee to verify the qualifications and capabilities of the consultants and their ability to furnish the required services.

The Competitive Negotiations Committee shall establish by consensus a minimum of three firms it deems to be most fully qualified and capable to perform the required services.

If the Competitive Negotiations Committee determines from its evaluations that there are less than three fully qualified firms submitting Letters of Interest, it shall provide the Board of County Commissioners with such recommendation(s) as it deems appropriate under the circumstances.

6.5.2 Committee Membership

The membership of the Competitive Negotiations Committee shall consist of the following:

There shall be three (3) voting members on the Committee as follows:

- 1) The County Manager (or designee) who shall chair the committee. At the discretion of the County Manager (or designee) the number of voting members may be expanded to five (5), if the complexity and uniqueness of the project justifies such expansion.

6.5.2 Committee Membership (Continued)

- 2) The director of the project sponsoring department (or designee).
- 3) The project sponsoring department project manager.
- 4) The Committee may include the County Attorney or his or her designated Assistant County Attorney (as an “invited” participant), as a non-voting member, as legal counsel to the Committee.
- 5) The Manager of the Department of Construction & Design (or designee), will also serve as a voting member of the Committee when the project under consideration involves buildings or facilities for which this department has a responsibility for development, planning, design, construction, maintenance or operation.
- 6) Other persons, as may be designated and authorized in writing by the County Manager (or designee), may participate on the Committee but as non-voting members only.
- 7) Others, at the pleasure of the Chair, may be invited to participate in the Committee discussions.
- 8) No outside industry representatives shall be allowed to sit on the Committee as a voting member but may serve as a non-voting, unless approved by the Board.

6.6 Solicitation and Evaluation of Letters of Interest

The public shall not be excluded from the proceedings under this Section.

6.6.1 Public Announcement and Solicitation of Qualifications from Interested Firms

- 1) The County, through Procurement Management, shall publicly announce when professional services are required pursuant to this policy.

The public announcement shall

- (a) be published once in a newspaper of general circulation throughout Lee County, and posted on the Procurement Managements website; and
 - 1) Procurement will maintain a list of firms who have previously submitted the required application along with the Federal GSA Form 330.

6.6 Solicitation and Evaluation of Letters of Interest (Continued)

- (c) State the deadline date and time for submitting Letters of Interest and qualifications information.

Firms will be given not less than two weeks from the date the public announcement is published to submit their 3-page Letters of Interest and qualifications information.

- (a) The Letter of Interest 3-page requirement may be expanded if requested by the Project Sponsoring Department.

6.6.2 Evaluation and Selection Process

- 1) All Letters of Interest are to be submitted to Procurement Management. On the date and at the time announced as the deadline for submittal of Letters of Interest for each project, Procurement Management shall open and make a certified record of the Letters of Interest received prior to the announced submittal deadline. Letters of Interest received after the announced deadline shall be considered ineligible for consideration and shall be returned to the submitter.
- 2) Procurement shall distribute to each of the members of the Competitive Negotiations Committee a copy of each of the Letters of Interest and qualifications information which were received prior to the announced submittal deadline.
 - a) a copy of the Federal GSA Form 330 that are on file with Procurement Management will also be forwarded with the Letters of Interest.
- 3) Procurement Management shall coordinate the scheduling, announcement and arrangements for all meetings of the Competitive Negotiations Committee.
- 4) The Competitive Negotiations Committee may request oral, written or visual presentations from, conduct interviews with, or conduct visits to the office, facilities or projects of the firms it selects from among those submitting Letters of Interest.
- 5) At the conclusion of its evaluations the Competitive Negotiations Committee shall establish by consensus a minimum of three firms most fully qualified and capable to perform the required services for a telephone or presentation to the Committee. If less than three fully qualified firms are available, the Committee will select only those fully qualified.
 - a) Procurement will be responsible for scheduling the telephone/ presentation meetings with the Committee.
 - b) Upon conclusion of its evaluation the Committee shall establish by consensus a recommended ranking of the interviewed firms.
 - c) All Committee meetings shall be recorded by Procurement.
 - d) The Competitive Negotiations Committee shall evaluate the firms using the Consultant Selection Ranking form.

6.6 Solicitation and Evaluation of Letters of Interest (Cont.)

6.6.2 Evaluation and Selection Process (Cont.)

- 6) Immediately following the Competitive Negotiations Committee meeting, the project manager of the Project Sponsoring Department shall forward the Consultant Evaluation Ranking form to Procurement Management to be submitted to the Board for approval.
 - a) Procurement Management shall prepare brief minutes of the Competitive Negotiations Committee meetings for placement in the project file.
 - b) Procurement Management shall notify "informally" all consultants who submitted a Letter of Interest of the Committee's order of preference, "pending Board approval".
 - c) Procurement Management shall report the Competitive Negotiations Committee recommendations and order of preference in the "Blue Sheet" to the Board of County Commissioners for approval.

