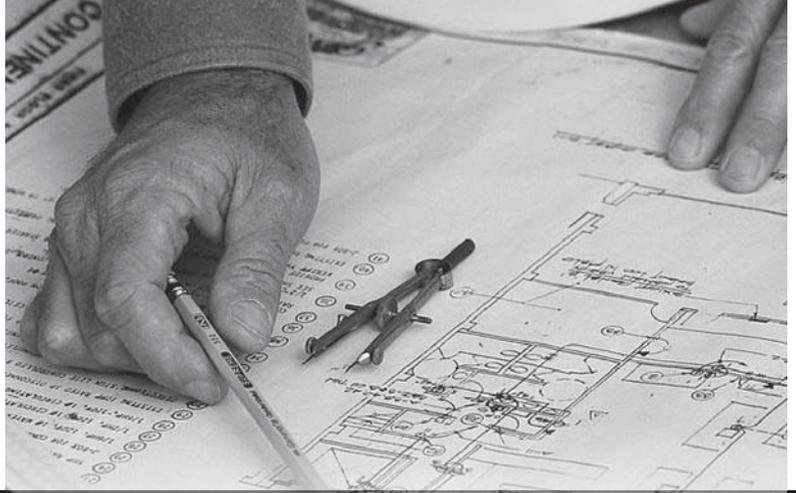


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Private Services

in the

Public Interest

Reforming
Jefferson Parish's
Unusual Approach
to Service Contracting

MAY 2012



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938 Lafayette St., Suite 200
New Orleans, LA 70113
Phone 504-525-4152
Fax 504-525-4153
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EXECUTIVE SUMMARY

Jefferson Parish's contracting process for professional and other services stands far apart from norms and best practices.

To begin with, it places the power to select contractors with the Parish Council instead of the executive branch. This approach is abnormal for a government with an elected executive. It creates a misalignment between powers and responsibilities. While the responsibility for delivering services and infrastructure rests with the executive branch, the power to select the contractors who carry out much of that work rests with the legislative branch.

The misalignment of powers, while problematic, is not the most troubling aspect of the Parish's contracting process. The most serious flaw is the Parish Council's nearly unfettered discretion in the selection of contractors. The Parish Council is free to ignore the work and recommendations of evaluation committees and make its own selections.

This degree of discretion would be troubling on its own, but the problem is grossly exacerbated by the practice of deferring to the councilmember in whose district the contracted service will be performed. The result is an idiosyncratic process that some perceive to be driven more by personal political relationships than by what makes the most sense for taxpayers.

There is no reason for giving any elected official – whether it be a council member or the chief executive – such expansive power over contractor selection. Best practices indicate that governments should select the firm that performs best on an evaluation committee's scoring of relevant criteria.

In this report, BGR summarizes the parish's current contracting procedures and identifies weaknesses. It then draws on best practices to recommend reforms that should be implemented regardless of who controls the selection process. The recommendations would reduce the discretion of elected officials, enhance the contract review process and improve other aspects of contracting in the parish.

INTRODUCTION

Jefferson Parish, like other local governments, routinely turns to the private sector to provide the range of services expected of modern government. Its contracts are as varied as translation services for courts, dental services for juvenile inmates, engineering services for drainage projects and trash hauling services to dispose of household waste. The parish is not required to award these service contracts to the lowest bidder. Instead, it can consider factors other than price.

Often, this is a sensible approach. Price is not necessarily the most important factor for selecting services that depend on technical or specialized skills. But the inclusion of non-price considerations results in a more subjective selection process – and the potential for favoritism, waste and abuse. Without a transparent and rational set of procedures, jurisdictions are sure to face serious questions over how and why contracts are awarded.

As currently constructed, Jefferson Parish's contracting process encourages exactly these types of questions. In fact, flaws in the parish's approach have contributed to contracting problems in recent years.

