

Procurement Task Force Report

November 29th, 2011

Procurement Task Force History

- The Procurement Task Force was created at the recommendation of Mayor Jim Gray to address the findings outlined in the January 2011 State Auditor Report relative to procurement.

Procurement Task Force Composition

- Chuck Ellinger - Council Member LFUCG
- Julian Beard - Council Member LFUCG
- Brian Marcum - Director of Purchasing LFUCG
- Don Speer – Director of Procurement Services – Kentucky Finance & Administration Cabinet
- William Harris - Director of Purchasing – University of Kentucky
- Mike Hill – Director of the Division of Professional Services - KYTC
- Mike Mudd – Capital Construction Procurement Manager – University of Kentucky
- John Burkhard – Retired Executive - Ford Motor Company

Procurement Task Force Meetings

- February 28th, 2011 – Initial Task Force Meeting – Discussion of directive and establishment of goals
- March 21st, 2011 – Discussion of existing process and thresholds related to auditor recommendations
- April 11th, 2011 – Continuation of existing process and committee recommendation discussions
- May 23rd, 2011 – Auditor recommendations and revised process to address
- June 20th, 2011 – Continuation of process improvements

Goals of the Procurement Task Force

- Address the State Auditor Report Findings
- Analyze and evaluate CAO Policy #1 (Evaluation of Professional Services)
- Incorporate the evaluation of professional services into the LFUCG Procurement Regulations

State Auditor Findings

- Procurement policies have no clear hierarchy or authority, occasionally conflict, and have not been approved by Council.
- No consistent procurement method was used for purchasing insurance broker services.
- LFUCG does not use a quantitative scoring method for competitively bid vendor proposals.

State Auditor Recommendations & Comments Related to Procurement

- CAO Policy #1 creates a conflict between the authority of the Division of Central Purchasing as designated by the Charter and the Office of the CAO
- Establish a quantitative scoring method for competitively bid vendor proposals
- Disclosure of quantitative scoring method in all RFP documents to improve transparency
- Professional service policy should dictate the responsibility to assemble a selection team to evaluate all proposals

Procurement Task Force Recommendations

- Repeal CAO Policy No. 1 and replace with a new regulation governing the procurement of personal/professional services to maintain consistency and transparency
- Adopt the proposed regulations including the framework of the process/procedure
- Establishment of a process that would require notification of awards to Council in lieu of formal Council approval(i.e. Resolution/Ordinance) if funds have been previously approved through the budget process(not part of State Auditor findings)

State Auditors Approval of Task Force Recommendations

- The Procurement Task Force recommendations were sent to and approved by Brian Lykins and Bob Mcbeath at the State Auditors Office.

Procurement Topics Not Addressed By The Procurement Task Force

- Vendor Preferences
- Sole Source Procurement
- Change Orders

Procurement Task Force

Questions?

Division of Central Purchasing Procurement Regulations

Source Selection: Personal/Professional Services

GENERAL

As used in these regulations "Personal/Professional Services" shall mean services whereby an individual, firm, partnership or corporation is to provide LFUCG certain services requiring professional skill or judgment.

The LFUCG will only procure Personal/Professional Services if LFUCG personnel are not available or if it is not feasible for LFUCG personnel to perform the service. The Division of Central Purchasing ("Purchasing") shall determine whether any LFUCG personnel (regardless of Department of Division) can reasonably provide the needed service prior to initiating the Personal/Professional Service procurement procedure provided for herein. If a dispute exists as to the necessity of acquiring the services from outside the LFUCG, the decision to proceed will be made by the Chief Administrative Officer.

The retention of Personal/Professional Services pursuant to these regulations will not be used if as a result of the procurement there would be established an employee/employer relationship between the LFUCG and the service provider or its employees or agents. An employee/employer relationship exists when the LFUCG has the right to direct and control the worker in the way he works, both as to the final results and as to the details of when, where and how the work is done.

The acquisition of commodities or biddable services may not be undertaken through the "Personal/Professional Services" process provided herein.

The provisions of these regulations shall not apply to any purchase constituting an emergency within the meaning of KRS 424.260.

It is not the intent of these regulations to eliminate the ability of LFUCG to advertise, as appropriate and in accordance with any applicable publication laws, any announcement soliciting general letters of interest from those parties who may be qualified to perform various Personal/Professional Services on behalf of LFUCG.

These regulations shall not limit LFUCG's ability to pursue the acquisition of Personal/Professional Services pursuant to state law, in which instances the LFUCG may elect to follow those provisions in lieu of these regulations, or modify these regulations as necessary to accommodate the process and procedure provided pursuant to the law.

