



# COLLEGE OF THE NORTH ATLANTIC

## OPERATIONAL PROCEDURE

### TOPIC: HIRING OF EXTERNAL CONSULTANTS

<b>Procedure No.</b>	FA-312-PR	<b>Division</b>	Finance & Administration
<b>Supersedes</b>	n/a	<b>Board Policy Ref.</b>	BP-FA-309B
<b>Related Policy</b>	FA-312	<b>Effective Date:</b>	November 20, 2007

## PROCEDURE

### 1.0 Responsibilities

The Vice-President of Finance and Administration shall coordinate and implement these guidelines in consultation with the President.

The General Counsel shall provide interpretation and advice on specific contracts and will review the consultant guidelines periodically to ensure they continue to meet the operational and financial objectives of the College.

### 2.0 Definitions

#### 2.1 Acceptable Proposal

Acceptable is interpreted to mean that the College is able to determine that the quality of the proposals and the technical competence, experience, past performance and work on hand of those consultants submitting proposals are such as to anticipate satisfactory performance.

#### 2.2 Consultant

An external consultant is deemed to be a private individual, group of individuals, company or institution with a high level of attainment in a professional, scientific, technical or managerial field which is engaged directly by the College to perform specific work of an advisory nature not covered under the *Public Tender Act*. Please refer to section 2(g) and 3(2) of the *Public Tender Act* for a description of services and situations which are not covered under the *Public Tender Act*.

### 2.3 Limited Proposals

The College will identify the consultants from which they will invite proposals.

### 2.4 Public Proposals

The College may place an open call for proposals in the media. The respondents with appropriate qualifications will be identified and asked to make written and/or oral submissions.

### 2.5 Fee-for-Service

Fee-for-service applies when a consultant:

- a) Is required to be available on an ongoing basis to perform specific tasks, upon request, and paid at an hourly rate or per diem rate (in some cases a retainer may be applicable); or
- b) Is engaged to perform a task which has a high degree of uncertainty relative to its financial and functional scope.

### 2.6 Board

“Board” refers to the Board of Governors for the College.

## **3.0 Expenditure Approval Requirements**

### 3.1 General

Before the College initiates any action to call for proposals and select the services of an external consultant, the necessary budgetary allocation from which to expend funds for this purpose must be identified.

### 3.2 Estimate Preparation

- a) Faculties, departments and divisions must include all budgetary estimates for consultant funding requirements in the Budget Estimate under the main object of expenditure "Professional Services" and capital account funding requirements in approved project related sub-head accounts.
- b) Faculties, departments and divisions, to the extent possible, should include in their budget submissions detailed information on projects for which proposals from external consultants will be called. The information should include a description of the work to be performed as well as the desired budgetary funding level.

- c) Faculties, departments and divisions, during the budgetary process, may employ the block funding approach when requesting funds to cover anticipated consultant fees when detailed project information is not available during the preparation of the budget estimates.

### 3.3 Approvals

- A. Approval of a faculty/departmental/divisional funding level during the budgetary process implies College authorization to request proposals from consultants for only those projects or studies which are:
- Specified in the approved departmental budget; and
  - The required consulting work is consistent with the basis on which the budget allocation was approved; and
  - The cost is in accordance with the budgetary provision.
- B. Faculties, departments and divisions have authority to make expenditures from block funding when:
- The work to be performed is not detailed in the departmental estimates; and
  - The associated consultant fees and expenses are not anticipated to exceed \$50,000.
- C. Faculties, departments and divisions must receive approval from the Vice-President of Finance and Administration and/or President to make expenditures from block funding when:
- The work to be performed is not detailed in the departmental expenditures and the associated fees are anticipated to exceed \$50,000.
- D. Faculties, departments and divisions must, in all cases, receive specific approval from the President or the Vice-President of Finance and Administration to obtain professional services from a consultant on a fee-for-service basis when:
- The time frame of the agreement exceeds one year.

### 3.4 Overruns

In cases of contracts awarded at set amounts, the President's approval must be received in order to authorize payments which are in excess of 110 percent, in the aggregate, of approved contractual amounts.