The most troubling of these flaws is the Parish Council's nearly unfettered discretion in the selection of contractors. This flaw is deepened by the council's tradition of deferring to the recommendation of the councilmember in whose district the service will be performed. The result is a process that some perceive to be driven more by personal political relationships than by what makes the most sense for taxpayers. The current process can also create costly problems, as illustrated by the Jefferson Performing Arts Center debacle. Parish officials blame the years of delay and \$18 million in cost overruns – 68% of the project budget – largely on problems with the facility's original design.¹ The architect responsible for the design was selected through the parish's flawed selection process.²

It is impossible to eliminate subjective judgments from the service contracting process. They accompany any analysis containing qualitative evaluation criteria. Fortunately, it is possible to establish a process that protects against potential abuses and create a framework

METHODOLOGY

BGR has long focused on the issue of public contracting, issuing nine reports on the topic during the last 20 years alone.³ In conducting its research for this report, BGR drew on that institutional knowledge and consulted a variety of sources. It interviewed parish officials from both the executive and legislative branches. It consulted experts from the National Institute of Governmental Purchasing (NIGP), the National Procurement Institute and a procurement consulting firm.⁴ It reviewed the American Bar Association's Model Procurement Code, as well as contracting textbooks published by NIGP⁵ and the International City/County Management Association.⁶ Finally, BGR interviewed and gathered information from procurement offices in other cities and counties.⁷

for sound, rational decision-making.

This report summarizes the parish's current contracting procedures and identifies weaknesses. It then draws on best practice research to recommend reforms designed to serve the interests of Jefferson Parish residents.

LEGAL FRAMEWORK

Jefferson Parish has considerable flexibility in designing its procedures for evaluating and awarding service contracts. State law imposes only one significant parameter on local governments: They must award contracts for architectural and engineering design services on the basis of competence and qualifications.⁸ In making the award, they cannot consider price. Otherwise, the state allows each local government to develop its own service contracting processes.

The Jefferson Parish charter requires Parish Council approval of all contracts for public works and all purchases of materials and supplies.⁹ These contracts are awarded to the lowest responsive and responsible bidder, as required by the state's public bid law. The charter also requires council approval for any changes to any type of contract, including those for services, un-

less the council provides otherwise by ordinance.¹⁰ The charter does not require Parish Council approval for service contracts. It does, however, call on the council to create by ordinance processes for the evaluation and award of service contracts.¹¹

Under that directive, the Parish Council has established five processes for evaluating and awarding service contracts. However, according to parish officials, in practice all service contracts are handled through the following three:¹²

- Professional services are procured through the parish's Statement of Qualifications (SOQ) Process.
- Professional engineering services worth less than \$300,000 are procured through the parish's Routine Engineering Process.
- Nonprofessional services can be procured through either a sealed bid process or the parish's Request for Proposals (RFP) Process.

In 2011, the parish selected 86 service contractors through its SOQ, Routine Engineering and RFP processes.¹³ The parish's purchasing department could not provide data on the number of service contracts awarded through a sealed bid process, but it indicated that the number far exceeded the 17 contracts awarded through its RFP Process last year.

The council has granted itself sweeping selection authority in the SOQ, Routine Engineering and RFP processes. These processes are described in detail below.

THE CONTRACTING PROCESS IN JEFFERSON

The SOQ Process: Professional Services

When Jefferson Parish wants to contract for a professional service¹⁴ other than a routine engineering service, it invites firms to submit a statement of qualifications (SOQ). The solicitation must be approved by the Parish Council.

