



BUREAU OF GOVERNMENTAL RESEARCH

January 2002

Challenge for a New Mayor: Professional Services Contracting Reform

Introduction

Over the past decade the Bureau of Governmental Research has repeatedly advocated specific reforms to eliminate patronage in professional services contracting by the City of New Orleans and other local government entities. Although the City has adopted some basic measures, such as establishing written procedures, serious problems remain.

The press frequently reports on the connections between campaign contributions and contract awards or covers dysfunctional situations, such as bid processes in which a single bid is received. The problems reported by the press stem from a basic conflict of interest created by the selection process. Under current procedures, public officials or their appointees control the selection process for professional services contracts. Those same officials are elected in campaigns financed in varying (but almost always significant) degrees by the very people who later seek, and often receive, such contracts. Reforms adopted to date have failed to address this basic conflict.

The election campaign for mayor presents an opportunity to demand fundamental reform in an area that has undermined trust in government, discouraged economic development, subverted confidence in programs designed to help disadvantaged business enterprises, and contributed to a political culture poisoned with cynicism. To focus public discussion and encourage change, BGR is presenting a model for professional services contracting and calling on mayoral candidates to pledge to implement it. The model and the pledge are specific, allowing voters to hold the candidate accountable, should he or she become mayor.

The central element of BGR's plan limits the role of elected officials in the process for awarding professional services. BGR believes that restricting their role and discretion will eliminate the conflict at the heart of the current system, thus opening the door to more objective decisions. It will also benefit both the mayor and prospective contractors by reducing pressure on prospective contractors to contribute to political campaigns and alleviating pressure on the mayor to reward contributors with contracts.

Background

In 1990, BGR issued a report advocating the adoption of reforms that aimed at restoring public confidence in the professional services contracting process. Prior to 1990, the City of New Orleans had no written guidelines governing the selection process for professional services. In 1991, the Chief Administrative Officer issued guidelines that ostensibly addressed BGR's concerns. BGR did a follow-up report in 1992 which commended the administration for taking a first step by creating written guidelines. BGR found the guidelines themselves, however, to be woefully inadequate.

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 contract procurement process was to be defined by executive order of the mayor (for the executive branch) and by rules of the city council (for the council's contracts).

Unfortunately, the written policies fell far short of the goal of providing an independent, non-political process for choosing contractors based on the best service for the least cost to the citizens. These deficient policies remain in effect today.

The Model

BGR is now recommending a dramatic overhaul of the existing system. The proposed model would apply to all city departments and other city entities, including the New Orleans Aviation Board and the Sewerage and Water Board. Because the concepts would apply equally well to contracting done by the city council, BGR also is recommending that a similar model should be adopted by the council.

Depoliticize the Selection Process

Create selection committees with a majority of members chosen by relevant professional organizations

The cornerstone of BGR's model is depoliticizing the selection process through the creation of independent selection committees for professional services contracting. Under the present system, appointees of the mayor are in control of the evaluation process. Under BGR's model, selection committees with a majority of members chosen by relevant professional organizations would evaluate and select professional service contractors.

The model proposed by BGR is not without precedent. Both the State of Louisiana and the City of Baton Rouge have for many years utilized independent selection committees, with a majority of voting members designated by professional associations or boards, for the selection of architects and engineers. Both models were created to remove political patronage from the awarding of professional services contracts. The state boards were created in 1976 at the urging of professional groups. The Baton Rouge boards were created in 1989 through the efforts of a mayor who had run on a platform of removing patronage from the city's business.

BGR's proposal would expand the use of independent selection committees beyond the fields of architecture and engineering. BGR recommends the creation of five standing committees to make selections for professional services contracts in the following fields: architecture, engineering, medical services, accounting/data processing, and legal services. A sixth umbrella committee would make selections for professional services in other fields.

Each of the standing committees would be made up of five professionals chosen by two or more professional organizations of that discipline, plus two city staff members. One of the staff members would be the Chief Administrative Officer or the designee thereof, and the other would be the head of the user agency for each particular contract or the designee thereof. The umbrella committee would consist of one outside professional member from each of the five standing committees, selected by the five non-government members of that committee, plus the two city staff members as in the other committees. All members of the committees would have voting rights.

No firm in which a selection committee member is an owner, associate, employee, stockholder or partner would be eligible to receive any city contract during that individual's term and for a period of one year following that individual's service on the committee. During an individual's term and for a period of one year following, neither that individual member of the selection committee nor any member of that individual's firm would be allowed to act as a consultant or subcontractor to any firm awarded a contract by the committee.

