CHAPTER 6 – DESIGN SERVICES: PROCUREMENT PROCEDURES

SECTION 6.1 GENERAL

The University Procurement Rules set forth the general parameters for the procurement of professional services. In addition to this manual, refer to guidance on laws and regulations made available by W&M Supply Chain Services.

6.1.1 University Policy

The sections in this chapter provide further definition of the requirements for procurement of professional services at the university as well as nonprofessional services that are design and construction related. The policy of the university is to contract with a single entity in acquiring the full range of disciplines necessary to provide the services identified for a project. The entity may be an Architectural & Engineering (A/E) firm with in-house capabilities in all disciplines or it may be an Architectural firm, an Engineering firm, a Land Surveying firm, or a Landscape Architectural firm in-house.

6.1.1.1 – Equal Opportunity to Compete

All of the above entities have an equal opportunity to compete for projects. The proposer who demonstrates it is best suited and has the ability to meet the required criteria will be selected as the single entity to provide project service. In any case, the proposer will be referred to as the A/E and will be required to provide the complete services indicated in the University's A/E Contract with all disciplines coordinated.

6.1.2 Project responsibility

The person having overall responsibility for the project management and coordination of disciplines may be a licensed Architect, a licensed Landscape Architect, a Professional Engineer or a licensed Surveyor.

6.1.2.1 – A licensed Architect shall be in charge of planning and design of the architectural aspects of the project. A licensed Engineer competent in that particular discipline shall oversee each discipline of the Engineering aspects of the project. A licensed Landscape Architect shall oversee all major landscape projects and issues and a licensed Land Surveyor shall be in charge of all survey requirements.

6.1.2.2 – All professional persons in charge shall be registered and licensed by the Virginia Department of Professional and Occupational Regulation (DPOR) in accordance with the requirements of the Code of Virginia.

SECTION 6.2 PROCUREMENT OF RELATED CONSULTANTS

The following types of services are typically required for facilities projects.

6.2.1 Professional Services

Land surveyors, geotechnical engineers, soils engineers, or any service requiring the use of a licensed architect, landscape architect, engineer, or surveyor are considered by state law and shall be procured as Professional Services as outlined in this chapter.

6.2.2 Non-Professional Services

Cost consultants, interior design services, space planning, soil testing, concrete testing, project management, project administration, inspection/clerk of the works, archeology, commissioning, construction auditing, and other services which may be performed by either licensed or non-licensed professionals are considered to be "Construction Related." Nonprofessional Services and shall be procured using procedures contained in this chapter except that price shall be considered in final selection.

6.2.3 Design Assist

Design Assist is not permitted because it violates Code of Virginia requirements for Participation in Bid Preparation (§2.2-4373) and is also contrary to the requirement for competition in the Virginia Public Procurement Act (Code of Virginia §§ 2.2-4300 through 2.2-4377). The designer of record shall be solely responsible for providing a complete design.

SECTION 6.3 PROJECT SCOPE OF WORK

6.3.1 Scope of work

Once the University determines the need for professional services, a scope of work will be prepared to identify or outline the services required, to identify the criteria, limitations and parameters for the services, and to describe the product(s) expected. The scope may range from very general to very specific and will usually reference this Manual, the University Design Guidelines, the University Technical Standards, the Budgeting Instructions, the VUSBC and/or other standards for the specific related requirements.

6.3.2 Project Initiation

Architectural or Engineering Planning for or construction of, or acquisition of any project shall not commence without an approved PIP (and, if applicable, HECO-2 / PRF / MR).

SECTION 6.4 ADVERTISEMENTS FOR PROFESSIONAL SERVICES

6.4.1 Public Notice

Public notice of the request for Letters of Interest shall be given at least 21 days prior to the date set for receipt of proposals. When requested and justified by the University PM in writing, the University Architect may approve a reduction in the number of days' notice required to a number not less than 10 days.

6.4.1.1 Methods of Public Notice

Public notice of any request for Letters of Interest shall be given by the following methods:

- By publication of a notice on the On-Line Bids page of the eVA electronic procurement website.
- If deemed necessary by the University Architect, by publication in a newspaper of general circulation in the general area of the project.

