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# CONSTRUCTION & PROFESSIONAL SERVICES MANUAL – 2004

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## CHAPTER 4: PROCUREMENT PROCEDURES FOR PROFESSIONAL SERVICES

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### SECTION 412.0 A/E TERM CONTRACTS (*Code of Virginia, §2.2-4301, Competitive Negotiations, 3.a*)

A/E Term Contracts are a useful and effective tool for the Agency in effectively managing their planning, maintenance, and renovation programs and effectively handling emergency situations. The following policy governs the use of these contracts.

**412.1 Applicability:** Term Contract Procurement of A/E services may be used for engaging an A/E to provide investigations, cost estimates, designs, and related services for multiple small projects over a one-year period of time subject to the limitations below.

*Some advantages for the agency include a reduction in the cost and time of advertising for services, a shorter response time from the A/E, and an improved efficiency and clarity in the production of the Contract Documents for the Agency. For the A/E, it is usually more cost effective to provide the services on multiple small projects for the same agency. Feasibility studies, cost studies, designs of small capital and/or construction project (project costs less than \$1,000,000) and maintenance reserve project designs are examples of Term A/E Contract types of projects.*

**A/E design services for all construction and/or renovation projects with an estimated total project cost of \$1,000,000 or more shall be advertised and procured individually.**

**412.2 Advertisement:** Since there is a potential for the maximum total of fees to exceed \$100,000, the advertisement, disadvantaged business utilization, selection and posting of notices procedures in Sections 404.0 through 406.0 herein apply. Publication of the notice/advertisement of the RFP shall be on the On-Line Bids page of eVA, Virginia's central electronic procurement website. The URL is <http://vbo.dgs.state.va.us>. Publish the Notice in a newspaper of general circulation statewide and/or in the general area of the project.

**412.3 RFP:** The RFP shall include a description of the nature / types of the potential projects, the disciplines / expertise required by this Term A/E Contract, and the nature of services expected to be required. The RFP shall also describe factors pertinent to the evaluation and selection process.

**412.4 Rights to Issue RFPs and Project Orders :** The Agency reserves the right, at its sole discretion, to issue separate RFPs for similar work and other projects as the need may occur. The Agency reserves the right to issue a Project Order under the provisions of this contract to have the A/E provide the type of services described to any branch or subsidiary of the Agency or to another state agency in the same general area.

**412.5 Multiple Contract Awards from a Solicitation:** An Agency may issue Term A/E Contracts to not more than four (4) of the fully qualified and best suited firms interviewed from a particular A/E Term Contract RFP advertisement / selection process

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- 412.6 Contract Award Period:** The Agency shall have a period of 120 days from the closing date of the RFP solicitation in which to complete selection process and award a Term A/E Contract including the first Project Order to each of the A/E's selected for award of a Term A/E Contract.
- 412.7 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 any one (1) Agency including any subdivisions or branches thereof.
- 412.8 Fees:** The fee for the services on each Project Order shall be negotiated individually on a lump sum basis considering the Scope of Services required, the estimated manhours required for each skill level/discipline and the labor rates agreed upon and listed in the MOU. If an estimate of 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 / fee shall be determined by the A/E's **certified record** of manhours expended by classification / skill level / discipline and the hourly rates for each as listed in the MOU.

Any individual Project Order fee shall not exceed \$100,000 and the aggregate total of fees for all Project Orders issued during the term of the Term A/E Contract shall not exceed \$500,000 unless a higher limit is approved in writing for that agency by the Director, Department of General Services. Agencies may specify lesser fees in the RFP than above if desired.

The Memorandum of Understanding prepared by the Agency will document the negotiated acceptable labor rates for the various A/E classifications/disciplines/skill levels. These rates will be used by the Agency in arriving at lump sum fees and any hourly rate work that is authorized by the Agency for Project Orders issued under the Term Contract resulting from this solicitation.

If a Project Order is to be performed on a lump sum basis, the Agency shall determine a lump sum based on the Scope of Service required, the estimated manhours required for each classification/discipline/skill level, and the labor rates agreed upon during the contract negotiations.

- 412.9 Contract Term:** The term of the A/E Term Contract as relates to the issuance of new Project Orders shall be the earlier of one year from the date of the A/E Term Contract or when the cumulative total of fees for Project Orders issued reaches the maximum fee total or if the Contract is terminated in writing by either party. This one-year period shall be referred to as the Term.

If a Project Order is issued during the Term which, in the aggregate total of it, all previously issued Project Orders and any Change Orders to the previous Project Orders, reaches the term dollar limit, then 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

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Contract Term; however, all terms and conditions of this Contract, including all rights and obligations, shall survive until the Work is completed, except the owners 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, including change orders thereto, issued even though the term for issuing new project orders has concluded.

The Owner may, at its sole discretion, renew the Contract for an additional one-year Contract Term 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 execution of this Contract, or previous renewal, or the date that the Owner notifies the A/E that the option to renew is being exercised, whichever occurs first. A new aggregate limit of \$500,000 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 are forfeited and shall not carry forward to the next Contract Term. Subsequent renewals up to a maximum of four (4) one year renewals shall follow the same procedures. The maximum number of renewals is stated in **§2.2-4301, *Competitive Negotiations***.

**412.10 Project Orders :** The first Project Order will be issued at the same time as the execution of the A/E Term Contract. It will authorize the A/E to perform the Work for a lump sum amount or at the marked up hourly rates agreed to and set forth in the MOU attached to the A/E Term Contract. A Form E&B CO-3.1a shall be used to award each Project Order.