## 4.0 **Proposal Requirements**

### 4.1 Request for Proposals

It is the intention of the College to employ, to the extent feasible, the practice of requesting multiple proposals when engaging the services of

external consultants. The College favours a public request for proposals and will use this method whenever it is feasible to do so.

The College appreciates that there may exist circumstances which mitigate against the public calling of proposals, and, consequently, permits departments to deviate from this preferred method. In such cases, faculties, departments and divisions are to invite proposals from any competent consultants as known to the departments; three proposals being considered as a minimum number.

Furthermore, even though these guidelines identify practical exceptions and exemptions, departments are cautioned to suspend the public calling of proposals only after serious consideration.

College funding will be used to encourage the growth of a local consulting community and encourage technology transfer. To this end, firms will be required to indicate the percentage of work which will be performed here in the province using the successful firm's own resources or in a sub-contractual arrangement with a provincial firm. All things being equal, faculties, departments and divisions should consider such local information carefully when making their final decision.

#### 4.2 Consultant List

The College will maintain an up-to-date list(s) of appropriate consultants who have expressed an interest in submitting proposals for College work. The consultant list(s) shall be an item of public knowledge and an updating process shall be such as to provide opportunities to newer entrants. Faculties, departments and divisions are encouraged to contribute the names of qualified consultants for addition to the list.

#### 4.3 Terms of Reference

Faculties, departments and divisions must prepare terms of reference for the work to be performed by the external consultant. This document should assist in the planning and management of the work as well as assisting prospective consultants approach the work in a cost effective manner. See Section 6.0 for further information on this requirement.

#### 4.4 Discretionary Proposals

A. When engaging consultants on a fee-for-service basis with charges being on a per diem basis:

- Faculties, departments and divisions may use their discretion and not request proposals when total fees and expenses are not estimated to exceed \$50,000.
- Faculties, departments and divisions are required to have a limited

call for proposals when total fees are estimated to exceed \$50,000.

- B. When engaging consultants for the express purpose of design or project management of the construction or major renovation of a building to be used primarily by the College:
- The College may use its discretion and not request limited or public proposals when fees and expenses are not estimated to exceed \$100,000.
  - The College may suspend the requirement to request public proposals but must request limited proposals when total consultant fees and expenses are estimated to be in range of \$100,000 to \$150,000.
  - The College must prepare and advertise a public “Request for Proposals” when total consulting fees and expenses are estimated to exceed \$150,000.

If the College deems it impractical to request either type of proposal for those projects in excess of \$150,000, it must receive specific Board approval to suspend the request for proposals.

In situations of multi-phased projects where it is in the College's best interest, the College has discretionary authority to retain the same consultant on all phases without a need to invite proposals for each phase.

#### 4.5 Mandatory Proposals

Faculties, departments and divisions engaging consultants for all other types of projects or studies other than those referred to in 4.4, when the number of consultants permits (i.e. three or more available):

- Request limited proposals when the total consultant fees and expenses for a project or study are not estimated to exceed \$50,000; or
- Prepare and advertise a public “Request for Proposals” when the total consultant fees and expenses for a project or study are estimated to exceed \$50,000.

#### 4.6 Suspension of Mandatory Proposals

- 1) Faculties, departments and divisions are authorized to suspend the calling of limited or public proposals when the total consultant fees and expenses are not estimated to exceed \$50,000 and:

- There are an insufficient number of consultants (less than three); or
  - A pressing requirement does not provide sufficient time.
- 2) In circumstances outlined in 1), when the total consultant fees are estimated to exceed \$50,000, faculties, departments and divisions must receive approval from the President or Vice-President of Finance and Administration to suspend the calling of limited or public proposals.
  - 3) Where the subject of a project or study requires a high degree of confidentiality, a faculty, department or division must request authority from the President or Vice-President of Finance and Administration to suspend the requirement to request for proposals.

#### 4.7 Other Considerations

- 1) Faculties, departments and divisions, within the above limitations, may use their discretion in the consideration of unsolicited proposals.
- 2) Where it is perceived to be advantageous to the College, departments may disclose the funding level of the project or study to those consultants which are to submit proposals.

