

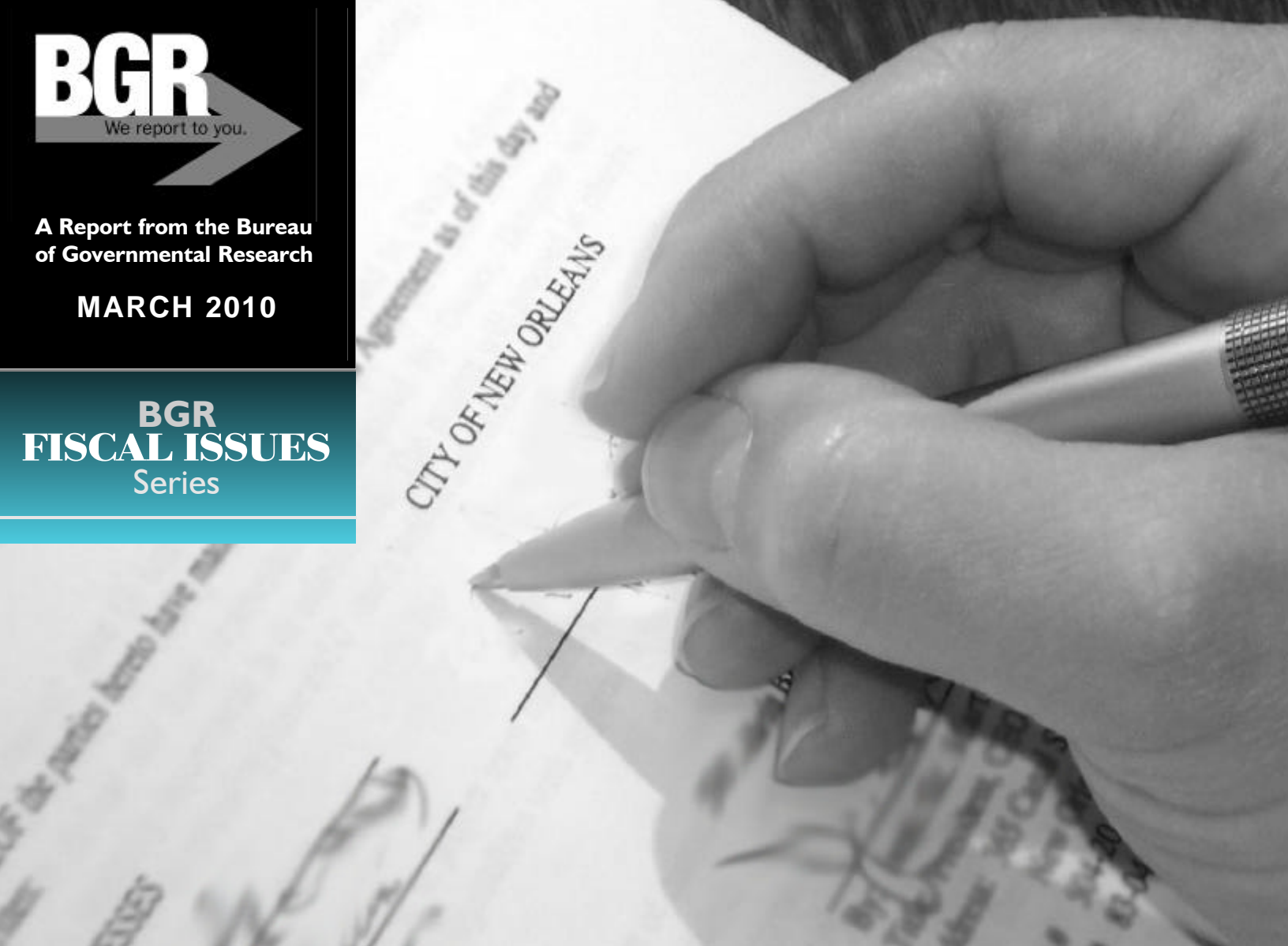
BGR

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Contracting with Confidence

PROFESSIONAL SERVICES
CONTRACTING REFORM
IN NEW ORLEANS

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The Bureau of Governmental Research is a private, non-profit, independent research organization dedicated to informed public policy making and the effective use of public resources for the improvement of government in the New Orleans metropolitan area.

