

## **VOLUME 3, PART I**

### **CHAPTER 2**

#### **CONSULTANT SELECTION**

##### **INTRODUCTION**

The selection of design professionals is subject to University policy and guidelines. State law requires design professionals and other consultants to be selected based on the procedures in the Public Contract Code as implemented by University policy.

##### **2.1 UNIVERSITY POLICY ON EQUAL OPPORTUNITY IN UNIVERSITY BUSINESS CONTRACTING**

###### **References:**

- **University policy: "Policy To Ensure Equal Opportunity in University Business Contracting" (see [FM1:5.1](#)).**

Effective January 1, 1996, the Regents passed a policy that eliminated using race, religion, sex, color, ethnicity, and national origin as criteria in its business contracting practices. The University's equal opportunity policy states in part:

“It is the policy of The Regents of the University of California that race, religion, sex, color, ethnicity, and national origin will not be used as criteria in its business contracting practices.... Every effort will be made to ensure that all persons, regardless of race, religion, sex, color, ethnicity, and national origin have equal access to contracts and other business opportunities with the University.” (see [FM1:5.1](#)).

###### **2.1.1 Compliance with State and Federal Law or Regulation**

Under the terms of certain design and construction work done in conjunction with federal or state funds, the University may be required to take action regarding awards to disadvantaged and/or women-owned business enterprises.

Where required as a condition of federal or state funded contracts or grants, the University will continue to set goals and timetables for small (SBE), disadvantaged (DBE), women-owned (WBE), and disabled veteran (DVBE) business enterprises; maintain statistics on utilization of such businesses; and will require self-certification. In addition, the University will continue to use outreach programs to assure equality of opportunity.

The definitions for SBE, DBE, WBE, and DVBEs may be found in the Administrative Guidelines to Ensure Equal Opportunity in University Business Contracting (see [RD6.5](#)).

###### **2.1.2 Certification**

For purposes of statistical reporting, the University will require self-certification by businesses as to their status as SBE, DBE, WBE, or DVBE.

### **2.1.3 Statistical Records**

As a federal contractor, the University is periodically required to produce statistics on its use of SBE, DBE, WBE, and DVBEs. Each Facility should maintain records containing, at a minimum:

- Total dollars expended to all businesses.
- Dollars expended, by category, to SBE, DBE, WBE, and DVBE firms.
- Dollar expenditure expressed as a percentage of the total for each business category.

The above annual statistical information shall be submitted to the Office of the President not later than August 15 each year in the following form:

- Total annual expenditure, by contracting category, for purchasing, construction and design professionals.
- The separate dollar expenditure in each contracting category for small, disadvantaged, women-owned, and disabled veteran business enterprises.

### **2.1.4 Outreach**

Each Facility must use a broad range of outreach activities designed to improve the University's access to qualified small businesses, including SBE, DBE, WBE, and DVBEs (referred to collectively as S/D/W/DVBEs) and to build goodwill in the community toward the University's design and construction programs. Existing outreach programs should be continued, and new ones designed as needed to suite local campus needs. Such activities could include, for example:

1. Publishing a brochure or other instructional material designed to convey information to all small businesses about the University's contracting programs; the material should contain a directory of key personnel and information on how to access the University's design and construction projects.
2. Participating in trade fairs for the purpose of enabling small business to demonstrate their abilities.
3. Attending trade fairs and business opportunity events presented by others for the purpose of meeting new small businesses, including S/D/W/DVBEs, and discussing common problems and solutions with other organization's design professional staffs.
4. Presenting seminars for groups of small businesses, including S/D/W/DVBEs for the purpose of instructing them on how to do business with the University.
5. Meeting small business consultants on an individual basis to understand their capabilities and qualifications.
6. Visiting small business locations for the purpose of inspecting their facilities, understanding their capabilities and prequalifying them as University design professionals.
7. Participating in local organizations that support small businesses, including groups oriented toward S/D/W/DVBEs.

