

 Confederation COLLEGE COLLEGE PRACTICE	Number: 2-2-07	# of Pages: 8
	Originator:	Purchasing Officer
	Approved By:	College Planning Committee
	Effective Date:	April 20, 2011
	Replaces:	March 23, 2011

PURCHASING PRACTICE-ACQUISITION OF CONSULTING SERVICES

1. RATIONALE

Effective April 1, 2011, Procurement Directives have been changed for all Ontario Broader Public Sector organizations which include Colleges. The new rules for consultants are addressed within this practice.

2. DEFINITIONS

- "Construction" means construction, reconstruction, demolition, repair or renovation of a building, structure or other civil engineering or architectural work and includes site preparation, excavation, drilling, seismic investigation, the supply of products and materials, the supply of equipment and machinery if they are included in and incidental to the construction, and the installation and repair of fixtures of a building, structure or other civil engineering or architectural work, but does not include professional consulting services related to the construction contract unless they are included in the procurement.
- "Consultant" means a person or entity that under an agreement, other than an employment agreement, provides expert or strategic advice and related services for consideration and decision-making.
- "Consulting Services" means the provision of expertise or strategic advice that is presented for consideration and decision-making.
- "Contract" means an obligation, such as an accepted offer, between competent parties upon a legal consideration, to do or abstain from doing some act. It is essential to the creation of a contract that the parties intend that their agreement shall have legal consequences and be legally enforceable. The essential elements of a contract are an offer and an acceptance of that offer; the capacity of the parties to contract; consideration to support the contract; a mutual identity of consent or consensus ad idem; legality of purpose; and sufficient certainty of terms.

3. ALLOWABLE EXCEPTIONS – CONSULTING SERVICES

The following are allowable exceptions, for the non-competitive procurement of Consulting Services subject to Non-Competitive Approval Form-Consulting (Appendix B) signed by The President and/or Board and filed with Purchasing:

- 3.1 Where an unforeseen situation of urgency exists and the Consulting Services cannot be obtained by means of a competitive procurement process. An unforeseen situation of urgency does not occur where the College has failed to allow sufficient time to conduct a competitive procurement process.
- 3.2 Where Consulting Services regarding matters of confidential or privileged nature are to be purchased and the disclosure of those matters through a competitive procurement process could reasonably be expected to compromise confidentiality, cause economic disruption or otherwise be contrary to the public interest.
- 3.3 Where there is an absence of any bids in response to a competitive procurement process that has been conducted in compliance with this Directive.
- 3.4 Where only one supplier is able to meet the requirements of a procurement in the following circumstances:
 - 3.4.1 To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licenses, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representatives. Compatibility with existing products may not be allowable if the reason for compatibility is the result of previous non-competitive procurements.

3.4.2. For the procurement of goods and services the supply of which is controlled by a supplier that is a statutory monopoly.

4. THE COLLEGE PRACTICE

The following process must be followed for the acquisition of consulting services.

4.1 \$0 to \$100,000 – Require 3 written quotations; exclusive of taxes, must be acquired following a competitive process

4.2 \$100,000 or more – formal and advertised requests for proposal/tender, as per the College's Purchasing Practice and spending authorization limits.

Notes: Departments must keep the 3 (three) written quotes on file for 7 (seven) years.

5. CONSULTING – APPROVAL AUTHORITY SCHEDULE (AAS)

<u>Procurement Method</u>	<u>Procurement Value</u>	<u>Approval Authority</u>
Three written quotes	\$0 up to \$100,000	as per Spending Authorization Limits
Tender/Proposal	\$100,000 and over	as per Spending Authorization Limits
Non-Competitive	\$0 to \$1,000,000 Consulting)	President (Non-Competitive Approval Form-
Non-Competitive	Over \$1,000,000	Board must sign off (Non-Competitive Approval Form-Consulting)

6. EXPENSES FOR CONSULTANTS AND OTHER CONTRACTORS

6.1 Meals and Incidentals:

Consultants and other contractors **must not** be reimbursed for any hospitality, incidental or food expenses, including:

Meals, snacks and beverages
Gratuities
Laundry or dry cleaning
Valet services
Dependent care
Home management
Personal telephone calls

6.2 Claims for Reimbursement of other Expenses

Reimbursement for allowable expenses under this Practice can be claimed only when the contract with the College specifically allows for it.