The parish code sets forth nine criteria on which the SOQs should be evaluated, but it allows the Parish

Council to add, eliminate or alter criteria in the solicitation. The nine recommended criteria for evaluation are:

- Professional training and experience.
- Capacity for timely completion of the work.
- Past and current accomplishments.
- The nature, quantity and value of parish work previously performed and presently being performed. (In its SOQs, the parish explains that this criterion is intended to spread work around by giving a slight preference to firms that do not have a deep history of performing work for the parish. This intent is not, however, specified in the text of the code).
- Past performance by the contractor on public projects.
- Whether any past work resulted in litigation between a public entity and the contractor.
- Location of the principal office where the work will be performed, with a preference given to those based in Jefferson.
- The size of the firm, based on the number of personnel, as related to the project requirements and/or scope.
- The percentage of Louisiana residents who will work on the project, with preference given to firms employing at least 80% Louisiana workers.¹⁵

Price is not included among the parish's recommended criteria. In the case of architecture and engineering services, state law prohibits it.¹⁶ (The parish negotiates architectural and engineering contracts according to established fee schedules.) The parish can consider price in selecting other professional service providers, but often it does not.

The code does not currently assign weights to the criteria. Specific weights are proposed by the administration and approved by the Parish Council as part of the advertisement of each particular solicitation.

The Parish Council adopted several ordinances May 9 that are not yet effective, but would alter the SOQ process.¹⁷ One of them creates a separate set of seven criteria intended to apply to SOQs for architects and engineers. It also creates weights for the criteria and provides that a contractor must achieve a minimum

score in order to be considered qualified.

One of several committees evaluates the SOQs submitted by interested firms:

- The parish's Technical Evaluation Committee reviews SOQs for architectural, engineering and surveying services. One of the ordinances adopted May 9 adds lab and field-testing services to the committee's purview. The five-member committee consists of the director of the department requesting the service, a professional engineer employed by the parish and appointed by the parish president, and three non-parish members nominated by the local chapters of relevant professional organizations. Those organizations are the Louisiana Engineering Society, the American Council of Engineering Companies and the American Institute of Architects.¹⁸ The new ordinance adds at least two of the following three administrators to the committee: the directors of public works, engineering and capital projects.
- The Financial Evaluation Committee evaluates SOQs for bond counsel, accounting, auditing and other financial services. The four-member committee consists of the parish attorney and the parish finance director or their designees, and two non-parish professionals appointed by the Louisiana Society of Certified Public Accountants and the Louisiana Bar Association.¹⁹
- The Insurance Advisory and Coordinating Committee evaluates insurance coverage proposals for the parish and its employees. The six-member committee consists of the chief administrative assistant, the director of human resource management, the finance director, the director of loss control, the chief assistant to the Parish Council and the parish attorney or his designee.²⁰
- The Data Processing Advisory Board evaluates professional service proposals related to information technology. The seven-member

committee consists of an appointee from the parish president's office, the parish's data processing coordinator, the director of finance, the director of public works, the personnel director, an appointee of the parish attorney, and an appointee from the council's office of research and budget.²¹

For professional service contracts outside the scope of these committees, the council may name a committee to review SOQ responses.²² The code is silent on how the proposals should be evaluated if the council does not. Parish officials interviewed by BGR could not recall an instance when SOQ responses were not assigned to a committee for review.

All of the review committees conduct their evaluations in open meetings. Their evaluations are documented in writing and available for public inspection upon request.

Each evaluation committee scores responses according to the criteria and weights set forth in the solicitation. It then submits a list of the top five firms to the Parish Council, along with a list of all other firms that the committee deems qualified to perform the job.²³ There is no requirement that the committee rank any of the firms, although they often rank the top five. The council is free to select any of the qualified firms, regardless of whether it ranks among the top five.²⁴ For services specific to a particular location, the Parish Council typically defers to the recommendation of the councilmember whose district contains the project.

Once the Parish Council selects a contractor for a particular job, the administration negotiates the terms of the contract with the selected firm and submits it to the Parish Council for ratification. If the administration cannot reach an agreement with the selected firm within 60 days, the council can select another firm from the evaluation committee's list of qualified respondents, re-advertise the contract or cancel the procurement.²⁵

The Big Exception for Professional Services: Routine Engineering

Most engineering services are treated differently from other professional services. Every year, the Parish

Over the course of 2010 and 2011, the Parish Council awarded roughly 80% of the contracts for sewer, water, street and drainage work through the Routine Engineering process. That means only one in five such contracts was openly advertised and individually evaluated by the parish's Technical Evaluation Committee.