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INTRODUCTION

OVER THE COURSE OF MANY YEARS, the Bureau of Governmental Research has advocated specific reforms to limit patronage in professional services contracting by the City of New Orleans and other local government entities. Patronage undermines trust in government, discourages economic development and subverts confidence in programs designed to help local and disadvantaged businesses. It results in the squandering of precious funds badly needed for city services and basic infrastructure, harming the quality of life of all citizens.

In recent years, federal law enforcement officials and the media have exposed numerous problems with professional services contracting in New Orleans. An \$81 million energy efficiency contract saddled the city with two decades of excessive payments and resulted in the convictions of an administration official, political supporters, and contractors who skimmed money from the deal.¹ Technology contracts went to politically connected firms, allegedly in exchange for kickbacks.² A contract for home monitoring of municipal offenders went to a politically connected firm that possessed no experience providing the service and that scored lowest on the city's evaluation of proposals.³ The public paid 60% more to install and manage electronic parking meters than it would have had the city contracted with the firm that scored highest in the city's own evaluation.⁴ A post-Katrina car removal contract went to the most expensive of 14 bidders through an evaluation process that did not account for the cost of services.⁵ The list goes on.

In 2002 and 2006, BGR urged mayoral candidates to commit to a contracting model that sought to depoliticize the process. The proposal called for creating committees of professional experts from outside of government to evaluate proposals and select contractors. Contracts were to be negotiated by city staff and presented to the mayor for signature or rejection, with a written explanation required if the mayor rejected a contract. The proposal also recommended measures to maximize competition for contracts, standardize the evaluation process, make the process transparent and ensure accountability.

At the time it proposed the model, BGR recognized that one aspect of the proposal – the use of the professional evaluation committees – was complex and would be difficult to execute. However, under the institutional framework then in place, the proposed model appeared to offer the best chance for fixing an opaque, badly broken process controlled solely by the mayor and his appointees.

Since that time, there have been two critical changes in the city's institutional framework: the activation of the Ethics Review Board and the creation of the Office of Inspector General. The Ethics Review Board, an independent board appointed by the mayor largely from lists of nominees submitted by university presidents, appoints the Inspector General for four-year terms. It has the power to remove him by a two-thirds vote during a term, but only for cause. The appointment and oversight process, coupled with a dedicated funding stream for the office, creates an official watchdog who is not directly beholden to the mayor for his position.

The Office of Inspector General possesses wide authority to audit, evaluate, investigate and inspect city entities and the private firms with which they contract.⁶ The City Code requires the city to notify the Inspector General of any meeting of a selection or negotiation committee pertaining to the procurement of goods or services.⁷ The Inspector General may attend those meetings, pose questions and raise concerns consistent with the mission of the office, and use audio equipment or a court stenographer to record all meetings he or his staff attends.⁸

The presence of an independent official with broad oversight powers opens the door to effective contract reform through a simpler model than the one previously proposed by BGR. In this report, BGR proposes a model that taps into the monitoring powers of the Inspector General. The model would apply to both the executive and legislative branches of city government. The mayor could modify his process through an executive order, and the City Council could change its process through a rule change. Implementing the model would not require amendment of the charter. However, incorporating the model in a charter amendment would provide a higher level of protection for the reforms.

The proposal would not modify city policies that encourage contracting with local and disadvantaged businesses. The city would ensure compliance through the request for proposals (RFP) process and monitoring of contractor performance.

BACKGROUND

In 1995, BGR supported and voters in Orleans Parish approved a charter amendment requiring that all professional services contracts be awarded through a “competitive selection process.” The contracting process was to be defined by executive order of the mayor (for the executive branch) and by rules of the City Council (for the legislative branch).⁹ The Charter requires that the city procure all other goods and services through a competitive bid process that awards the contract to the lowest responsible bidder.¹⁰

Executive Branch

Following passage of the charter amendment, then-Mayor Marc Morial signed an order creating a selection process for professional services contracts. The process was administered by the chief administrative officer (CAO). The order called for the CAO to chair selection panels consisting of the CAO, the relevant department head and, in some cases, the deputy CAO. The CAO had the flexibility to add others from within or outside government to enhance expertise. The panel submitted the top three proposals to the mayor, who chose the winning proposal from those recommended.