6.4.1.2 Minimum Information

The public notice will show the name, address, phone number and fax number of the issuing office. Provide in the notice/advertisement the following information as a minimum:

- Name and address of the Agency
- Project number, if available
- Title of the project
- Scope of services
- Proposed Design-not-to-exceed construction budget
- A brief description of the project
- Criteria for evaluation and selection of the A/E
- Submittal of AE-1 to AE-6, AE Firm Data Forms required
- Last date for submitting a response
- (For Term A/E Contracts), provision to extend the contract for four one-year options at the sole discretion of the agency
- (For Term A/E Contracts), provision to allow use of the contract for service orders by other state agencies at the sole discretion of the issuing agency

SECTION 6.5 REQUESTS FOR PROPOSAL

6.5.1 The RFP

A Request for Proposals will be provided to the A/E's short-listed from review of the Letters of Interest.

6.5.1.1 RFP Content

The RFP will indicate in general terms the nature of the project and the architectural and/or engineering services which are sought, show the factors which will be used in evaluating the responses, incorporate by reference the Manual, Design Guidelines, Technical Standards, contractual terms and conditions, and set forth specifically any additional contractual terms and conditions. The RFP will state any unique capabilities or qualifications which will be demanded of the A/E and will include an evaluation scoring matrix as outlined below. The matrix may not be changed without approval of the University Architect.

Firm's Experience with Projects of Similar Context, Size, Scope and Scale	25
Project Team's Key Personnel Experience, Qualifications and Certifications/Licenses	20
Firm's Past Performance Meeting Scope/Budget on Projects of Similar Context, Size, Scope and Scale	15
Specific Project Plan and Design Concept	20
Firm’s Approach to Value Engineering and Value Management	10
SWaM Participation	10
TOTAL POINTS	**100**

6.5.2 RFP Stipulated Negotiations

The RFP may specify the method to be utilized during negotiations in arriving at the fee amount for services; however, it will not call for proposers to furnish estimates of man-hours, labor rates, or cost for services with

their qualification proposals. If no method is specified, the respondents may propose methods for negotiating the fee amount.

6.5.3 Responses to RFPs

Each respondent shall submit current AE-1 to AE-6, AE Firm Data Forms, and other requested information in response to the RFP and include the data and qualifications of any A/Es to be associated with it on the project. Each respondent to the RFP agrees to provide all the architectural and/or engineering services with respect to the project that are set out in the Manual and the RFP. Responses which do not include the Forms and/or do not include the requested information, and data may be considered as Not Responsive to the RFP.

6.5.4 Confidential Trade Secrets or Proprietary Information

Confidential trade secrets or proprietary information from respondents will not be disclosed to the public or to the competitors provided such trade secrets or proprietary information is properly identified, as required by the University Procurement Rules, in the RFP response. The respondent shall not designate as trade secrets or proprietary information (i) an entire bid, proposal, or prequalification application; (ii) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (iii) line-item prices or total bid, proposal, or prequalification application prices.

The Owner may require respondents to identify its trade secrets or proprietary information by submitting a second complete set of response materials with all confidential trade secrets and proprietary information redacted. With the sole exception of the redactions, the second set must be exactly the same as the first.

SECTION 6.6 SMALL BUSINESSES AND BUSINESSES OWNED BY WOMEN AND MINORITIES (SWaM)

6.6.1 RFP SWaM Requirement

On proposals for Contracts with a fee, or accumulation of fees, expected to exceed $100,000, the A/E shall be required to submit with the RFP response, a report of past efforts to utilize the goods and services of such SWaM businesses and plans for involvement on the proposed contract.

6.6.1.1 Certification of Information

By submitting such information with their proposal, proposers certify that all information provided is true and accurate.

6.6.1.2 Failure to Submit Information

If a proposer fails to submit all information requested, the Owner may require prompt submission of missing information after the receipt of A/E proposals. Failure to provide information required by the RFP will ultimately result in rejection of the proposal as non-responsive.

6.6.2 Required Information

The following data is required on each small business, women- owned business and minority-owned business: (1) ownership, (2) utilization in the most recent twelve (12) months, and (3) planned involvement or services to be performed on the proposed project. The form for submission of this data is included on FPDC Forms website.

6.6.3 Monthly Reporting

On contracts for professional services which exceed $100,000 in total gross fees, the A/E is required to submit reports with each pay application on the involvement of SWaM businesses in the work or in support of the work on this contract.

SECTION 6.7 SWaM PROCUREMENT PLAN

6.7.1 University Plan

In accord with Executive Order 35 (2019), an annual SWaM Procurement Plan that specifies the University's plans and goals for SWaM procurement is required. W&M Supply Chain Services develops this plan with support from the Office of the University Architect

6.7.2 Audits

To ensure compliance with certification requirements of SWaM subcontracting plans, the contracting or certifying agency or institution shall contractually provide for appropriate auditing of vendors and contracts. Such audits shall include the right to make on-site audits at any time during the term of the applicable contract or certification.

