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BGR's Spotlight on Local Government Issues

Jefferson Parish Contracting Reform Proposal Misses the Mark

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Introduction

The Jefferson Parish Council has released a draft ordinance that would make changes to the parish's process for evaluating and awarding contracts for nonprofessional services. The proposal comes following pressure from the media and citizens to revamp contracting processes that stand far apart from norms and best practices. While the proposal makes some welcome changes, it is problematic in several respects and fails to meaningfully address a fundamental weakness: the council's extraordinary discretion over contract selections.

Background

Jefferson Parish's home rule charter calls on the Parish Council to create processes for the evaluation and award of service contracts. Under that directive, the council has created five such processes, but as a practical matter the parish uses only three. It procures professional services, other than engineering services valued at \$300,000 or less, through its statement of qualifications (SOQ) process. It procures the aforementioned engineering services through its "routine engineering" process. It procures nonprofessional services through either sealed bids or its request for proposals (RFP) process. The RFP process is the subject of the proposed ordinance.

Last year, BGR released [*Private Services in the Public Interest: Reforming Jefferson Parish's Unusual Approach to Service Contracting*](#). It provided an in-depth analysis of all three pro-

cesses and found problems with each, the most troubling of which is the Parish Council's nearly unfettered discretion in the selection of contractors. This decision-making framework creates the risk that contracts will be awarded based more on personal relationships than on an in-depth analysis of what makes most sense for taxpayers. For a more complete analysis of these processes, see the [report](#).

The RFP Process

In 2011, the parish awarded 20% of its non-bid service contracts through the RFP process. In recent years, the parish has used that process to award contracts for recycling, transportation and security services, among others.

Under the RFP process, a four-person committee evaluates proposals according to weighted criteria outlined in the solicitation. The committee consists of representatives from the department requesting the service, the council's office of research and budget, the finance department and the purchasing department. A representative from the legal department serves in an administrative, non-voting capacity. The committee makes its evaluations in open meetings and documents them in writing.

The parish code requires that each response to an RFP include a proposed price, but it prohibits the committee from considering it in its scoring. Instead, the committee simply forwards the prices to the council for its consideration alongside the committee's scoring of non-price criteria. The council is free to award the contract to any firm deemed qualified by the evaluation committee, regardless of where it ranks in the scoring process.

The Proposed Ordinance

The proposed ordinance would make a number of changes to the RFP process. It would, among other things:

- Limit the council to selecting from the three highest-scoring proposers when

an RFP receives seven or fewer responses, and from among the top five when it receives more than seven.

- Prohibit unclassified employees from serving as scoring members of an RFP evaluation committee.
- Include price in the scoring process and weigh it at 20% for all RFPs, create a formula for assigning scores to price proposals, and require that prices remain under seal until evaluators have scored all other criteria.
- Require written explanations from evaluators whose technical scores for a certain respondent are less than 50% of the allowable points.
- Expand campaign contribution disclosures to require both prime contractors and subcontractors to submit affidavits listing all campaign contributions made over the last two years by the company and its officers and directors, as well as anyone owning at least 25% of the company, to the Parish President and to current and former councilmembers. Currently, only prime contractors – but neither their subcontractors nor their directors, officers or owners – are required to submit information on campaign contributions.
- Require all prime contractors and subcontractors to submit an affidavit listing any solicitations for campaign contributions or other monetary considerations made over the last two years via telephone or other personal form of contact by the Parish President or any current or former councilmembers.

Certain elements of the proposed ordinance would improve the parish's RFP process. Expanding the current campaign contribution disclosure as proposed would strengthen the

integrity of the parish's evaluation process and improve the public's confidence in it. Including price as a weighted factor to be considered by the evaluation committee would encourage respondents to submit their best possible price to the parish, and define the importance of price relative to other criteria. Establishing an objective method for scoring price and keeping price under seal so it will not prejudice the scoring of non-price criteria would also improve the process.