7. All consulting engagements not part of a RFP **must have a signed contract** that specifies scope, milestones and deliverables under the contract along with dates and payment terms. See Appendix A for a template.
8. All consulting contracts must be put on a **purchase order**. Any exceptions must be approved by Purchasing Services.

For additional information please contact:

Purchasing Officer, Purchasing Services
(807) 475-6500

Attachments

Appendix A – Contract for Consulting Service

Appendix B – Non-Competitive Approval Form - Consulting



Appendix A
Contract for Consulting Service

This is a contract for service between The Confederation College of Applied Arts and Technology (hereafter referred to as "The College") and

_____ (hereafter referred to as "The Firm").
(Legal name if incorporated)

Address: _____

Telephone Number: _____ HST # _____

The Firm acknowledges that it is an established company that markets its services to other organizations. The College recognises that it is The Firm's sole right to send any of their employees (sub-contractors) that they see fit to provide the services to The College.

Terms

The Firm agrees to provide the following services (or attach documentation as required):

Dates/duration of contract: _____

Total Fees: \$ _____

Invoice Schedule (project Milestones/deliverables and corresponding payment schedule, if any)

Payment at signing (if any) _____

Milestone/deliverable #2 (describe event and amount): _____

Milestone/deliverable #3 (describe event and amount): _____

Milestone/deliverable #4 (describe event and amount): _____

Final payment/Delivery of final report: _____

Terms are net 30 from receipt of invoice.

The Firm is responsible for all hospitality, incidental or food expenses including:

- Meals, snacks and beverages
• Gratuities
• Laundry and dry cleaning
• Valet services
• Dependant care
• Home management
• Personal telephone calls

The College will supply/reimburse the following expenses incurred in carrying out contact:

_____.

If this agreement is terminated by either party, for any reason, your fees will be paid based on the actual hours/work completed to the date of termination.

The Firm is to contact:

Name: _____

Title: _____ Department: _____

of The College if there are any questions. **Please forward your invoice(s) to the above person for approval and payment.**

Conditions

The Firm hereby agrees to make available to The College, personnel for the specified purposes on the terms and subject to the conditions set out in this agreement. The Firm agrees that the relationship between The College and The Firm be that of principal and independent contractor and as such personnel of The Firm will in no way be constituted as an employee, agent or servant of The College and therefore, will not be treated as an employee of The College for payroll, union seniority or any other purposes. Notwithstanding the foregoing, the firm and its employees agree to abide by, and become familiar with, all College policies and procedures (regarding smoking, discrimination/ harassment, health and safety, ECT.).

The Firm agrees to invoice The College upon completion of the above mentioned service (or in accordance with any payment schedule listed above). The College agrees to pay The Firm the amount invoiced plus any applicable taxes without making any deductions on account of Income Taxes, Canada Pension Plan contributions or Employment Insurance Premiums (or without making remittances for employer's share of these and Employer's Health Tax).

The College will not be liable for the acts, omissions, neglect or default of The Firm or its personnel in connection with the performance or non-performance of services under this agreement.

The Firm acknowledges having liability insurance in force (minimum \$1,000,000) as well as WSIB coverage for its employees working on The College's property during the duration of this contract. Supporting certificates are to be provided to the College.

The College:

The Firm:

Signature (name & title)

Signature (name & title)

Date:

Date:



Appendix B

Non-Competitive Approval Form-Consulting

Briefing Note

To: President/Board of Governors

From: xxxx, Title, Department

Date: xxxx

Subject: Single or Sole Sourcing Consulting Approval Sign-Off

COMPANY:	
REQUISITION #	PURCHASE ORDER#

Background

Explanation of the product or service (what it is, how it is used, where it is used, why it is needed, who made the request) and how it fits with organizational objectives. Describe the circumstances that have created this situation. Describe any risks or implications.

Justification

Explain why approval is requested for a single or sole sourcing award. Need to clearly explain why bypassing the competitive process is necessary and justify why this exception is required. Provide details on what due diligence was performed to confirm the situation.

If this is a renewal, explain how the original decision was made (i.e., how this product or service was selected).

Actions Taken

Explain the cost/benefit analysis (if applicable) including details of the value proposition for the organization given the single/sole sourcing circumstances.

Required Timing

State when the product or service is required (helps to ensure sign-offs completed in time).