SECTION 6.8 PROCEDURES FOR A/E SELECTION

6.8.1 Emergency Procurement

In the event of an emergency, selection may be made without regard to use of these procedures, but a D&F signed by the CBO and University Architect explaining the circumstances shall be placed in the file. A HECO-3 shall be used for the Contract.

6.8.2 Streamlined Procedure

For a project with a fee of $100,000 or less the University PM may use one of the following procedures.

6.8.2.1 Projects with Expected Fees Less Than $25,000

For projects with expected fees less than $25,000 not being procured through the process outlined by section 6.9.6 of this document (Term A/E Project Orders) the University PM will:

1) Select a firm or professional based on market research and/or trade experience with projects of similar scope that appears to be qualified to render the required services.
2) Conduct a telephone or personal interview with the firm to determine current workload and capability to meet the proposed schedule, and to determine personnel qualifications, expertise and past performance on similar projects.

3) Negotiate a fee for services. As part of negotiation with the selected firm, the A/E will fill out Forms AE-1 to AE-6, AE Firm Data.
4) Complete a HECO-2.1a and obtain required approvals (University Architect and VCCO).
5) The award will be made using a HECO-3.
6) Post a Notice of Award on eVA.

6.8.2.2 Projects with Expected Fees up to $100,000

For all projects with expected fees between $25,000 and $100,000, not being procured through the process outlined by section 6.9.6 of this document (Term A/E Project Orders), the University PM will:

1) Identify 3 firms or professionals which have expressed an interest in doing Work for the University, and based on market research and/or trade experience with projects of similar scope appear to be qualified to render the required services
2) Rank the 3 firms and obtain written approval of the University Architect.
3) Conduct telephone or personal interviews with the number one ranked firm to determine current workload and capability to meet proposed schedule and to determine personal qualifications, expertise and past performance on similar projects.
4) Negotiate a fee for service with the number one ranked firm. As part of negotiation with the selected firm, the A/E will fill out Forms AE-1 to AE-6, AE Firm Data if they do not have one on file with the university.
5) Complete a HECO-2.1b and obtain required approvals (University Architect and VCCO).
6) The award will be made using a HECO-3.
7) Post a Notice of Award on eVA.
8) Change Orders up to a total Contract amount of $100,000 are allowed. Any Change Orders where the total Contract amount exceeds $100,000 require a D&F signed by the CBO and University Architect.

6.8.3 Formal Procedure

For all projects with anticipated A/E fees over $100,000, a formal selection process as outlined below shall be followed.

6.8.3.1 Two evaluation panels and a negotiating team are used in the formal A/E selection procedure. These panels include a Screening Panel, an Interview Panel, and the Negotiating Team.

- The Screening Panel shall consist of at least three members from the University, including a licensed design professional from the University. The screening panel typically consists of the University Architect or their designee, Director of Design & Construction, and user representatives to evaluate Letters of Interest submittals and select a short list of qualified design professionals or firms.
- The Interview Panel, which consists of the screening panel plus additional members of the Building Committee, shall conduct interviews with short-listed firms and make the final selection of the design professional or firm.
- The Negotiating team, which consists of the Director of Design & Construction, the University PM, and the VCCO, shall negotiate design fees related to the project.