Other elements of the parish's proposal, however, are problematic.

Continued Discretion

In its report, BGR identified the council's nearly unfettered discretion in the selection of contractors as the biggest weakness in the parish's service contracting processes. By limiting the council's discretion to the top three or five respondents, the proposal would not restrict the council to a meaningful degree. It offers the illusion of reform while maintaining a system that allows elected officials to pick and choose who receives parish work.

Best practices call for selecting the firm that scores highest on a committee's evaluation of relevant criteria or terminating the procurement. Giving elected officials discretion over selection invites politics and patronage into the process. It also jeopardizes the efficient and effective use of public funds, as illustrated by the Jefferson Performing Arts Center debacle, in which the council awarded the design contract to the fourth-ranked respondent.

Appointee-Free Evaluations

The proposal would prohibit political appointees from serving as scoring members of the evaluation committee. As a result, nearly all department directors would be barred from serving as evaluators. The council chairman put forth the prohibition due to concerns that some department directors are less qualified than their assistant directors and that the Parish President, working through his appointed,

unclassified department heads, could exert undue influence on the evaluation process.

The latter is a legitimate concern, but there are arguments in favor of including political appointees. A blanket prohibition on the participation of department directors could rob the evaluation process of valuable expertise. It would also exclude from the evaluation process the person most responsible for the delivery of the service at issue. The purchasing director, presumably the parish's top expert on all things related to procurement, would also be prohibited from serving on the committee.

Nowhere in BGR's research of best practices has it come across a recommendation to ban politically appointed department directors from the evaluation process. If the Parish Council is concerned about politically tainted evaluations, it could impose a limit on the number or percentage of political appointees on the committee.

Furthermore, a key rationale for the prohibition – that the contracting process should be protected from political influence – simply does not square with the proposal's continuation of broad council discretion over the ultimate selection of contractors. The discretion individual councilmembers enjoy in selecting contractors is more susceptible to politics than the participation of a political appointee in a group evaluation process that is open to the public, based on scored evaluation criteria, documented for public review and now subject to active oversight by the parish's office of inspector general.

A Fixed Weight for Price

The proposal improves the parish's consideration of price by including it as a scored evaluation criterion, keeping prices under seal until all other criteria are scored and, once prices are unsealed, creating an objective formula for scoring them. However, it would unnecessarily fix the weight assigned to price at 20% for all RFPs.

In recent years the parish has used its RFP process to award contracts for everything from the operation of its landfill to catering. For services as varied as these, there is no single appropriate weight for price. Instead, its proper percentage will vary depending on whether the project is straightforward or open-ended, and the importance of qualifications to a successful service procurement. Ideally, that determination would be made by a trained chief procurement officer, in consultation with the director of the department requesting the service.

Disclosures

The proposal requires extensive disclosures. Some of these are clear improvements to the process. The expanded disclosure requirements relating to campaign contributions close obvious loopholes. But the second disclosure provision, requiring disclosure of any solicitations of contributions, seems overly broad and possibly impractical.

Conclusion

The proposed ordinance would make some positive changes to the parish's RFP process. It expands disclosures of campaign contributions required of both prime contractors and subcontractors. And it makes certain improvements in the treatment of price.

However, key elements of the proposal are problematic. The proposal leaves in place the Parish Council's power to pick and choose who receives parish work. The prohibition on department directors and other political appointees serving on evaluation committees could deprive the committee of valuable expertise and would bar those most responsible for a successful procurement from the evaluation of proposals. Assigning a fixed weight to price for all RFPs would prevent the parish from carefully considering the importance of cost for each particular procurement. And the proposal requires new disclosures from respondents that may not be practical.

To address these shortcomings, BGR recom-

mends, consistent with best practices elsewhere, that the Parish Council amend the proposal to:

- Require the council to select the top-ranked respondent or terminate the procurement.
- Allow the participation of department directors on evaluation committees.
- Allow for varying weights for price depending on the nature of each particular service procurement.