That process remained in place, with minor modifications, until 2005, when Mayor Nagin issued a new executive order on professional services contracting.¹¹ Among other things, the order altered the composition of the review panel to include a community representative for contracts worth more than \$150,000. It specified that deliberations of the committee would be confidential.¹² The order maintained the CAO’s administrative control over the process and continued to allow the mayor to select the winning proposal from a menu of three firms recommended by the panel.

SOURCES CONSULTED

In researching this report, BGR consulted a variety of sources. These included the American Bar Association’s Model Procurement Code and publications from the National Institute of Governmental Purchasing and the International City/County Management Association. BGR interviewed national experts on procurement practices as well as procurement officials in Miami-Dade County, Fla., Tampa, Fla., Tucson, Ariz., Milwaukee, Wis., Madison, Wis., Fulton County, Ga., Baltimore, Md., Loudoun County, Va., Harris County, Texas, Austin, Texas, and Tarrant County, Texas.

In February 2009, the City Council passed an ordinance requiring the review panels to meet in public.¹³ The mayor vetoed the ordinance and issued an executive order scrapping the evaluation panels altogether.¹⁴ Under the new order, contract proposals are reviewed by a single mayoral appointee, and the mayor has complete freedom in selecting the winning proposal.¹⁵ That executive order, signed in late February 2009, remains in effect today.

By eliminating review panels, the mayor effectively negated the City Council ordinance calling for public meetings. The elimination of those panels had another negative effect: It seriously impaired the Inspector General’s ability to monitor the contracting process. Without meetings, the administration has no obligation to notify the Inspector General, and the Inspector General has no opportunity to observe the selection process.

Legislative Branch

In 2007, the City Council adopted new rules governing its own process for evaluating and selecting professional services contractors.¹⁶ Those rules created an evaluation committee, comprised of the Council Chief of Staff, the Council Research Officer, and either the

Council Fiscal Officer or the Director of Council Utilities, depending on the contract. The rules also subject the committee to various transparency measures. The evaluation committee forwards the City Council as many as five proposals from which to choose the winning firm.

BEST PRACTICES

Many citizens of New Orleans have lost faith in the government's ability to procure services that are cost-effective and serve the public interest. To regain the public trust, the city must establish a sound and scrupulous process for evaluating and awarding professional services contracts.

The American Bar Association (ABA) and the National Institute of Governmental Purchasing (NIGP) provide best practice guidance on two questions critical to a sound process: Who within government should administer the process, and how should government select the winning contract proposal?

Regarding the first question, the ABA's *Model Procurement Code for State and Local Governments* expressly calls for the centralization of procurement administration in a single procurement office led by a chief procurement officer.¹⁷ The *Code* notes that, "to operate effectively ... there [must] be central leadership to provide direction and cohesion."¹⁸ With respect to professional services in particular, the *Code* argues that, "since contracting for services can be one of the most difficult types of public procurement ...," it should not be exempt from central purchasing oversight and the assistance of procurement professionals.¹⁹

To this same point, the NIGP has passed a resolution urgently recommending governments to centralize purchasing authority.²⁰ The resolution cites the important role the professional procurement office plays in providing open and effective contracting and building public confidence in government.

Regarding the second question – How should professional services contractors be selected? – the ABA,

NIGP and the International City/County Management Association offer guidance.²¹ Publications by these organizations call for awarding a professional services contract to the firm whose proposal scores highest on an evaluation committee's scoring and ranking of proposals. That evaluation should be based on criteria clearly outlined in the RFP.

REGAINING THE PUBLIC'S TRUST

BGR is proposing a model to improve contract administration and restore faith in the contracting process. The model would move the administration of professional services contracting from the CAO to the Bureau of Purchasing in the Department of Finance — the office that currently administers all other purchases and contracts.

Furthermore, the model would harness the significant powers and resources of the Inspector General. To enable the Inspector General to perform the oversight role that the City Code contemplates, the proposal calls for the reinstatement of committees to evaluate and select contractors. These committees, composed of government employees, would follow a standard process and review and score proposals in public meetings. They would be subject to monitoring by the Inspector General as described above.

To reduce the influence of politics and make the selection process truly competitive, the mayor's role would be limited to accepting or rejecting a selection. In the case of contracts awarded by the legislative branch, the City Council's role would be similarly limited.