Each University location must designate a coordinator knowledgeable in its facilities design programs who will be responsible for:

1. Informing small businesses, including S/D/W/DVBEs, of appropriate design professional contracting procedures.
2. Referring small businesses, including S/D/W/DVBEs, to appropriate design professional staff.
3. Coordinating outreach activities.

4. Maintaining statistical records.

## **2.2 PROCEDURES FOR CONSULTANT SELECTION**

### **References:**

- **University policy: "Capital Improvement Program Management", revised November 1, 1993 (see [FM1:5.1](#)).**
- **Public Contract Code 10510.4 – 10510.9, “Contracts with Private Architects, Engineering, Environmental, Land Surveying and Construction Project Management Firms”**

University policy on the use of design professionals states in part:

“University policy is to have design work for major capital improvement projects performed by design professionals unless an exception to have the work performed by Facility personnel is specifically approved by the Chancellor or Vice President Agriculture and Natural Resources.

“Design of all other projects, including minor capital improvement projects, may be performed by Facility personnel, design professionals, or Facility personnel supplemented by consultants.

“The Lawrence laboratories, because of laboratory requirements, may perform any design work with laboratory personnel.” (see [FM1:5.1](#)).

The Public Contract Code mandates certain procedures, described in more detail in this section, covering the selection of, and contracting with, consultants, including design professionals. The following procedures for the selection of consultants apply to all capital improvement projects on University property including renovation projects and projects on inclusionary property in which the University is involved in the selection of the consultant. The selection process for consultants varies with anticipated consultant contract sum. (see [RD1.1](#), Consultant Selection Process).

### **2.2.1 Advertising**

A Facility may advertise for consultants for any project, regardless of project cost. However, advertising is mandatory for any consultant contract with a sum of fees plus reimbursables reasonably anticipated to be over \$100,000, and for those contracts with the sum estimated to be below that threshold if the type of project or the type of services required were not identified in the annual announcement (see [RD1.1](#)).

If a Facility advertises, include the following language in the advertisement to convey the University's policy to ensure equal opportunity in University contracting: "Every effort will be made to ensure that all persons, regardless of race, religion, sex, color, ethnicity and national origin have equal access to contracts and other business opportunities with the University."

To expedite the design process, once a capital improvement project has been included in the budget, even if prior to project approval, a Facility may advertise for design professionals. The advertisement should refer to a proposed project and state that final selection and appointment is contingent upon project approval.

Advertisements must be placed in:

1. The State Contracts Register, <https://www.cscr.dgs.ca.gov/cscr/> **AND**
2. The electronic publication of the applicable professional societies and organizations, subject to the requirements of this section 2.2.1.

Advertisements must be published at least two weeks prior to any deadline for the submittal of documents in response to such advertisements. If the consultant services can be performed by more than one type of covered consultant the publication must be in the electronic publication of each applicable society or organization. A list of such electronic publications will be maintained by the Office of the President (see [RD1.4](#), List of Electronic Publications). If the applicable professional society or organization does not maintain a statewide electronic publication, the Facility shall advertise on the Facility's website. If the Facility does not maintain a website for such purpose the advertisement shall be placed on the website maintained by Facilities Administration, Office of the President. In addition to the above requirements advertisements may be placed in other publications, including newspapers of general circulation.

The advertisement in the form of a "Request for Qualifications (RFQ)" must generally include:

1. The type of consultant service required.
2. The title and a brief description of the project.
3. The size of the project, as measured by gross square footage and estimated construction cost, if applicable.
4. The Facility name and the name and address of the person to contact for detailed submittal requirements.
5. The deadline (date and time) for receipt by Facility of detailed submittals.
6. A statement that each candidate firm will be required to show evidence of its equal employment opportunity policy.