Council approves and advertises a solicitation for statements of qualifications from engineering firms interested in performing "routine" work in four areas: water, sewerage, drainage and streets. The parish code defines "routine" as any contract worth \$300,000 or less.²⁶ Of the 86 service contracts awarded in 2011 through the parish's three non-bid selection processes, 45% were awarded through the Routine Engineering Process.²⁷

The Technical Evaluation Committee scores respondents using a set of weighted criteria outlined in the solicitation. In the past, those criteria have typically resembled the nine criteria that the code recommends for other professional services.

The committee provides the Parish Council with lists of firms demonstrating adequate qualifications to perform work in each of the four areas. The parish uses a score of 70% as the cut-off for inclusion on the lists. The firms on the lists are not ranked. Currently, each list contains about 50 eligible engineering firms. Most firms appear on all four lists. According to parish records, of the 214 firms that applied to get on the current lists, only 10 failed to make the cut.²⁸

Throughout the year, when routine engineering needs arise, the Parish Council simply chooses a firm off the pertinent list. The council has complete discretion in making its selections from among the many eligible firms. The selection is typically made at the recommendation of the councilmember in whose district the work will be performed. The administration then finalizes the scope of work and negotiates a contract. The contract is then submitted to the council for final approval.

Over the course of 2010 and 2011, the Parish Council

awarded roughly 80% of the contracts for sewer, water, street and drainage work through this expedited process.²⁹ That means only one in five such contracts was openly advertised and individually evaluated by the parish's Technical Evaluation Committee.

In February, the Parish Council amended the code to create a specific set of criteria and point values for evaluation, formalize the current 70% threshold for inclusion on the list, and add members to the Technical Evaluation Committee for evaluation of firms interested in performing Routine Engineering services.³⁰ The new members include the directors from two of three departments: public works, engineering and capital projects. (In May, the Parish Council passed an ordinance expanding the role of the additional members to include review of all other proposals that come before the Technical Evaluation Committee.)

The changes also require the non-parish members of the Technical Evaluation Committee to submit annual financial disclosure statements to the parish. Future evaluations for creating a pool of pre-qualified firms to perform Routine Engineering services will occur under these new guidelines.

Bids or RFPs: Nonprofessional Services

The parish may award contracts for services other than professional services through a sealed bid process or through the RFP Process. For basic services that do not require a specialized skill set, such as grass cutting, janitorial and alarm testing services, the parish normally uses a sealed bid process, awarding the contract to the lowest bidder. In other cases, the parish uses its RFP Process, which allows for the consideration of factors other than price. The parish requires the use of a bid or RFP Process for any nonprofessional service valued at \$15,000 or more.³¹

In the RFP Process, a four-person committee evaluates proposals according to weighted criteria included in the solicitation. In the past, the committee has consisted of representatives from the department requesting the service, the council's research and budget office, the purchasing department, and the legal department. A change adopted by the Parish Council in February replaces the representative from the legal department

with one from the finance department. The legal department representative will oversee the work of the committee, but will not participate in the evaluation.³²

The code does not specify a recommended set of criteria. The RFPs that BGR reviewed included a range of criteria such as the proposer's qualifications, experience, key personnel, financial health and proposed approach to the project.

The parish code requires that each response to an RFP include a proposed price.³³ However, the code prohibits the committee from considering price in its scoring. Instead, the evaluation committee simply forwards the prices to the council for it to consider alongside the committee's scoring of non-price criteria.

The committee makes its evaluations in open meetings and documents them in writing. They are available for public inspection upon request.