It is understood that more than one Project Order may, at the owner's sole discretion, be offered to the A/E during the Contract Term. Although the potential exists for multiple project orders during the Contract Term with aggregate fees up to \$500,000, the Agency does not represent or guarantee that the A/E will receive more than one Project Order.

The Project Order offered to the Term A/E Contractor should include a scope of work, a definition of the product required and a request for a fee proposal. If the A/E and the Owner cannot agree on the scope of work and/or the fee for a Project Order offered to the A/E, the Owner shall terminate negotiations with the A/E on that Project Order and pursue obtaining the services from other A/E's using proper procurement procedures. The Agency shall not offer the Project Order, nor request a fee proposal from a second A/E until negotiations have been terminated in writing with the Term A/E Contractor first offered that Project Order.

**412.11 *Procedures for Selection of the Architect or Engineer for a Term A/E Contract:***

**412.11.1 *Draft a Request For Proposal (RFP).***

**412.11.2 *Advertise: Same as Category C***

**412.11.3 *Receive, evaluate, and rank the respondents .***

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**412.11.4 License:** *Verify that all A/E's are properly licensed to offer services in Virginia.*

**412.11.5 Interview:** *The Building Committee will conduct interviews with a minimum of the top three ranked A/Es. If Term A/E Contracts are advertised to be awarded to more than one (1) A/E under this solicitation, the Agency shall, in addition to the three (3) minimum, include two (2) more interviewees for each Term A/E Contract the Agency intends to award. (e.g. 1 contract = 3 interviewees, 3 contracts = 3+2+2= 7 interviewees.*

**412.11.6 Selection:** *Rank order the interviewees and select the A/E to be awarded a contract.*

**412.11.7 Negotiation:** *Negotiate and agree upon the special terms and conditions, if any, and the hourly rates which pertain to the Contract and document same in the MOU. The Agency shall then offer a Project Order to the selected A/E and request a fee proposal for the work. Negotiate the fee for the services on the project.*

**412.11.8 Award:** *If the negotiations are successful, the Agency will award a Contract to the selected firm. If negotiations, including hourly rates and other terms and conditions set forth in the MOU to the Term A/E Contract, are not successful, the negotiations shall be formally terminated (in writing) and the contract and the project offered the next firm for negotiation and possible Award of the Contract as described in §2.2-4301, Competitive Negotiation of the Code of Virginia, as amended. The Agency shall issue one Project Order as the basis for execution of the Term A/E Contract. The Agency shall not award a Term A/E Contract to the A/E until such contract can be accompanied by the first Project Order.*

**412.11.9 Documentation:** *Issue a Purchase Order in eVA referencing to the Contract CO-3.2. Send a copy of the Contract Form CO-3.1, the MOU and the initial Project Order Form CO-3.1A to DEB. Also post a Notice of Award.*

**412.11.10 Subsequent Project Orders:** *The Agency may offer additional project orders of a similar nature to the A/E in accordance with the Contract and the MOU and, upon successful negotiation of a fee for the services, include the project order services in the A/E's Contract.*

**412.11.11 Notice:** *Post / publish the notice on the On-Line Bids page of eVA, Virginia's central electronic procurement website. The URL is <http://vbo.dgs.state.va.us>.*

### SECTION 413.0 CONTRACT FORMS TO BE USED

The Standard Forms of Contract for Architect and Engineer Services, GS Forms E&B CO-3, 3.1, 3.1A, and 3.2 shall be used for A/E Contracts. Copies of these forms are on the Forms Center.

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- (e) *Award a contract and post notice of same. Post / publish the notice on the On-Line Bids page of eVA, Virginia's central electronic procurement website. The URL is <http://vbo.dgs.state.va.us>.*
- (f) *Use Contract Form CO-3.2, and forward a copy of the signed contract to DEB.*
- (g) *Issue a Purchase Order in eVA referencing to the Contract CO-3.2*

**410.2** *If the total fee including reimbursable expenses will be less than \$5,000.00, this 'small purchase' process will allow the VCCO to select and call only one qualified A/E from the list of firms that have expressed interest. Repeated selection of the same A/E firm for these 'small purchases' violates the intent of these procedures.*

- (a) *Consideration should be given to number and value of previous agency and state contracts awarded to each firm. Agencies should consider the opportunity to maximize the participation of qualified Virginia firms interested in doing such work for the Commonwealth including Small Businesses, Minority Owned Businesses, and Women Owned Businesses. Agencies should avoid favoritism or the appearance of favoritism.*
- (b) *Rank order A/Es and negotiate fee for service using competitive negotiation procedures.*
- (c) *Award a contract and post notice of same. Post / publish the notice on the On-Line Bids page of eVA, Virginia's central electronic procurement website. The URL is <http://vbo.dgs.state.va.us>.*
- (d) *Use Contract Form CO-3.2, and forward a copy of the signed contract to DEB.*
- (e) *Issue a Purchase Order in eVA referencing to the Contract CO-3.2*

### **SECTION 411.0 PROCEDURES FOR CATEGORY C (Code of Virginia, § 2.2-4301, "Competitive Negotiation, 3.a and 4303.B,) Standard Professional Services Procurement Procedures**

For a project with a fee amount which is expected to be greater than \$30,000, and for smaller fees if desired, the Committee shall use a qualifications, suitability, and capability based selection process followed by competitive fee versus scope of work negotiations with the selected offeror.

#### **411.1 Draft a Request For Proposal (RFP).**

**411.2 Advertise:** *Post a notice on the On-Line Bids page of eVA, Virginia's central electronic procurement website. The URL is <http://vbo.dgs.state.va.us>. Post the advertisement in a public area normally used for posting public notices. Post / publish the Notice in a newspaper of general circulation statewide and/or in the general area of the project.*