### **2.2.2 Applicant Pool**

Each Facility must maintain an applicant pool (a current list) of consultants. The applicant pool will include all consultants that responded to the annual announcement and submitted any required statements of qualification and performance data. Once an Applicant Pool is established, it may be convenient to subdivide it by specialized experience, qualifications, and production capability. An opportunity for selection must generally be given to each of the applicants within the pool.

For a consulting contract with a sum reasonably anticipated to be under \$100,000, if the type of project and the type of services required were identified in the annual announcement, the responsible administrator may select a consultant from the Applicant Pool and from any other source the responsible administrator may wish to use. The Facility must preclude favoritism in the selection process and ensure compliance with the University Policy to Ensure Equal Opportunity in Business Contracting.

### **2.2.3 Screening Committee**

The Screening Committee may have one or more persons, including, if the consultant is a design professional, an appropriate staff design professional. All members of the Screening Committee must be familiar with either the technical requirements of the project or the level of professional competence that will be required of the consultant that is selected.

**Screening Process.** For consulting contracts with a sum reasonably anticipated to be over \$100,000, from those firms which responded to the RFQ following its advertisement, the Screening Committee must develop a list of a representative number of consultants who appear to be qualified to provide the services under consideration. The list must be submitted for approval to the responsible administrator.

#### **2.2.4 Selection Committee**

For a consulting contract with a sum reasonably anticipated to be over \$100,000, a Selection Committee must make the recommendations to the responsible administrator. The Selection Committee convened must have at least one member of the Screening Committee, and as many of the following interests, and in such numbers, as is deemed appropriate to the project under consideration: faculty, students, and Facility staff. Members must be selected for their expertise and knowledge of the project requirements.

**Selection Process.** The Selection Committee must notify the candidate firms on the approved list that they are being considered for selection, that they must respond, in writing, to the *Selection Criteria, Attachment A.* (see 2.3 below)

The Selection Committee must review each of the consultant's submitted materials and may request additional or more current information about a firm and its experience. The Selection Committee must review the qualifications of each consultant being considered on the basis of the Selection Criteria. The Selection Committee may add other consultants to the approved list with the concurrence of the Screening Committee. The Selection Committee shall conduct discussions with no less than three firms (provided that at least three firms submitted qualifications) regarding anticipated concepts, the relative utility of alternative methods of approach for furnishing the required services, and such other issues as may be appropriate. Interviews conducted with the consultants on the approved list normally satisfy the requirement for discussions. The discussions may be conducted in person or may consist of written submittals required of each such firm.

Based on the responsible administrator's instructions, the Selection Committee must present a recommended list from the firms with which it conducted discussions. The list will be in order of preference based upon criteria established and published by the Facility, and will include no less than three of the firms deemed to be the most highly qualified to provide the services required. If the ranked list includes less than three firms, or if less than three firms submitted qualifications, then the referral must be accompanied by documentation showing the efforts used to receive submissions from additional firms. The responsible administrator will review and approve the recommended list or return the list to the Selection Committee for further action.

#### **2.2.5 Conflict of Interest**

Participating as a member of a Screening or Selection Committee shall constitute "making or participating in the making of a decision." Requirements governing such decision-making and financial conflict of interest are found in the University's Conflict of Interest Code, and shall be observed when acquiring consultant services. Specifically prohibited are rebates, kickbacks, or other unlawful consideration. University employees having a relationship with a person or business entity seeking a contract under these provisions are prohibited from participating in the selection process.

## **2.2.6 Consultants for Multiple Phases of a Project**

When a Facility is selecting a consultant for a project and intends to issue an initial contract only for preliminary services e.g., programming and feasibility studies, and there is a possibility that this same consultant may be required to perform services for the entire project, the Facility must follow the selection process described in section 2.2 applicable to the total estimated value of the services. In addition, the Facility must comply with the notice requirements in 2.5 below.

## **2.2.7 Non-State-Resident Design Professionals**

### **References:**

**University policy: "Appointment of Architects for University Buildings" (see [FM1:5.1](#)).**

"University policy does not forbid hiring non-state-resident design professionals."