6.8.3.2 Process for Formal A/E Selection

1) The University PM will prepare an advertisement requesting that interested firms submit a letter of interest and statement of qualifications utilizing the AE-1 to AE-6, AE Firm Data Forms.
2) The VCCO will publish the advertisement of the project as outlined above.
3) The VCCO will verify that all A/E's are properly licensed to offer services in Virginia.
4) The University PM will convene the screening panel to select a short list of qualified firms
5) The Screening Panel will recommend the top 3-5 firms for interviews.
6) The University Architect will approve the short list of firms.
7) The University PM will draft an RFP for issuance to only short-listed firms as outlined above.
8) The University PM will convene the interview panel to interview short-listed firms.
9) The Interview Panel will:
    a. Interview the top-ranked, short-listed firms who are deemed to be fully qualified, responsible, and suitable based on their initial responses and their response to the detailed RFP.
    b. Solicit more detailed information, where applicable, on the above criteria as well as specific information as to the personnel proposed to be assigned to the project and their individual qualifications; the concepts, methods and approaches proposed for the design; and other pertinent information.
    c. Evaluate each interviewed firm and rank order as best suited for the project.
    d. Determine, in writing, the top three firms, and rank them in order of preference.
    e. Proprietary information from respondents shall not be disclosed to the public or to competitors provided such information is appropriately noted in the RFP response.
10) Upon completion of the selection, the University PM will prepare a memorandum outlining the results of the selection process, and the VCCO will notify the selected firm and the non-selected firms concurrently.
11) The University's Negotiating Team shall negotiate with the Architectural/Engineering firm ranked first as to overall suitability and qualifications.
    a. Negotiations should proceed to establish a fee amount for the scope of the project.
    b. The fee shall include all work necessary to provide the required basic services and any other services requested by the University.
    c. If the parties cannot reach agreement on a fee amount, the negotiations shall be formally terminated in writing. The University may then proceed to negotiate with the Architectural/Engineering firm ranked second. If not successful, the third, etc.
    d. It is understood that negotiations may be terminated, and the project re- advertised.
12) Once the fee negotiations are complete, the VCCO will record the terms of the agreement in a written MOU and incorporate it in the HECO-3 contract form, which shall be signed by the University and the A/E.
13) VCCO will "Post" a Notice of Award after the contract has been awarded.

SECTION 6.9 TERM A/E CONTRACTS

6.9.1 General

A/E Term Contracts are a useful and effective tool for the Agency in managing their planning, maintenance, and renovation programs and quickly handling emergency procurement of professional services. Term Contracts shall include the terms and conditions and pricing for work which may be issued during the term of the contract.

6.9.2 Applicability

Term Contracts for A/E services may be used for engaging one or more A/E firms to provide investigations, cost estimates, designs, and related services for multiple small projects for a period of time subject to the limitations below. The projects must require similar expertise.

6.9.3 Term Contracts Not Exclusive

The Term Contract is not exclusive. An agency may issue separate RFPs for similar work and other projects as the need may occur.

6.9.4 Multiple Contract Awards from a Solicitation

The Owner may issue Term A/E Contracts to multiple fully qualified and best suited firms interviewed from a particular A/E Term Contract RFP advertisement and selection process. Where multiple awards are made, the University will distribute Project Orders among the Term A/E firms during the contract term.

- Selection of a firm or professional will be based on experience with projects of similar scope that appears to be qualified to render the required services.
- The firm's current workload and ability to meet the proposed schedule will be taken into consideration when selecting a Term A/E for a project order.
- Although the potential exists for multiple Project Orders during the Contract Term, the Owner does not represent or guarantee that the A/E will receive any Project Orders.

6.9.5 Contract Limit

No A/E, including any subdivisions or branches thereof, may at any time have in effect more than one (1) A/E Term Contract with the University.

6.9.6 Contract Term

Term Contracts shall be limited to one year, or when the cumulative total project fees reach the maximum cost authorized, whichever occurs first. Such contracts may be renewable for four additional one-year terms at the option of the Owner. The sum of all projects performed in a one-year term shall not exceed $10 million. When the aggregate total of all Project Orders, including change orders to those Project Orders, reaches the term dollar limit, no further Project Orders may be issued during that term. It is understood that the A/E's work under the Project Orders issued may not be completed during the contract's term; however, all terms and conditions of the contract, including all rights and obligations, shall survive until the work is completed, except the Owner's right to issue, and the A/E's right to accept, additional Project Orders. The Owner and the A/E are obligated to fulfill the requirements of all Project Orders issued, including change orders, even though the term for issuing new Project Orders has concluded.

The Owner may, at its sole discretion, renew the contract for up to four additional one-year Contract Terms, provided the option to renew was indicated in the RFP. If the Owner exercises its option to renew, the next Contract Term shall begin one year from the date of the first Contract Term. A new aggregate limit of $10 million shall apply to the second Contract Term, without regard to the dollar amounts of Project Orders issued during the first year of the contract. Any unused amounts from the first Contract Term shall carry forward to the next Contract Term. Subsequent renewals shall follow the same procedures.

In general, in renewable Contract Term years, Project Orders will first be charged to unused amounts carried forward from a prior Contract Term. The Owner, however, reserves the sole discretion as to whether to charge

Project Orders against unused amounts carried forward or to the dollar limit allocated for a renewable Contract Term; i.e., the $10 million allocated to each renewable term.