In the past, the Parish Council could award the contract to any respondent, even one not deemed qualified by the evaluation committee. An ordinance approved in February restricts the council to selecting from among the firms deemed qualified by the committee.³⁴ However, the council's choice is not limited to the committee's top-ranked proposal or even a subset of top-ranked proposals.

As with professional services, when selecting contractors for nonprofessional services in a particular area of the parish, the Parish Council typically defers to the recommendation of the councilmember whose district contains the work.

Once the Parish Council selects a firm, the administration is responsible for negotiating the terms of the contract with that firm. It then submits the contract to the council for final ratification.³⁵

Other Parish Contracting Processes

Jefferson Parish's code of ordinances outlines special evaluation and selection procedures for two other types of service contracts: design-build contracts and contracts for personal services. For emergency procurements, the parish follows a set of internal procedures that mirror

state requirements for bypassing the public bid law.

BGR found no examples of contracts awarded under the design-build procedures during the past two years. Parish officials told BGR that the parish does not engage in design-build projects.

However, the code establishes a two-step process for evaluating design-build contracts. It calls for the parish's Technical Evaluation Committee to review statements of qualifications and score them according to criteria outlined in the solicitation. The public works director then invites the top two to five highest-rated firms to submit a detailed technical and cost proposal for the project.³⁶

The code calls for those proposals to be scored by a separate committee consisting of the public works director or his designee, who serves as the chairman, a representative of the finance department, the director of the parish department directly involved in the design-build project, and any other Jefferson Parish employee deemed necessary by the committee chairman.³⁷ Under the code, once the committee completes its scoring, the Parish Council has complete discretion to select the contractor.³⁸

In addition, the code sets forth a process for procuring "personal services," defined in state law as work rendered by individuals that requires creative, technical or otherwise unique skills, such as graphic design, photography or handwriting analysis.³⁹ The code allows the director of a parish department to procure these services without a committee evaluation, subject to final authorization by the Parish Council.⁴⁰ The purchasing department reported that the parish does not use this process. Such services are procured through either the RFP Process or a bid process.

Finally, in cases of emergency, the parish's emergency procurement policy permits a departmental director to bypass the parish's codified contracting processes.⁴¹ For example, in the case of a natural disaster, flooding from a broken water main, a parish building in imminent danger of collapse, or severe buckling on a major thoroughfare, a department director can immediately contact a single firm to procure a needed professional service. For nonprofessional services, the department

director must get approval from the purchasing department before making an emergency procurement. After the work is complete, the departmental director must submit a resolution to the Parish Council to approve the expenditure, and that resolution must be published in the parish's official journal within 10 days, or as soon as otherwise possible.

ANALYSIS OF THE PARISH'S CONTRACTING PROCEDURES

Jefferson Parish's contracting processes contain a number of elements that promote transparency. The parish uses committees to evaluate proposals according to a set of published, weighted criteria. All evaluation committee meetings are open to the public. The evaluations are documented in writing and are available for public inspection upon request.

Furthermore, the council makes decisions to solicit private services, select contractors, ratify contracts and make any changes to contracts in public meetings. In those meetings, the council also approves the weighted criteria on which interested firms will be evaluated.

The parish requires prime contractors to disclose their subcontractors. It also requires prime contractors to disclose campaign contributions to elected officials during the previous two years.⁴² Under a council resolution enacted in January, the Clerk of Council now reads campaign contribution information aloud at the beginning of each meeting.⁴³

In the arena of contract oversight, improvements to the process are forthcoming. Last year, parish voters amended the charter to create an Office of Inspector General (OIG), and passed a tax to support it. The OIG will have the ability to closely monitor the contracting process.⁴⁴ It will receive notice of all evaluation committee meetings. The inspector general will be free to attend and record meetings, and pose relevant questions and express concerns during meetings. The OIG will also have the authority to audit and investigate parish contractors. The office is expected to start operations in early 2013.

