

**FINANCE**  
**Purchasing and Supply**  
**Procurement of Professional and Consultant Services**

This policy supersedes policy 5015.3.

**I. PURPOSE**

To outline procedures governing the selection and negotiations for professional and consultant services using appropriated and non-appropriated funds.

**II. SUMMARY OF CHANGES SINCE LAST PUBLICATION**

This policy has been revised to align with current policies and procedures.

**III. 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 54.1 of the Code of Virginia. Professional services are those that are as referenced in the Fairfax County Purchasing Resolution, which include, but are not limited to: accounting, actuarial, architecture, land surveying, landscape architecture, law, medicine, optometry, dentistry, pharmacy, and professional engineering, and shall be procured as set forth in Virginia Code Section 2.2-4302.2, Process for Competitive Negotiation, in the definition of competitive negotiation at paragraph 4, and in accordance with this policy.

**B. Consultant Services**

Consultant Services shall mean any type of services (other than professional services) required by Fairfax County Public Schools (FCPS), but not furnished by its own employees, which 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 service required, and at fair and reasonable compensation, rather than by competitive sealed bidding.

Consultant Services shall include any type of services (other than professional services) where a firm exercises discretion and flexibility, makes recommendations on how to improve performance and solve organizational or operational problems, or evaluates and recommends effective and efficient ways of achieving desired goals and outcomes.

C. Firm

The term “firm” means any individual, partnership, corporation, association, or other legal entity permitted by law to conduct business in the Commonwealth of Virginia or any other individual, firm, partnership, corporation, association, or other legal entity qualified to perform professional services, non-professional services, or consultant services.

D. Compensation

The term “compensation” means the total amount paid by FCPS for a single professional or consultant services contract, including expenses where applicable.

E. Competitive Negotiation

The method of vendor selection, which includes issuance of a written Request for Proposal (RFP) indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal indicating whether a numerical scoring system will be used in evaluation of the proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the RFP or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

F. Department

The term “department” means that unit of organization managed by an assistant superintendent, or a region assistant superintendent, a chief, a deputy, or in the case of other units reporting directly to the Division Superintendent, a program manager.

G. Department Head

The term “department head” means the assistant superintendent, region assistant superintendent, chief, deputy, or program manager in charge of a department, as defined above.

**IV. EXCEPTIONS**

- A. All professional and 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 governed by this policy.

2. Legal Services

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

3. Emergency

In the case of a public emergency validated by the Division Superintendent, or designee, 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 that the required professional or consultant services are practicably available only through a single source, such services may be procured directly from that source. Such determination will be made in writing by the Division Superintendent or designee.

5. Small Purchase Procedures

Professional or consultant services estimated to cost less than \$10,000 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. A statement of work detailing the scope, tasks, deliverables, and cost shall be attached to the purchase order.

- B. Procurement of professional or consultant services where the contract party is an individual, as opposed to a firm or other entity, 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 or consultant services that involve direct contact with individual students may be obtained under this policy. These services may alternatively be obtained through employment as an FCPS hourly employee, or if a permanent position is deemed necessary, employment may be fulfilled through the department of Human Resources (HR).
- 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.

**V. COMPETITIVE NEGOTIATION - CONSULTANT SERVICES**

**A. Compensation of \$200,000 or more**

1. When selecting a firm for consultant services and the compensation is estimated to exceed \$200,000, the Division Superintendent, or designee, shall appoint a Selection Advisory Committee (SAC) composed of three or more staff members to recommend to the Division Superintendent and the School Board those consultant services firms that should be retained by FCPS.
2. At the time the SAC is formed, the office of Procurement Services (OPS) will appoint a staff member to serve on the committee in an advisory role.
3. Proposed contracts for consultant services, where the compensation is estimated to exceed \$200,000, shall be approved by the School Board.

**B. Compensation less than \$200,000**

1. When selecting a firm for consultant services, and the compensation is estimated to be less than \$200,000, the Division Superintendent, or designee, shall appoint a SAC composed of three or more staff members to recommend those consultant services firms that should be retained by FCPS.
2. At the time that the SAC is formed, OPS 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 or designee. 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 or designee.