6.9.7 Procedures for Selection of an A/E for Award of Term Contract

The following procedures shall be used for selection of design professionals for award of Term Contracts:

1) The procurement staff will draft an RFP which includes the information outlined in the RFP Content section above.
2) The procurement staff will advertise the Term Contract RFP as outlined in the Public Notice section above.
3) The procurement staff will verify that all A/E's are properly licensed to offer services in Virginia.
4) The interview panel, comprised of the University Architect, Director of Design & Construction and other Business Affairs or VIMS FM staff (a minimum of 3 panel members) will receive, evaluate, and rank the respondents.
5) The interview panel will conduct interviews with two or more offerors deemed fully qualified, responsible and suitable. Repetitive informal interviews are permissible. The panel will rank the respondents.
6) The University's Negotiating Team shall negotiate with the Architectural/Engineering firm ranked first as to overall suitability and qualifications and agree upon the special terms and conditions, if any, and the hourly rates which pertain to the contract. Note that the fee negotiations are fixed; the rates negotiated for the original term will remain fixed for all subsequent Term Contract renewals.
7) If the negotiations are successful, the University will award a Term Contract. If negotiations, including hourly rates and other terms and conditions are not successful, the negotiations shall be terminated in writing, and the University shall conduct negotiations with subsequently ranked offerors.
8) The negotiating team may negotiate with additional firms as needed to reach the desired number of firms.
9) Once the fee negotiations are complete, the VCCO will record the terms of the agreement in a written MOU and incorporate it in the HECO-3.1 contract form, which shall be signed by the University and the A/E. The VCCO will also post a notice of award on eVA
10) The HECO-3a terms and conditions shall be made as part of all contracts for A/E services.

6.9.8 Project Orders

Specific work under a Term Contract will be authorized by Project Order using HECO form 3.1a. As an alternative for Project Orders below the streamlined procedure thresholds in section 6.8, the award may be made using a HECO-3.1a referencing the Term Contract. A Project Order shall not exceed $2,500,000. This threshold may not be exceeded without approval of the University Architect.

The following process outlines creation of a Project Order:

1) The University PM will identify, and the University Architect will approve a specific term A/E for an identified project, in writing
2) The University PM will request a fee proposal from the selected term A/E. This request will include scope, schedule, and budget information for the A/E firm's information.
3) Upon receipt of the A/E's fee proposal, the University PM will negotiate individually on a lump sum basis considering the scope of services required, the estimated man- hours required for each skill level/discipline and the labor rates agreed upon and listed in the MOU attached to the Term Contract.

If the time required to perform the work cannot be reasonably estimated, the A/E may be directed to proceed with the work on an hourly basis with a maximum or not-to-exceed amount. The compensation shall be determined by the A/E's certified record of man-hours expended by classification, skill level and discipline, and the hourly rates for each as listed in the MOU.

4) Once the fee negotiations are complete, the VCCO will record the terms of the agreement and incorporate it in the HECO-3.1a Project Order which shall be signed by the University and the A/E.

SECTION 6.10 TERM PROJECT MANAGEMENT CONTRACTS

6.10.1 Non-Professional Services

The University may also award contracts to service firms for Construction Administration/Project Administration related services. Such services shall be procured using non-professional services procedures as provided in the University Procurement Rules. These services may include (but shall not be limited to) claim analysis, constructability reviews, cost estimates and construction management/administration services.

SECTION 6.11 CONTRACT FORMS TO BE USED

6.11.1 Standard Forms

The Standard Forms of Contract for Architect and Engineer Services, HECO-3, 3.1, 3.1a, and 3.2, shall be used for A/E Contracts following the formal procedures.

6.11.2 Form Modification

Other than filling in the appropriate data and information, these contract forms shall not be modified without the approval of the University Architect.

6.11.3 Memorandum of Understanding (MOU)

Any details of the fee negotiations, the scope of work, the A/E schedule, and other items agreed to in the negotiations shall be detailed in the Memorandum of Understanding (MOU).

SECTION 6.12 GENERAL TERMS AND CONDITIONS FOR PROFESSIONAL SERVICES

6.12.1 General Terms and Conditions

The General Terms and Conditions for Professional Services Contracts are discussed in chapter 5 of this manual. They shall be made a part of all contracts for professional services and shall not be modified without the approval of the University Architect.

6.12.2 Additional Terms and Conditions

Clauses supplementing the General Terms and Conditions are included in chapter 5 and may be incorporated into A/E contracts as needed.