### 5.0 **Selection Approval Requirements**

#### 5.1 Board Selection

For major projects where total fees and expenses are estimated to exceed \$100,000, a faculty, department or division must prepare for the President or Vice-President of Finance and Administration's consideration and selection a paper containing a list of those consultants submitting proposals along with its recommendations.

#### 5.2 Selection of Engineering, Design and Architectural Consultants

Notwithstanding subsection 4.1, appointments of engineering, design and architectural consultants shall be made by the President or Vice-President of Finance and Administration, acting as the President's designate.

#### 5.3 Departmental Selection

A faculty, department or division has the authority to select the successful consultant when:

- Consultant fees and expenses are not estimated to exceed \$100,000; and
- Requirements of prevailing legislation and these and other relevant guidelines and regulations are met; and

- In cases where two or more consultants are deemed qualified in capacity to complete a specific project, the selected consultant has submitted the lower priced proposal.

#### 5.4 Board Referral for Selection

A faculty, department or division must refer its selection of a consultant to the President or Vice-President of Finance and Administration for approval when:

- Following evaluation against pre-determined criteria, two or more consultants are deemed equal in capability to compete a specific project and the organization wishes to select the consultant which does not have the lower priced proposal of the two; or
- The selection of a consultant does not meet the requirements of these and other relevant guidelines and procedures.

#### 5.5 Selection Considerations

Faculties, departments and divisions are advised to consider, but not be limited to, the following factors when selecting a consultant:

- a) Qualifications, background and experience of each person assigned to the project by the consultant;
- b) Level of performance displayed by the consultant in previous work of a similar nature and size for this and other departments;
- c) Level of performance displayed by the consultant in previous work of a similar nature for external organizations;
- d) Depth of the support services of the firm. For example, if a study is primarily financial management, but with data processing and operations research implications, does the consultant have specialists available to give particular advice on those aspects even though they are not full-time members of the project team?;
- e) Ability of the consultants to measure up to the demands of the task in terms of qualifications, experience, financial stability, reputation and professional standards;
- f) Quality of the study plan submitted to the department in terms of logic, method of approach and comprehensiveness;

- g) Extent to which the consultant is in harmony with applicable legislation with respect to qualifications, i.e. the *Professional Engineers Act, Architect Act, etc.*;
- h) That rates being quoted are not in excess of the fee schedules published by various professional associations;
- i) Faculties, departments and divisions are encouraged to consider opportunities to strengthen or develop local consultant expertise in the province.

If during the selection process a department requires further information on a consulting firm, it should give strong consideration to obtaining additional documentation from the senior personnel of the firm and/or from the major clients of the firm.

## 6.0 Contractual Considerations

### 6.1 General

Once a consultant is selected, it is important that a faculty, department or division document its requirements and responsibilities and those of the consultant. The faculty, department or division will contact the General Counsel's office in order to put in place this documentation. Under no circumstances will a faculty member, department or division draft its own legal documentation nor sign any document presented to it by the consultant.

### 6.2 Documentation Requirements

- i. All agreements for advice and services between the College and consultants must be in writing; either a contract or a formal letter of agreement.
- ii. Contracts must be reviewed by the General Counsel before being signed.
- iii. Contracts should be signed by both parties before any work is performed.
- iv. Without exception, contracts must be signed before any payments can be authorized.
- v. Changes to initial contractual agreements must be in writing and signed by both parties.

### 6.3 Contractual Signing Authority

Only the President or his/her designate may sign a contract with a consultant. Under no circumstances will the head or any employee of a faculty, department or division sign any legal document.

### 6.4 Contractual Components

Contracts with external consultants will contain the following provisions:

- i. Nature and Scope: A contract will describe in as much details as possible the nature and scope of the project including adherence to any professional standards or codes. Reference should be made to the date and nature of any interim reports or periodic progress to be attained. The "Terms of Reference" may be referred to and attached as a schedule to the agreement if appropriate and, in this case, it should be stated that the agreement shall predominate in case of a conflict between the agreement and terms of reference.
- ii. Financial Implications: A contract should identify, but not limit itself to:
  - a) Total contract price and other pertinent pricing information in both words and numbers, including progress, interim or advanced payments;
  - b) Billing and payment arrangements;
  - c) Expenses, i.e. travel, accommodations, postage, etc.; and
  - d) Adherence to professional fee schedule.