The deans of the colleges or the chairs of the academic departments that provide the relevant professional training at the city's universities would designate the professional organizations with appointment powers. To be eligible for designation as an appointing body, a professional organization must (1) require its members to meet ethical standards of the profession, (2) have had a presence in New Orleans, if a local body, or in the state of Louisiana for at least five years, (3) have a substantial membership of licensed or certified professionals, (4) be open to any qualified member of the profession, and (5) have by-laws and keep minutes. The method of choosing appointees should be left to the discretion of the organization's board.

The appointing organizations should be mindful of Section 2-86 of the city code which establishes city policy to ensure that bodies performing governmental functions (as these selection committees would) reflect the demographic composition of the city as a whole.

Selection committees would select the contractors for professional contracts over \$15,000, the threshold for competitive selection as currently set by city ordinance. Provisions should be made for committee review of emergencies and for committee review and approval of sole-source contracting and extensions of contracts where continuity of service is essential.

Submit contracts negotiated by the city staff to the mayor for signature or rejection, with a written explanation required if the mayor rejects a contract

Under the present system, the mayor selects contractors from a list of three chosen by an evaluation committee consisting of mayoral appointees. Under BGR's system, after a selection committee has made its decision, 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.

At this stage, the mayor would have the functional equivalent of a veto, i.e., the discretion to decline to sign the contract. The mayor should be required to justify in writing any refusal to sign a contract. Such a rejection and the explanation thereof should be public records, readily available for public inspection. If a contract is refused, the mayor and the initiating department head would then meet to decide whether to restart the process or cease the procurement.

Actively Promote Competition

Maximize the pool of competitors by advertising and conducting outreach programs

All requests for proposals or potential contracts 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 website. Written policy should specify additional advertising requirements in relevant media (like professional journals or newsletters) based on the size of contracts. Records should be kept of all advertisements associated with each contract. The city should conduct outreach programs to encourage an ample number of proposals.

Re-advertise 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. Re-advertising avoids the appearance of proposal requests designed to disqualify all but one provider.

Conduct a Fair, Open, and Transparent Process

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

Comprehensive written procedures are critical to a competitive and publicly accountable contracting system. They provide a guide for each stage of the contracting process, including demonstrating the necessity or cost effectiveness of using outside contractors instead of in-house staff, preparing advertisements, evaluating proposals and selecting contractors, and monitoring the contract and evaluating performance at completion. Written procedures encourage accountability and public trust by providing objective standards against which the actions of city officials can be measured.

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

RFQs should be used to certify potential professional contractors. RFQs and RFPs should be structured to elicit the maximum competition from qualified contractors. Every RFP should be reviewed by the selection committee. Each should contain a clear description of the scope of service, the goal of the contract, the deadline for proposals, the contact person, the timetable for selection, and the criteria for evaluation and the relative weight attached to each. Goals for participation by Disadvantaged Business Enterprises should remain a part of each request. The form for submission of proposals should be standardized.

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

Selection committees should follow the criteria and weighting of the RFP exactly, and they should record their grading of each proposal in written form in the process of ranking the proposals.

Document all aspects of the contract evaluation and selection process

Every step of the contracting process should be documented and every document considered a public record and made readily available for public inspection. Contract awards should be posted on the city's website, and the signed contracts themselves should be retrievable from the site.

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

These meetings should be subject to all of the provisions of the public meetings and records laws. The meetings are, after all, to discuss the expenditure of public funds.

Establish an appeals process

The selection committees should establish a formal, standardized procedure for contractor appeals.

Ensure Accountability

Monitor contractor performance and create and maintain written evaluations

The contracting department should monitor the progress of all contract work and file written, standardized progress reports. The contracting 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 contractor's name and cross-referenced by officers and principals of the business. Checking this evaluation of past performance should be a required part of all selection committees' review of any future proposals from that contractor.

Enforce the Rules

Give the force of law to the process described herein

The mayor should, after a public hearing, adopt this process through an executive order. The mayor should then 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.

Activate the Ethics Review Board

The mayor should appoint members of the Ethics Review Board in compliance with current charter provisions. It should have explicit investigative powers to review the professional contracting process for conflicts of interests and adherence to written policy.

The Pledge

Each candidate for mayor is requested to take the following pledge:

I pledge that, within ninety days after taking office, I will implement the BGR Professional Services Contracting Model by issuing an executive order and taking all the other steps necessary to make the model operational.

Signature

Name (Please print)

Date

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BGR's Mission: The Bureau of Governmental Research is a private, nonprofit, independent research organization dedicated to informed public policy making and the effective use of public resources for the improvement of government in the Greater New Orleans Metropolitan Area.



Bureau of Governmental Research
225 Baronne Street, Suite 610
New Orleans, Louisiana 70112-1704

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