Please attach the Non-Competitive Approval-Form signed by Supervisor and Procurement before President/Board of Governors signs-off



Non-Competitive Approval-Form – Consulting Services

1. Identify non-competitive procurement type: Sole Sourcing Single Sourcing
2. What are you procuring: Consulting Services
3. Specify the exception code: _____ (see attached Appendix - Exception Codes)
4. Total Procurement Value: _____ Contract Base Term & Extension _____
5. Name of Recommended Supplier: _____
6. Has the Recommend Supplier previously received a non-competitive award? _____
7. Has the requesting Department previously asked for a non-competitive award? _____
8. Services: Is there a ceiling on the contract value? Yes No

ACKNOWLEDGEMENT

I am aware of the Organization's competitive procurement process and criteria for approving Single and Sole Sourcing. I am comfortable the necessary due diligence has been conducted to support the recommendation. I have fairly and clearly outlined the background, justification, actions taken and required timing of this purchase in the briefing note.

Briefing note prepared by: Name: _____

Title: _____ Department: _____

Signature: _____ Date: _____

APPROVAL SIGNATURES

First Sign-Off: Supervisor/Manager

Name: _____ Signature: _____ Date: _____

Second Sign-Off: Procurement

Name: _____ Signature: _____ Date: _____

Third Sign-Off: Vice President College Services

Name: _____ Signature: _____ Date: _____

CEO must sign off for non-competitive award for consulting services < \$1 million
Board must sign off for non-competitive award for consulting services >= \$1 million

Final Sign-Off: President /or Board of Governors

Name: _____ Signature: _____ Date: _____



Single/Sole Sourcing Approval Form – Exception Codes

<u>Sole Source</u>	<u>Single Source</u>
<p>Where only one supplier is able to meet the requirements of a procurement, Organizations may conduct non-competitive procurement in the circumstances listed below (also known as sole source situations) provided that they do not do so for the purposes of avoiding competition between suppliers or in order to discriminate against suppliers:</p> <ul style="list-style-type: none"> a. To ensure compatibility with existing products, to recognize exclusive rights, such as exclusive licences, copyright and patent rights, or to maintain specialized products that must be maintained by the manufacturer or its representative; b. Where there is an absence of competition for technical reasons and the goods or services can be supplied only by a particular supplier and no alternative or substitute exists; c. For the procurement of goods or services the supply of which is controlled by a supplier that is a statutory monopoly; d. For the purchase of goods on a commodity market; e. For work to be performed on or about a leased building or portions thereof that may be performed only by the lessor; f. For work to be performed on property by a contractor according to provisions of a warranty or guarantee held in respect of the property or the original work; g. For a contract to be awarded to the winner of a design contest; h. For the procurement of a prototype of a first good or service to be developed in the course of and for a particular contract for research, experiment, study or original development, but not for any subsequent purchases; i. For the purchase of goods under exceptionally advantageous circumstances such as bankruptcy or receivership, but not for routine purchases; j. For the procurement of original works of art; k. For the procurement of subscriptions to newspapers, magazines or other periodicals; and l. For the procurement of real property. 	<p>Organizations may conduct non-competitive procurement in the circumstances listed below (also known as single source situations); provided that they do not do so for the purposes of avoiding competition between suppliers or in order to discriminate against suppliers.</p> <ul style="list-style-type: none"> a. Where an unforeseeable situation of urgency exists and the goods or services cannot be obtained in time by means of open procurement procedures; Failure to plan and allow sufficient time for a competitive procurement process does not constitute an unforeseeable situation of urgency. b. Where goods or services regarding matters of a confidential or privileged nature are to be purchased and the disclosure of those matters through an open tendering process could reasonably be expected to compromise government confidentiality, cause economic disruption or otherwise be contrary to the public interest; c. Where a contract is to be awarded under a cooperation agreement that is financed, in whole or in part, by an international cooperation organization, only to the extent that the agreement between the entity and the organization includes rules for awarding contracts that differ from the obligations set out in the Directive; d. Where construction materials are to be purchased and it can be demonstrated that transportation costs or technical considerations impose geographic limits on the available supply base, specifically in the case of sand, stone, gravel, asphalt, compound and pre-mixed concrete for use in the construction or repair of roads; e. Where compliance with the open tendering provisions set out in the Directive would interfere with the entities' ability to maintain security or order or to protect human, animal or plant life or health; and f. In the absence of a receipt of any bids in response to a call for proposals or tenders made in accordance with the Directive.