6.7 Competitive Negotiations

- 6.7.1 Action by the Board of County Commissioners on the recommendation(s) of the Competitive Negotiations Committee.

The Board of County Commissioners, after consideration of the recommendation(s) and order of preference reported by the Competitive Negotiations Committee, will take such action as they deem appropriate to approve, in order of preference, the firms that they deem most fully and highly qualified and capable to perform the required services.

Subsequent to the approval of the ranking of firms by the Board of County Commissioners, Procurement Management shall notify all short listed firms of the ranking established by the Board of County Commissioners action.

6.7.2 Negotiations Process

The negotiations process for the development, approval and award of a Professional Services/Service Provider Agreement will be administered by the director of the project sponsoring department (or designee) and Procurement Management as follows:

6.7 Competitive Negotiations (Continued)6.7.2 Negotiations Process (Continued)

- (1) The director of the project sponsoring department (or designee), on the basis of (a) a detailed Scope of Professional Services, (b) project guidelines and criteria, and (c) time and schedule of performance developed by the director of the project sponsoring department (or designee), and based on the provisions set forth in the County's Standard Form of Agreement shall negotiate a contract with the number one ranked firm at compensation which the director of the project sponsoring department (or designee) determines is fair, competitive, reasonable and adequate. The director of the project sponsoring department (or designee) has the final acceptance responsibility in the price negotiations process.
- (2) Should the director of the project sponsoring department (or designee) be unable to negotiate a satisfactory contract with the firm considered to be the top ranked firm, the director (or designee) will notify Procurement Management of the desire to terminate negotiations with that firm, and negotiations shall be formally terminated by the Procurement Management office. To expedite the contract development and award process, the decision to terminate negotiations does not require the approval of the Board of County Commissioners or the County Manager (or designee). The Procurement Management Office shall notify the number one ranked firm, in writing (with a copy to the Project Sponsoring Department), that negotiations are terminated and thereafter the director of the project sponsoring department (or designee) shall proceed to negotiate a contract (as set forth above) with the number two ranked firm.
- (3) Failing accord with the second ranked firm, the director of the project sponsoring department (or designee) will notify Procurement Management of the desire to terminate negotiations with that firm and negotiations shall be formally terminated by the Procurement Management office as set forth above. The director of the project sponsoring department (or designee) shall then undertake negotiations with the third ranked firm. If negotiations with the number three ranked firm are not successful, Procurement Management shall formally terminate negotiations as set forth above.
- (4) Thereafter, the Competitive Negotiations Committee may review the list of firms that submitted Letters of Interest to determine if any of the remaining firms are fully qualified and capable of performing the required services and then provide the Board of County Commissioners with its recommendation(s) concerning an additional list of firms in order of preference for approval. The Board of County Commissioners may authorize negotiations with additional firms listed or may authorize the public announcement and solicitation of Letters of Interest for the selection process to begin again.
- (5) When efforts are successful, the director of the project sponsoring department (or designee) or Procurement will be responsible for the compilation of the Agreement document with the assistance of the Contract Manager (or designee), for ensuring the document is complete, clear, accurate and correct.

6.8 Professional Service Agreement Award

The award of a contract for Professional Services requires approval from the Board of County Commissioners over \$100,000.00.

This may be accomplished in two ways:

- a) After the contract has been executed by the consultant, Procurement Management shall transmit two complete sets of the contract executed by the consultant, along with the insurance, to the Chair of the Board of County Commissioners, without such contracts being submitted to the Board for review and approval when all of the following conditions have been met:
 - 1) The selection and ranking of consultants has previously been approved by the Board of County Commissioners or the Competitive Negotiations Consultant selection process has been waived by the Board; and
 - 2) The amount of compensation to be paid to the consultant as established in the contract is not more than the estimated compensation amount that was included in the Board's previous action approving the selection and ranking of consultants; and
 - 3) The contract has been developed using Lee County's Board approved Standard Form of Agreement; and
 - 4) The Agreement has been executed by the consultant; and
 - 5) As evidenced on a Contract Review Checklist, Standard Form CMO:042, submitted to the Board Chair with the execution sets of the Agreement, the contract has been reviewed and favorably endorsed by the director of the project sponsoring department (or designee), Risk Management, the Contract Manager (or designee), and the County Attorney's staff.