Unfortunately, the benefits that should flow from the evaluation process and transparency provisions are

Unfortunately, the benefits that should flow from the evaluation process and transparency provisions are largely negated by defects in the selection process. Chief among these is the Parish Council's unfettered discretion in the selection of service contractors and the council's custom of deferring to the recommendation of the councilmember in whose district the work will occur.

largely negated by defects in the selection process. Chief among these is the Parish Council's unfettered discretion in the selection of service contractors and the council's custom of deferring to the recommendation of the councilmember in whose district the work will occur.

Discretion of Elected Officials

When selecting professional service contractors through its SOQ and RFP processes, the Jefferson Parish Council is not required to select the evaluation committee's top-ranked firm, or even choose from the top three or five firms. The only limitation is that it must select a firm deemed qualified by the review committee. For Routine Engineering services, the council can select a contractor from any of 50-plus pre-qualified firms. Were it to pursue a design-build solicitation, the council would not be required to select the top-ranked firm. And when selecting contractors through the SOQ, RFP and Routine Engineering processes, the Parish Council typically defers to the recommendation of the councilmember in whose district the work will occur.

There is no reason for giving any elected official – whether it be a council member or the chief executive – such expansive power over contract selection. Best practices indicate that governments should select the firm that performs best on an evaluation committee's scoring of relevant, clearly articulated criteria.⁴⁵

The reasons for limiting the discretion of elected officials are obvious. To start, granting elected officials wide discretion invites politics and patronage into a selection process that should be based strictly on getting

the best combination of quality and price for the public.

A system that gives elected officials or their appointees broad discretion suffers from a fundamental conflict of interest: Officials with extraordinary power to select service providers are elected in campaigns financed in varying (but almost always significant) degrees by the very people who later seek, and often receive, such contracts.

While elected officials always insist that there is no nexus between campaign contributions and contracts, many of the firms that compete for professional service contracts are generous contributors to council members' campaigns. According to BGR's review of campaign finance reports filed with the Louisiana Board of Ethics, the current council members received roughly \$580,000 in campaign contributions in 2011 from parish service contractors and their principals. This amount accounted for 43% of the contributions the councilmembers received last year.

A flawed selection process can also lead to a waste of taxpayer dollars. The parish's selection of an architect to design the Jefferson Parish Performing Arts Center, a project that is years behind schedule and \$18 million (68%) over budget, illustrates the point. Parish officials have blamed the problems largely on the building's design.⁴⁶

When choosing the architect for the project, the Parish Council did not select the one ranked highest by the parish's own evaluation committee. Instead, it chose the fourth-ranked firm – at the request of the councilmember whose district contained the project.⁴⁷ The councilmember later told the Louisiana Legislative Auditor that the selected architect was the only firm to contact him regarding the project and that he was impressed with the firm's enthusiasm.⁴⁸ He also said that he did not review any of the submitting firms' SOQs.⁴⁹ To date, the performing arts center remains unfinished, and a change order currently under review by the parish could increase the spiraling cost of the project even further.⁵⁰

The parish's committee review process serves little purpose if elected officials can ignore the committee's criteria-based evaluation and recommendations. To

make matters worse, the process gives taxpayers the illusion of an objective approach to contractor selection, when in fact the Parish Council has wide discretion.

When procuring services through its SOQ, RFP and design-build processes, the parish should select the provider that scores highest on the review committee's evaluation. It should limit the role of elected officials to approving or rejecting the committee's recommended contractor or terminating the procurement. This approach would comport with best practices and is the only way to make sure that campaign contributions and other political connections do not drive contract selections. It also provides the best hope for the efficient and effective use of public funds.