## **2.3 CONSULTANT QUALIFICATION PACKET**

Each Facility is responsible for developing its own consultant Qualification Packet (see [RD2.3](#)). The packet's forms must be designed to ensure that responses will provide sufficient information to allow an equitable assessment of the qualifications necessary for the services required. (see 2.2.4 above). The packet must, at a minimum, include the following:

***Selection Criteria (Attachment A).*** This is a list of the criteria a Facility uses to review the qualifications of a consultant. Each consultant that is a candidate firm on an approved Screening Committee list must respond to the criteria in writing.

***Statement of Qualifications (Attachment B).*** This form, to be completed by each consultant candidate firm, contains basic information about the firm wishing to do business with the University.

## **2.4 CONSULTANT INSURANCE REQUIREMENTS**

### **References:**

**Business and Finance Bulletin, No. [BUS-63](#), University of California, Office of the Senior Vice President Business and Finance, Oakland, CA, latest edition.**

Guidelines for minimum insurance requirements can be found in the latest edition of the Business and Finance Bulletin, BUS-63. Levels of insurance are established based on risk and exposure of loss to the University. Exceptions to the insurance limit requirements in BUS-63 may be developed by Facility Risk Managers, in conjunction with responsible Facility administrators, once risk has been identified and evaluated. In such situations, it may be determined that little or no risk is involved. Then limits may be lowered or the requirement eliminated. Conversely, it may be determined that additional risk is involved, in which case, the limits may be raised.

## **2.5 CONTRACT NEGOTIATIONS AND APPOINTMENTS**

After providing notification to the firm ranked first on the Selection Committee's list ranking the top candidate firms, the responsible administrator or designated Facility representative shall provide written instructions for the negotiations that are to follow. These instructions

shall provide the firm with necessary information that shall allow the negotiations to proceed in an orderly fashion. Negotiations shall begin within 14 days after the successful firm has been notified of its selection or upon receipt of the cost proposal. The consultant should be notified if additional time is necessary to begin negotiations. If the Facility estimates that it will be unable to commence negotiations within the required 14 days it must notify the consultant in the letter providing written instructions, referred to above.

Should the Facility be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, at a price the Facility determines to be fair and reasonable, negotiations with that firm should be formally terminated. The Facility should then undertake negotiations with the second most qualified firm. If the Facility is unable to negotiate a satisfactory contract with the second most qualified firm, the Facility should terminate negotiations and then undertake negotiations with the third most qualified firm.

Should the Facility be unable to negotiate a satisfactory contract with any of the selected firms, it should select additional firms in order of their competence and qualification and continue negotiations in accordance with the procedures herein until an agreement is reached.

If the Facility advertised the services required for additional components of the project but intends to enter into an initial agreement covering only the first phase or component it must notify the consultant by letter that the negotiations will only address that first phase or component and an estimate of the time frame for commencing negotiations for any additional agreement covering the remaining services. (see 2.2.6 above)

## **2.6 PROJECT FILE RECORDS**

For each consultant screening and selection process, the following must be preserved in the project file:

- Proof of publication for each public notice.
- The applicant list.
- The consultant Qualification Packet.
- The names of screening and Selection Committee members.
- The Selection Committee's list ranking the top candidates.
- A copy of each appointment letter, if applicable.
- A copy of the executed agreement (see [FM3\[II\]:3](#)).

See the latest Business and Finance Bulletin, Records Management and Privacy and the current Records Disposition Schedules Manual for information on retention of records.

## **2.7 AGREEMENT EXECUTION**

Upon the completion of negotiations, the Facility and the firm shall proceed to execute an agreement. The agreement shall be provided to the consultant by the Facility within 45 days after negotiations have been concluded. If the Facility estimates that it will be unable to complete the agreement within the required 45 days it shall notify the consultant. If the consultant fails to execute the Agreement within fourteen days of receipt then the Facility may formally terminate the negotiations with that firm and undertake negotiations with the second most qualified firm.