After execution by the Board Chair the Agreements will be forwarded to the Clerk of Courts for dating and recording and distribution of an executed set of the Agreement to Procurement Management for transmittal to the consultant with a copy to the project sponsoring department.
- b) For contracts not meeting the criteria in Section 6.8(a) above, Procurement Management will be responsible for preparing and submitting the required written request (i.e., "Blue Sheet") to have the contract placed on the Board of County Commissioners agenda for approval. The "Blue Sheet" shall be accompanied by at least two complete Agreements executed by the consultant.
- c) Continuing contracts (i.e., annual type master agreements such as contracts for Materials Testing, Surveying, Civil, Utility, etc.) that are negotiated on hourly rates and/or per item costs, where no definite total amount can be negotiated, may be routed without Board approval as long as the Board has approved the Consultant selection and the Blue Sheet has specified the authorization to negotiate the hourly rates.

6.8 Professional Service Agreement Award (Continued)

- 1) In accordance with §287.055 (2)(g) F.S., a department/division **cannot** utilize a continuing contract if (1) the construction cost exceeds \$1,000,000.00 and/or (2) study activity exceeds \$200,000.00.

A separate solicitation under the Competitive Negotiation process is required for projects that exceed these levels.

d) Agreement Execution, Recording and Distribution

After approval by the Board of County Commissioners, the Agreement document will be processed by the Department of Public Resources for (1) approval as to form by the County Attorney; (2) execution by the Chair of the Board of County Commissioners; (3) dating and recording by the Clerk of Courts; and (4) distribution of any remaining executed set(s) of the Agreement to Procurement Management for transmittal to the consultant and a copy to the Project Sponsoring Department.

e) Notice to Proceed

After the contract has been executed by Chair of the Board and recorded by the Clerk of Courts, the director of the project sponsoring department (or designee) shall prepare and send the consultant an official written Notice to Proceed letter. A copy of the Notice to Proceed shall be forwarded to Procurement.

f) Abandonment of a Project

After going through the Competitive Negotiations process, the Board decides not to proceed with the project and later decides to move forward with the same project, the Board may award to the same consultant without initiating another Competitive Negotiations process. The project sponsoring department can request the Board approve the award so long as the scope of the project is unchanged, the proposed fee/costs from the consultant remains relatively the same (i.e., a reasonable allowance for inflation, etc.), and the proposed award occurs within a reasonable time from the first Board action. Each project should be decided on a case-by-case basis.

- 1) Any documentation to be completed (i.e., Blue Sheet, Professional Service Agreement, etc) shall be processed by Procurement Management.

6.9 Change Order/Supplemental Task Authorization Process for All Professional Services Agreements (PSA)/Service Provider Agreements (SPA)

After an Agreement has been approved and the written Notice to Proceed issued to the Consultant, if the director of the project sponsoring department (or designee) finds it necessary to have change(s) made in the Professional Services as required, set forth and agreed to by both parties, then such change(s) shall be approved and authorized using the appropriate procedure and form.

- 6.9.1 **PURPOSE** - A Change Order (CO) is used as a means for the County and the Consultant to agree in writing setting forth and authorizing changes to the agreed upon Scope of Professional Services and Tasks, Compensation and Method of Payment, Time and Schedule of Performance, or Project Guidelines and Criteria. **A Change Order is used for a project specific solicitation, not for Continuing Contracts.**

6.9 Change Order/Supplemental Task Authorization Process for All Professional Services Agreements (PSA)/Service Provider Agreements (SPA) (Continued)

PURPOSE - A Supplemental Task Authorization (STA) is used as a means for the County and the Consultant to agree in writing setting forth and authorizing a limited number of Professional Services, tasks, or work. Such Supplemental Task Authorizations must be consistent with and have previously been included within the scope of services in the initial Professional Services Agreement or Service Provider Agreement for which authorization has not been previously given or budgeted. **A Supplemental Task Authorization is only to be used under a Continuing Contract.**

6.9.2 APPROVAL AND AUTHORIZATION - Change Order or Supplemental Task Authorization approval, execution and authorization levels and amount limitation have been established as follows to expedite the Change Order or Supplemental Task Authorization approval and authorization process.

It will be the responsibility of Procurement Management or the project sponsoring department to prepare all Change Orders or Supplemental Task Authorizations. Prior to obtaining the consultant's signature, the project sponsoring department will send the Change Orders or Supplemental Task Authorizations to Procurement Management for review.