Though mayors have long enjoyed significant discretion in choosing contractors in New Orleans, BGR's research of best practices found little evidence to support this arrangement. Instead, the city should award a contract to the firm that scores best on an evaluation committee's objective and transparent scoring of proposals.

Any contracting process in which elected officials or their appointees participate can be circumvented or manipulated for political purposes. BGR's model

attempts to reduce the risk of political interference by providing sunshine and establishing procedures that promote a level playing field. It relies heavily on the Office of Inspector General to monitor the process and call attention to any unethical or wasteful practices.

The model also encourages competition and aggressive monitoring of contractor performance. A process that is tailored to a particular firm, or that does not widely solicit proposals, will not yield the best possible deal for taxpayers. Without follow-up and monitoring, the city risks receiving less than it bargained for.

The proposed model would apply to all city departments, agencies, boards and commissions. In the case of unattached boards and commissions, such as the New Orleans Aviation Board or the Sewerage & Water Board, it might be necessary to modify the committee structure or approving authority. Any alternate process should be set forth in the mayor's executive order. It should meet or exceed the requirements for competition, transparency and independent evaluation outlined in this report.²²

The model that BGR is proposing would also apply, with modifications, to contracting done by the city's legislative branch. BGR recommends that the City Council amend its rules on contracting to adopt a comparable framework.

The following section outlines the proposed contracting process. It includes administration by a professional procurement department, a formal decision-making framework, and provisions for making the process transparent, promoting competition and monitoring contractor performance.

THE MODEL

A Centralized Procurement Office

Under BGR's model, the professional services contracting process would be administered by a professional procurement office.

The city would transfer administrative authority over professional services contracts to the existing purchasing office within the Department of Finance. The office would be led by a chief procurement officer who meets appropriate educational and professional certification requirements. To reduce exposure to political pressure, the chief procurement officer would have civil service protection.

The office would work with city departments, agencies and boards (including the City Council) in drafting and advertising requests for proposals, and in reviewing proposals to ensure that they meet minimum criteria. It would also administer the evaluation committee process described below.

The Decision-Making Framework

Evaluation committees comprised of government employees would evaluate proposals for professional services contracts above a threshold set by city ordinance.²³

The chief procurement officer, in consultation with the head of the department, agency or board requesting the services, would appoint the evaluation committee for each contract. The committee would be comprised of at least three government employees. The chief procurement officer or his designee would serve as the committee chair and have voting powers. In addition, the committee would include as voting members two or more of the following:

- The head of the department requesting the services.
- Professionals from within local government who possess expertise in the relevant field.
- The department employee who will manage and monitor the contract.

-
- A representative from the city’s finance or budget office, if appropriate.

For the City Council, appropriate committee members would include the head of the Council’s research staff and subject matter experts from within city government.

The chief procurement officer could also appoint, when appropriate, members of the city’s procurement and law departments and experts from outside of government to participate as advisory, non-voting and non-scoring members. If the law department were requesting the contract, the City Attorney and a professional from the office could serve as full members of the committee.

Before participating on a committee, a member would have to certify that he did not have a conflict of interest with any of the proposals.

The evaluation committee would select the winning contractor. The mayor (or in limited cases, the City Council) would have the option of signing a contract with the evaluation committee’s highest-rated firm, or terminating the procurement.

Once the evaluation committee had identified the best proposal, it would submit it to the mayor for his acceptance or rejection. The mayor would be required to justify in writing any such rejection. The rejection and the explanation for it would be public records, readily available for public inspection. If the mayor refused to accept the committee’s selection, the procurement would terminate.

If the mayor approved the choice, city staff would negotiate a contract with the selected professional. Once a contract were ready, it would be presented to the mayor for final approval and signature.

In the case of contracts awarded by the City Council, the Council would have the prerogatives and responsibilities of the mayor. It would exercise its approval powers through a vote.

Provisions for a Fair, Open and Transparent Process

To shed sunlight on the contract evaluation and selection process and to promote a level playing field, the model requires the city to:

Conduct every meeting involving evaluation of proposals and selection of contractors as an open meeting.

These meetings should be conducted as open meetings, subject to all of the notice and other procedural requirements that apply to open meetings under state law. The meetings are, after all, to discuss the expenditure of public funds.

