

## BUSINESS AND NONINSTRUCTIONAL OPERATIONS

A. Generally1. Definition of Competitive Negotiations

Competitive negotiation is a method of source selection which involves individual discussions between the school board and the offeror on the basis of responses to the school board's request for proposals. The source selection method of competitive negotiation incorporates Code of Va., 11-42, 11-43, 11-46, 11-49, 11-50, 11-51, 11-52 and 11-55, in addition to the provisions outlined in this policy.

2. Condition for Use

Upon a determination by the purchasing authority in writing that competitive sealed bidding is either not practicable or not advantageous to the school board, goods, services, insurance or construction may be procured by competitive negotiation. The writing shall document the basis for this determination.

3. Request for Proposals

Request for proposals shall be in writing and indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating 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.

4. Public Notice

At least ten (10) days prior to the date set for receipt of proposals, public notice shall be given by posting in a public area or by publication in a newspaper of general circulation in the area in which the contract is to be performed, or both. In addition, proposals may be solicited directly from potential contractors.

5. Selection

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposals, including price, if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the purchasing authority shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the purchasing authority determine in writing and in its sole discretion that only one

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offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

#### B. Contracting for Professional Services by Competitive Negotiation

##### 1. Generally

Professional services (accounting, architecture, land surveying, landscape architecture, law, medicine, optometry or professional engineering) shall be procured by competitive negotiation.

##### 2. Discussion and Award

The purchasing authority shall engage in individual discussions with all offerors deemed fully qualified, responsible and suitable on basis of initial responses and with emphasis on professional competence to provide the required services. Repetitive informal interviews shall be permissible.

Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project as well as alternative concepts. These discussions may encompass non-binding estimates of total project costs, including where appropriate, design, construction and life cycle costs. Methods to be utilized in arriving at price for services may all be discussed. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined herein, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the purchasing authority shall select in the order of preference two or more offerors whose professional qualifications and proposed service are deemed most meritorious. Negotiations shall then be conducted beginning with the offeror ranked first. If a contract satisfactory and advantageous to the school board can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the purchasing authority determine in writing and in his sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

#### Legal Reference:

Code of Va., § 11-37. Definitions.--"The words defined in this section shall have the

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meanings set forth below throughout this chapter. . . .

'Competitive negotiation' is a method of contractor selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating 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.
  
2. Public notice of the Request for Proposal at least ten (10) days prior to the date set for receipt of proposals by posting in a public area normally used for posting of public notices and by publication in a newspaper or newspapers of general circulation in the area in which the contract is to be performed, so as to provide reasonable notice to the maximum number of offerors that can be reasonably anticipated to submit proposals in response to the particular request. In addition, proposals may be solicited directly from potential contractors.
  
3. a. Procurement of professional services. The public body shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this subdivision on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the public body shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror. . . .

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b. Procurement of other than professional services. Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the public body determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

'Professional services' means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, medicine, optometry, pharmacy or professional engineering  
 "Nonprofessional services" means any services not specifically identified as professional services in the definition of professional services. . . ." (1991)

Code of Va., § 11-41. Methods of procurement.--"A. All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this section, unless otherwise authorized by law.

B. Professional services shall be procured by competitive negotiation.

C. 1. Upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Upon a written determination made in advance by (i) the Governor or his designee in the case of a procurement by the Commonwealth or by a department, agency or institution thereof or (ii) the local governing body in the case of a procurement by a political subdivision of the Commonwealth, that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in subdivision 3b of the definition of 'competitive negotiation' in § 11-37. The basis for this determination shall be documented in writing.

2. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing

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shall document the basis for this determination:

(i) By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 11-41.2;

(ii) By any public body for the alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$500,000;

(iii) By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or

(iv) As otherwise provided in § 11-41.2:1

D. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

E. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

F. A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts not expected to exceed \$30,000; however, such small purchase procedures shall provide for competition wherever practicable.

G. Any local school board may authorize any of its public schools or its school division to enter into contracts providing that caps and gowns, photographs, class rings, yearbooks and graduation announcements will be available for purchase or rental by

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students, parents, faculty or other persons using nonpublic money through the use of competitive negotiation as provided in this chapter, competitive sealed bidding not necessarily being required for such contracts. The Superintendent of Public Instruction may provide assistance to public school systems regarding this chapter and other related laws.

H. Upon a determination made in advance by the local governing body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public, such items may be purchased at the auction. The writing shall document the basis for this determination." (1996)

Editor's Note See also legal references to policy # 4-29 Emergency/Small/Sole Source Purchases.

For competitive sealed bidding/awards see policy # 4-32.

\*For an interpretation of Subsection C see Attorney General's opinion September 30, 1987.

Adopted by School Board: August 2, 1983

Revised by School Board: September 3, 1985