- (a) The director of the project sponsoring department (or designee) is authorized to approve and execute individual Change Order(s) or Supplemental Task Authorization(s) that are under the \$50,000.00 expenditure authorization.
- (b) The County Manager (or designee) is authorized to approve, and execute individual Change Order(s) or Supplemental Task Authorization(s) that are under the \$100,000.00 expenditure authorization.
- (c) Change Orders or Supplemental Task Authorizations to be paid to the Consultant that exceed the County Manager \$100,000.00 expenditure authorization must be submitted to and approved by the Board of County Commissioners.
- (d) All Change Orders and Supplemental Task Authorizations authorized must use Lee County Standard Form CMO:023.
- (e) In instances of a decrease change order, no matter what the decrease amount is, no cost, or only a change in the time for execution or completion of the contract work, the director of the project sponsoring department (or designee) is authorized to approve, execute and authorize individual change orders.
 - 1) It is not necessary to process a Change Order for a decrease in the contract amount or contract time. This will be at the discretion of the Project Sponsoring Department.

6.9 Change Order/Supplemental Task Authorization Process for All Professional Services Agreements (PSA)/Service Provider Agreements (SPA) (Continued)

- (f) If the amount of a Change Order or Supplemental Task Authorization will make the total contract amount exceed the next level for which a contract has been previously approved, the appropriate authorizing signature must be obtained. (Example: If a Department Director has approved a contract for \$45,000.00 and a CO or STA is processed for \$6,000.00, the CO/STA must be approved by the County Manager because the new contract amount exceeds the Department Director level of \$50,000.00).

When a contract is awarded for a total amount under Board level, any CO/STA processed which makes the total dollar amount of the contract exceed the County Manager level of \$100,000.00, that CO/STA will require Board approval. Once Board approval is obtained, any future Change Order(s) or Supplemental Task Authorization(s) processed under County Manager's level will not require Board approval.

- (g) If an amendment (i.e., changing, deleting from or adding to) is necessary to the "Boiler Plate" articles of the Lee County's Standard Form of Professional Service Agreement or Service Provider it shall be done by an "Exhibit" to the agreement itself by Procurement Management.
- 1) Any and all changes must be submitted to Procurement Management for approval and preparation prior to any final authorizations.
- (h) The Consultant shall not be authorized to proceed with the change(s) set forth in a Change Order or Supplemental Task Authorization until the Consultant has received an executed set of the change document and a written Notice to Proceed is issued by the director of the project sponsoring department (or designee).
- (i) The total amount of Change Orders or Supplemental Task Authorizations approved and authorized by the director of the project sponsoring department, the County Manager or the Board of County Commissioners shall not exceed the amount of funds budgeted, allocated or available for the requested Professional Service without Board approval.

6.9.3 SUBMITTALS OF CHANGE ORDERS/SUPPLEMENTAL TASK AUTHORIZATIONS

- (a) Procurement Management is responsible for forwarding a copy of Change Orders or Supplemental Task Authorizations approved, executed and authorized by the director of the project sponsoring department or by the County Manager to the Finance Department and the project sponsoring department.
- (b) For Change Orders or Supplemental Task Authorizations requiring Board approval (over the County Manager's \$100,000.00 expenditure authorization), the "Blue Sheet" submitting the Change Order or Supplemental Task Authorization to the Board shall be prepared by Procurement Management and shall be based on and shall include the Change Order or Supplemental Task Authorization form executed by the Consultant.

6.9.3 SUBMITTALS OF CHANGE ORDERS/SUPPLEMENTAL TASK AUTHORIZATIONS
(Continued)

- (c) Upon receipt of notification that the Board has approved the Change Order or Supplemental Task Authorization and subsequent to execution, Procurement Management shall provide the Consultant with an executed set of the Change Order or Supplemental Task Authorization.
 - 1) The project sponsoring department may issue the written Notice to Proceed.

6.10 Consultant Agreement Payment Authorization

Payments for all Professional Service Agreements and Service Provider Agreements shall be initiated by the project sponsoring department on the County's standard form titled "Professional Service Agreement/ Service Provider Agreement Invoice Statement, Form No. CMO:024.

The project sponsoring department shall be responsible for preparing requests for payment throughout the duration of the agreement.

A copy of all final payments shall be forwarded to Procurement Management.

6.11 Consultant Performance Evaluations of a Professional Service Agreement or Service Provider Agreement

For Professional Service Agreements or Service Provider Agreements the project sponsoring department shall be responsible for the monitoring of all services during the duration of the contract. **Should the Project Sponsoring Department experience problems with the Consultant, the Project Sponsoring Department is required to complete and place on file with Procurement Management a Consultant Performance Evaluation Form.** The Consultant Performance Evaluation shall be completed on Form No. CMO:041.