Give notice to the Inspector General of the commencement of each procurement, as well as selection and negotiation meetings, and facilitate the Inspector General’s work.

The City Code gives the Inspector General oversight powers and requires the city to notify the Inspector General of any meeting of a selection or negotiating committee. The City Code should be amended to require notice of the decision to initiate a procurement as well. The mayor should formally recognize the Inspector General’s role and facilitate his participation.

Establish and follow a set of comprehensive written procedures for all contracts.

Comprehensive written procedures provide a guide for each stage of the contracting process. They also encourage accountability and public trust by providing objective standards against which the actions of city officials can be measured.

The procedures should require at the outset a determination by the chief procurement officer that the procurement is for an authentic professional service eligible for the professional services contracting process. In making that determination, the chief procurement officer should apply an industry-established definition of professional services.

The procedures should include requirements for: demonstrating the necessity of using outside contractors instead of in-house staff; advertising procurements; evaluating proposals and selecting contractors; hearing contractor appeals; and monitoring and evaluating contractor performance.

Finally, the procedures should include instructions for contracting during emergencies, for contracting when there is only one person or company that can provide the needed services, and for extending existing contracts when continuity of a particular service is essential.

Use standardized Requests for Proposals (RFPs) and Requests for Qualifications (RFQs).

The city must design a contracting process that awards work based on the quality of proposals rather than political connections. To identify the best firm for each job, the procurement office should use standardized RFPs and, in cases of larger, more complex projects, RFQs.

Each RFP should contain a clear description of the scope of services to be performed, the goal of the contract, the deadline for proposals, the contact person, the timetable for selection, the criteria for evaluation and the relative weight attached to each. The RFP should focus on relevant factors, such as technical approach, the knowledge and technical skills of the proposer, experience, the firm's financial capabilities, and cost. The RFP's criteria should reflect any city policies addressing participation by local businesses and firms owned by disadvantaged individuals.

The RFP should require disclosure of any family or business relationships that the firm, the proposed subcontractors and their principals have with city officials or employees. It should also require disclosure of campaign contributions by or on behalf of any of them to the mayor or the City Council. The form for submission of proposals should be standardized.

For larger, more complex projects, the procurement office may need to begin with an RFQ to identify those

firms that are fully qualified to complete the scope of work. The RFQ should include a summary of the project and request specific information regarding the firm's ability to complete the project. Once the city has identified a pool of qualified firms, it would issue an RFP to those firms in the pool.

All RFPs and RFQs should be structured by the procurement office to elicit the maximum competition from qualified contractors. They should also be subject to final approval by the procurement office before being advertised.

Require upfront and ongoing disclosure of all subcontractors involved in the contract.

All RFPs should require the disclosure of all principals and all subcontractors slated to perform work under the project. The contracts should require immediate disclosure of any principal or subcontractor added to the project after the contract has been signed.

Establish an objective proposal evaluation system that includes the use of detailed criteria, weights and grading.

The evaluation committee should grade proposals according to the exact criteria and weighting set forth in the RFP. Committee members should record in writing the individual and collective scoring and ranking of each proposal.

Document all aspects of the contract evaluation and selection process.

Every step of the contracting process should be documented, and all documents should be considered public records and made readily available for public inspection. Contract awards should be posted on the city's web site, and the signed contracts themselves should be retrievable from the site.

Steps to Promote Competition

To promote competition for professional services contracts, the model requires the city to:

Maximize the pool of competitors by advertising and conducting outreach programs.

All RFPs should be advertised widely and with ample time allowed for response. In addition to the official journal, each available contract should be advertised on the city's web site. Written policy should specify additional advertising requirements in relevant media (like professional journals or newsletters) based on the size of contracts. The city should keep records of all advertisements associated with each contract. The city should also conduct outreach programs to encourage an ample number of proposals.

Re-advertise at least once any contract that fails to receive at least three responsive proposals.

This requirement would serve as an incentive for encouraging competition and as a check to make sure it is accomplished.

Performance Monitoring

To confirm that the contractor is fulfilling its obligations and to create a record of contractor performance, the model requires the city to:

Monitor contractor effectiveness and maintain written evaluations.