**VI. COMPETITIVE NEGOTIATION - PROFESSIONAL SERVICES**

**A. Compensation of \$200,000 or more**

1. When selecting a firm for professional services and the compensation for such professional services is estimated to exceed \$200,000, the Division Superintendent, or designee, shall appoint a SAC 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 FCPS.
2. At the time that the SAC is formed, OPS will appoint a staff member to serve on the committee in an advisory role.
3. Proposed contracts for professional services where the compensation is estimated to exceed \$200,000, shall be approved by the School Board.

**B. Compensation between \$80,000 and \$200,000**

1. When selecting a firm for professional services and the compensation for such professional services is estimated to be more than \$80,000, but less than \$200,000, the Division Superintendent, or designee, shall appoint a SAC composed of three or more staff members to recommend those professional services firms that should be retained by FCPS.
2. At the time that the SAC is formed, OPS 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 or designee. 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 \$80,000**

1. When selecting a firm for professional services and the compensation for such professional services is estimated to be less than \$80,000, the department head shall appoint a Selection Advisory Committee composed of three or more staff members to recommend to the department head those professional services firms that are to be retained by FCPS.
2. All proposed contracts shall be approved by the Division Superintendent or designee. 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.

**VII. PUBLIC ANNOUNCEMENT AND QUALIFICATIONS PROCEDURES – PROFESSIONAL AND CONSULTANT SERVICES**

**A. Announcement**

On each occasion when professional and consultant services are requested to be purchased, such requirement will be announced in a uniform and consistent manner pursuant to the Fairfax County purchasing resolution.

**B. Qualifications**

FCPS shall encourage firms engaged in the lawful practice of their professions, who desire to provide professional services to FCPS, to submit annually a statement of qualifications and performance data in such a manner as is prescribed by the OPS.

C. Accreditation of Firms

FCPS 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.

**VIII. SELECTION AND NEGOTIATION PROCESS – PROFESSIONAL AND CONSULTANT SERVICES**

- A. The SAC for each proposed project shall evaluate the current statement of qualifications and performance data on file with OPS, together with those that may be submitted by other firms regarding the project.
- B. The SAC 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 proposed 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 FCPS. The objective shall be to affect an equitable distribution of contracts among qualified firms, provided, however, that such distribution does not violate the principle of selection of the most qualified firms and consideration of their ability to meet time requirements.
- C. The SAC shall negotiate a proposed contract with the highest qualified firm for the professional or consultant 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.

**IX. CONTRACT MODIFICATIONS – PROFESSIONAL AND CONSULTANT SERVICES**

- 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 \$100,000, whichever is greater, without the advance written approval of the purchasing agent or the director of the Fairfax County Public Schools office of Procurement Services. 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 accordance with P5011.

**X. PROHIBITION AGAINST CONTINGENT FEES**

Each contract entered into by FCPS for professional and consultant services shall contain a provision against contingent fees as follows: "The service provider warrants that it, he, or she (as applicable), has not employed any company or person other than the bona fide employee working for such provider to solicit or secure this agreement and that it, he, or she (as applicable), has not paid or agreed to pay any person, company, or corporation, individual, or firm, other than a bona fide employee working solely for such provider 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, FCPS 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.

**XI. CONFLICT OF INTEREST**

The provisions of the State and Local Government Conflict of Interest Act, Article VI, 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.

**XII. AUDITS**

Every contract for professional and consultant services shall include a provision permitting in-progress auditing and post-auditing by FCPS or its agent. Post-auditing, if any, shall be completed within three years of final payment.

**XIII. 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. In the event of any conflict between this policy and any other FCPS policy, this policy will govern and control.
- 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.

#### **XIV. UNAUTHORIZED PURCHASES**

Any contract for professional or consultant services entered into by any FCPS employee outside the provisions of this policy shall be of no effect and void. Contracts 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 director, OPS. All others must be presented to the School Board for review and approval.

Legal Reference: Code of Virginia, Sections §2.2-3100, Policy; application; construction; §3101, Definitions; §3106, Prohibited contracts by officers and employees of state government and Eastern Virginia Medical School; §3110, Further exceptions; §2.2-4301-4377, Virginia Public Procurement Act; Section §22.1-79, General Powers and Duties of the School Board; Title 54.1, Professions and Occupations

##### **Policy**

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FAIRFAX COUNTY SCHOOL BOARD