#### iii. Time Frame of Contract

The department should stipulate:

- a) The period of time for which the contract is in effect; or
- b) The delivery of the product which brings the contract to conclusion.

#### iv. Termination of Contract

Both parties should fully understand the conditions under which the contract is terminated: completion of work, non-performance by either party, lapse of specific time frame, etc; or the type and time of any notice requirement. Reference should be made to:

- a) Is compensation limited to payment for satisfactory work done to the date of termination at the rates provided in the contract with no compensation for consequential loss? And
- b) Commitments made which, at the time of termination, cannot be revoked. i.e. advance payments, retainers and leasing of equipment.

## v. Delays

The parties should agree upon their responsibility, if any, in the event of delays caused by mechanical breakdowns, slow performance, strikes, lockouts, acts of God, etc.

## vi. Definitions

The contract should provide explicit definitions of important terms or trade usage expressions so as to avoid misunderstandings.

## vii. Ownership of Acquired or Prepared Materials

If a work project is of the nature whereby materials of any kind are acquired or prepared, the contract should specify ownership, copyright and patent rights, whether copies may be retained and acknowledge credits to be included in any publications.

## viii. Confidentiality of Information

Both parties to the contract must be aware of the sensitivity of the subject matter and of contractual constraints regarding the disclosure of any information, materials, etc. collected or prepared during the course of a project.

## ix. Record Keeping Requirements

If the College (as an employer) wishes to audit the working or financial records of the consultant, or to inspect, supervise or direct any aspect of the project, the contract should stipulate the conditions, for example, access method, type of records, retention period, etc. necessary to satisfy the College's right.

## x. College Indemnification

Departments must ensure that the College is not held liable for injuries or damages caused by or to consultants, or held responsible for other pertinent liabilities except as stated in the contract.

## xi. Re-assignment of Work

Sub-contracting of the work in total or in part must be approved in advance by a department which engaged the consultant.

## xii. Employment Status

For the sake of clarity, it should be noted that any individuals engaged in a consultant capacity are not considered to be College employees.

## xiii. Address of Parties

Both parties should designate an address to which correspondence can be delivered and considered legally accepted by the other party.

## xiv. Scope of the Contract

Both parties to the contract must specify the documents which comprise the total agreement and make specific reference to pertinent documents external to the contract (include as schedules where possible).

## xv. Adherence to Legalities

It is implied in any contract that a consultant, or for that matter any party, shall not break, or cause to be broken, any laws in the performance of his/her contractual obligations.

## xvi. Applicable Courts

The contract should state any preferred procedure for resolving disputes arising from the contract, such as a procedure for arbitration and if the consultant is external to the Province, the contract must stipulate whether the provincial laws and courts of Newfoundland and Labrador shall apply or those of a different jurisdiction.

## xvii. Non-Performance

A contract should stipulate a legal position should an act of God, for example, fire or flood, make it impossible for one or both parties to perform.

## xviii. Holdbacks

Where it is appropriate for the industry, the College must withhold all or a portion of a consultant fee until such time as they are satisfied that the work has been properly completed and is judged acceptable.

**7.0 Elements of A “Terms of Reference”**

A "Terms of Reference" may include, but is not limited to, the following elements:

- a) The background - a statement outlining the situation leading to the requirement.
- b) The objective - a statement describing what is to be achieved.
- c) The scope - a description of the range, extent, and bounds of the work, and where appropriate, the parameters or indicators by which satisfactory completion is judged.
- d) Details of any constraints imposed, such as government policies and standards, current and proposed related activities, security, sensitivity to other interests, protection of the environment, conservation of resources, and other relevant restrictions.
- e) Details of available client support and client responsibilities.
- f) The manner in which work documents shall be presented and the number of copies required of each.
- g) A time schedule for the completion of each stage of the work and for the entire work.
- h) Financial limitations of the project budget and breakdown within which the work shall be performed.
- i) Progress report requirements and other control procedures to be applied by the client agency during the work.
- j) Approval and acceptance requirements relating to performance of the several stages and of the work as a whole.

Approval History	
Approved by President	November 20, 2007
Next Review	November 2011