Once the city awards a professional services contract, that contract moves into the monitoring phase. The user department should monitor the progress of all contract work and file written, standardized progress reports. The user department should also file a written, standardized evaluation upon completion of the contract. Such progress reports and written evaluations should be maintained in a central location indexed by the contractor's name and cross-referenced by officers and principals of the business. Checking evaluation of past performance should be a required part of all evaluation committees' review of any future proposals from that contractor.

IMPLEMENTING THE MODEL

The mayor should, after a public hearing, adopt the proposed process through an executive order. The mayor should also urge the City Council to adopt an ordinance making it illegal to deviate from the provisions of the executive order. The ordinance should specify appropriate sanctions. The City Council should amend its rules to mirror, with appropriate adjustments, the model recommended above.

Implementing the model would not require amendment of the charter. However, incorporating the model in a charter amendment would provide a higher level of protection for the reforms.

END NOTES

- ¹ Russell, Gordon and Frank Donze, “Four indicted in probe of Morial-era deal,” *The Times-Picayune*, June 17, 2005; and Russell, Gordon, “City Hall bribery case is crowded,” *The Times-Picayune*, February 5, 2007.
- ² Hammer, David, “Mefferts, St. Pierre indicted by feds,” *The Times-Picayune*, November 7, 2009.
- ³ Carr, Martha, “3rd place fits bill for N.O. contract,” *The Times-Picayune*, March 16, 2005.
- ⁴ Russell, Gordon, “Parking meter contract proves costly to city,” *The Times-Picayune*, February 28, 2005.
- ⁵ Varney, James, “Price no object in N.O. car-removal,” *The Times-Picayune*, March 22, 2006.
- ⁶ Code of Ordinances of the City of New Orleans, Sec. 2-1120(11) and Sec. 2-1120(12).
- ⁷ Code of Ordinances of the City of New Orleans, Sec. 2-1120(11)(u).
- ⁸ *Ibid.*
- ⁹ Home Rule Charter of the City of New Orleans, Sec. 6-308(5)(b) and (c).
- ¹⁰ Home Rule Charter of the City of New Orleans, Sec. 6-308(5)(a).
- ¹¹ The Nagin administration twice amended Executive Order MHM 96-020 prior to 2005, but neither amendment altered the committee makeup or re-allocated selection authority. Executive Order CRN 02-01 expanded the definition of professional services, and CRN 04-02 exempted certain types of contracts, including technology contracts, from the procedures required in Executive Order MHM 96-020.
- ¹² City of New Orleans, Office of the Mayor, Executive Order CRN 05-01.
- ¹³ New Orleans City Council, Ordinance No. 23,388 M.C.S.
- ¹⁴ City of New Orleans, Office of the Mayor, Executive Order CRN 09-01.
- ¹⁵ The proposals are reviewed by the CAO, City Attorney, or Director of the Office of Recovery and Disaster Administration, depending on the nature of the services. City of New Orleans, Office of the Mayor, Executive Order CRN 09-01.
- ¹⁶ *Rules and Regulations of the Council of the City of New Orleans*, Rule 45, Competitive Selection Process for Professional Services Contracts.
- ¹⁷ American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, 2006, Sec. 2-301, p. 16.
- ¹⁸ American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, 2006, Sec. 2-301, Commentary, p. 16.
- ¹⁹ American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, 2006, Sec. 2-302, Commentary p. 16. The *Code* does allow the procurement office to delegate some day-to-day procurement responsibility to a user department, but only if the department possesses procurement expertise and experience and if there is a significant degree of efficiency to be achieved through the delegation. However, the procurement office maintains ultimate responsibility for the process.
- ²⁰ National Institute of Governmental Purchasing, “Resolution 1002: Centralized Purchasing,” November 11, 1995.
- ²¹ American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, 2006, Sec. 3-203(7) and Sec. 5-205(3). Martin, Lawrence and John Miller, *Contracting for Public Sector Services* (National Institute of Governmental Purchasing, 2006). *Service Contracting: A Local Government Guide*, LeRoux, Kelly ed. (Washington: ICMA Press, 2007).
- ²² Since the charter was amended in 1995, each executive order outlining the procedures for selecting professional services contracts has allowed the city’s unattached boards, commissions, pension funds and public benefit corporations to employ an alternative process, subject to approval by the mayor.
- ²³ Code of Ordinances of the City of New Orleans, Sec. 2-7.



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