## **2.8 CONSULTANT SERVICES NOT COVERED BY PCC 10510.4 – 10510.9**

The Public Contract Code, Sections 10510.4 – 10510.9 requires the University to utilize the specified selection and contracting procedures for contracts with private architects, landscape

architects, engineering, environmental, land surveying, real property development services and construction project management firms. The Public Contract Code also exempts these contracts from the prohibitions of PCC 10515.

The Facility may request a waiver from the advertisement requirements included herein if: (1) The consultant services are not covered by PCC 10510.4, and (2) The requirements of the project would be adversely impacted by the time necessary to advertise. Requests for a waiver must be submitted the Office of the President and Office of the General Counsel for approval.

The procedures in this Chapter are applicable to all consultants providing services on projects as further described in 2.2 above. Specific procedures for real property development services are not included in this manual but may be found at [http://www.ucop.edu/facil/resg/rfq\\_rfp/documents/sb41fnl020106.pdf](http://www.ucop.edu/facil/resg/rfq_rfp/documents/sb41fnl020106.pdf)

Consultant services that do not fall within those defined in Public Contract Code, Section 10510.4, are not exempt from the application of the prohibition against specified contracting practices set forth in PCC 10515.

## **2.9 DESIGN PROFESSIONAL APPOINTMENT PROCEDURES**

University procedures for design professional appointment apply to executive architects, executive landscape architects, and executive and consulting engineers (structural, civil, mechanical, and electrical). The authority and procedure for appointing executive design professionals is described in 2.10 and 2.11 below.

## **2.10 AUTHORITY TO APPOINT EXECUTIVE DESIGN PROFESSIONALS**

References:

- **Delegation of authority: "Appointment of Executive Architects, Executive Landscape Architects, and Executive and Consulting Engineers" [DA 2134](#) (see [FM1:4](#))**
- Standing Orders of The Regents, 100.4(y), Revision 18, August 1993.

The Standing Order 100.4(y) provides as follows:

The President is authorized to appoint and execute necessary agreements with executive architects, executive landscape architects, and executive and consulting engineers for approved projects.

- [Standing Orders of The Regents, 100.4\(y\)](#)

The President redelegated appointment authority according to total individual project cost. Appointment authority was delegated to Senior Vice President Business and Finance for projects in excess of \$5 million but under \$10 million and authority was delegated to Chancellors and Directors for projects of \$5 million or less. For projects over \$5 million but under \$10 million, authority was redelegated to Assistant Vice President, Facilities Administration. (See [RD1.3](#), AUTHORITY TO APPOINT EXECUTIVE DESIGN PROFESSIONAL.)

(Note: When the term "executive" is applied to design professionals, the term refers to the primary design professional on a project and the one responsible for the overall design.)

## **2.11 SUBMITTING A REQUEST FOR DESIGN PROFESSIONAL APPOINTMENT**

A Facility requesting the appointment of an executive design professional must submit to the

Office of the President a letter recommending the appointment of the executive design professional. The letter will describe any special considerations taken into account during the selection process. The request will include one copy of (1) the Request for Qualifications or Request for Proposal, and (2) the recommended firm's completed Consultant Qualification Packet. At a minimum, the "P" portion of the project budget must be approved by the appropriate authority prior to submitting the request. When University policies and guidelines for the selection of design professionals have been met, the recommendation may be approved. If an exception to the University guidelines is being requested, the reasons for the exception must be stated in the recommendation letter and the appropriate background materials enclosed.

## **2.12 FACULTY AS CONSULTING ARCHITECTS**

### **References:**

**University policy: "Faculty as Consulting Architects and Consulting Landscape" (see [FM1:5.1](#)).**

University policy about faculty as consulting architects states:

"It is the policy of The Regents that members of the University faculty are not eligible to serve as consulting architects or consulting landscape architects for University campuses." (see [FM1:5.1](#))

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