Procurement of Personal/Professional Services of \$20,000 or more

1. The procurement of project specific architectural and engineering services may be undertaken either through the Qualifications Based Selection (QBS) Process or the RFP process depending on the funding source for the project.
2. All departments/divisions requiring Personal/Professional Services must submit a written request form to Purchasing. The request should be submitted well in advance of the need for the services as the procurement process for Personal/Professional services typically requires considerable time to complete. In most instances the entire process takes at least 60-90 days.
 - a. The request must be signed by the appropriate Director or Commissioner and include a description of the services desired, the estimated amount of work involved, the estimated cost per fiscal year, and the appropriate contact person who is able to answer any questions or provide any additional information .
 - b. Requests for legal services, auditing services, computer services, or other area of expertise for which LFUCG has professional employees on staff will be submitted by Purchasing to the appropriate department or division for a determination as to whether the services can or should be performed by LFUCG personnel.
3. Purchasing will review the request form and any additional information submitted to determine whether to proceed with procuring the services.
4. If the decision is made to proceed with procurement, Purchasing will work with the requesting department/division and any other necessary LFUCG personnel to develop the appropriate Request for Proposal ("RFP") and any other necessary documents, including an agreement for services.
5. Purchasing will issue a RFP to solicit proposals for the services required. Each RFP shall at a minimum describe the services required, list the type of information and data required of each offeror, and state the evaluation factors or criteria.
6. Purchasing will distribute the RFP, giving adequate (and any legally required) public notice of the need for services, which may include newspaper advertising and other means when available such as placing a notice on the LFUCG Economic Engine data base. The notice will contain, at a minimum, a brief description of services requested, estimated amount of work involved, and the name of the person to contact in order to obtain additional information and a copy of the RFP.
7. Upon receipt of the responses to the RFP, Purchasing may conduct discussions with any offeror submitting a proposal to determine the offeror's qualifications for

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further consideration but such discussions shall not disclose information derived from another offeror's proposal. If discussions are conducted with offerors for purposes other than to secure qualification information, the same discussions must be conducted with all offerors.

8. Purchasing will appoint a proposal evaluation committee comprised of LFUCG officers or employees. Purchasing has the discretion to appoint representatives of other entities (i.e., state or local governments or educational institutions) if such representation would be of value to LFUCG. However, under no circumstance shall a party with any conflict of interest be appointed. In most instances a private party or citizen would have a conflict of interest.
9. Purchasing and the evaluation committee shall review the proposals received and record the committee's final determination of the qualification rankings of the offerors based on the evaluation factors or criteria set forth in the RFP. This written determination shall be maintained by Purchasing.
10. After determining the best qualified offeror, Purchasing or the requesting department/division (with assistance from Purchasing) will negotiate the fair and reasonable compensation for the provision of the services with the selected offeror. If compensation cannot be agreed upon with the best qualified offeror, negotiations may be conducted with other offeror(s) in the order of their respective qualification ranking.
11. Upon reaching an agreement upon compensation with the offeror, the requesting department/division in coordination with the Department of Law and Purchasing will generate an agreement for services which includes the scope of the services to be performed, the compensation for such services, and all other terms and conditions agreed upon, which shall also include, at a minimum the following:
 - a. The duration of the Agreement;
 - b. A sworn statement regarding campaign finance laws;
 - c. A provision indicating that the offeror and its employees or agents are not employees of the LFUCG;
 - d. A termination clause under which LFUCG may terminate the agreement by providing no more than thirty (30) days notice;
 - e. In the event that (d) above is not deemed sufficient by the Department of Law, an additional termination clause for those agreements covering multiple fiscal years in the event that sufficient funds are not appropriated as part of the budget process;
 - f. A provision that Kentucky law applies to interpretation of the agreement and any disputes and that venue shall be in Fayette County, Kentucky;

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- g. A provision that the services cannot be assigned without the prior approval of the LFUCG;
 - h. Any indemnity and insurance requirements deemed necessary by the Department of Law or the Division of Risk Management; and
 - i. Any other necessary provisions from the RFP.
- 12. All agreements must be signed by a representative of each party having the legal authority to bind that party to the agreement. The Mayor will sign all agreements on behalf of LFUCG unless legal authority has otherwise been provided for someone else to obligate the LFUCG to the terms of the agreement. If a final agreement cannot be reached with the best qualified offeror, negotiations may be conducted with other offeror(s) in the order of their respective qualification ranking.
- 13. LFUCG may make payments for services under the agreement once final approval is obtained, but shall not pay in advance of receipt of services.

Procurement of Personal/Professional Service of Less Than \$20,000

If the Personal/Professional Services required is less than \$20,000, the department/division may informally solicit proposals, make a determination of the best qualified provider and establish a Personal/Professional Service Agreement if necessary. At a minimum, the department/division must use a Personal/Professional Service Scope document and have the provider sign and submit the documents to Purchasing for processing. The submittal to Purchasing must also include the proposals received and considered by the department/divisions and a properly authorized On-Line requisition requesting Purchasing to issue a purchase order.

As an alternative, the department/division requiring the services may submit an On-Line Requisition to Purchasing and forward the services required scope. Purchasing will solicit competitive proposals, negotiate pricing and contract for the necessary services. If this process is used, Purchasing will communicate with the department/division for any additional information necessary to complete the process. Purchasing will also generate a purchase order authorizing the provider to begin work and allowing payments to be processed.