If the parish wishes to maintain an expedited process for "routine" engineering services, it should create a more objective procedure for selecting contractors. One option is to choose contractors from the parish's prequalified list on a random basis. Another is to invite a subset of prequalified firms, chosen through a random selection process, to participate in a limited competition for each contract. In that case, the Technical Evaluation Committee would evaluate the invited firms' SOQs and any supplemental information specific to the project using a set of relevant criteria. The contract would be awarded to the firm that scores best on the committee's evaluation.⁵¹

Like the parish's current Routine Engineering Process, either approach would save time by avoiding the need for project-specific advertisements and evaluations of large numbers of respondents.

The parish should also reconsider the dollar maximum below which it can use its Routine Engineering Process. Currently the maximum is set at \$300,000. This is at the high end of the range of dollar limits BGR found among other local governments using an expedited process for awarding engineering contracts.⁵² Lowering the limit would allow Jefferson to give more projects a rigorous, project-specific evaluation.

The increased workload would be manageable. If the parish had a maximum of \$100,000 instead of \$300,000, then over the course of 2010 and 2011 42% of contracts for sewer, water, street and drainage services still

would have been eligible for the Routine Engineering Process. Instead of evaluating 13 sets of SOQs over that two-year period, the Technical Evaluation Committee would have had to review 35. This would have equated to less than one additional evaluation per month.

Some have expressed concern that limiting the council's discretion over service contracts and relying strictly on a scored evaluation would result in the same handful of firms getting all the work. We note that in some cases the parish's evaluation process already gives some weight to the volume of a contractor's past and current work with the parish, with the goal of spreading work around.⁵³ However, there is a question as to whether spreading work around is a worthy pursuit. It works against getting the best combination of quality and price, without necessarily providing offsetting benefits to the general public.

Where Should Service Contracting Authority Reside?

Beyond the question of whether council members should have discretion in the selection of contractors is a more basic one: Why is the Parish Council involved in contracting at all?

When it comes to contracting, the council's current authority extends well beyond the traditional policy-making role of a legislative body. The council selects contractors and approves other key steps of the procurement process, including the advertisement of the solicitation and the ratification of the final contract. In most other jurisdictions with an elected chief executive like a parish president, the executive branch is responsible for the contracting process from beginning to end. In those cases where the legislative branch has any role, it is typically limited to a final ratification of contracts valued above a certain dollar amount.

The current arrangement in Jefferson Parish creates a misalignment between powers and responsibilities. The administration is responsible for delivering services and infrastructure. Yet the parish's code of ordinances hands the power to select contractors to the Parish Council. Shifting contracting authority to the executive branch would address the misalignment.

Some defend the existing process by saying that, even

though Jefferson Parish elects its executive (the parish president), the allocation of powers with respect to contracting more closely resembles that of a council-manager form of government. Under that form of government, the council appoints a manager to run the executive branch, and the manager reports to the council.

But Jefferson Parish does not have a council-manager form of government. Parish voters were explicitly given the option of creating such a government in 1957, when the parish charter was put to a vote, but instead voters opted for a popularly elected executive. The charter tasks the parish president with responsibility for the administration and supervision of all parish departments.⁵⁴

Furthermore, even under a council-manager form of government, the council's role in contracting is generally very limited. BGR contacted 13 council-manager governments for this report.⁵⁵ In none of them does the council choose among contractors. While most of these jurisdictions require council approval for contracts over a certain dollar amount, this involves an up-or-down vote on either an evaluation committee's chosen provider or the final contract. In most of the council-manager governments BGR examined, the council's approval was limited to the final contract. In none of these jurisdictions does a council's involvement resemble that of Jefferson Parish's council.

The International City/County Management Association, the national organization for council-manager governments, and two statewide city/county manager associations told BGR that councils should not be making the selection from a pool of qualified contractors.⁵⁶

Some in Jefferson Parish government express the view that giving the council control over the selection of service contractors acts as a necessary check on the administration. However, the council's overly broad selection power does not function as a balance or oversight mechanism. Rather, the current arrangement allows the council to exercise, without appropriate controls and safeguards, a power normally vested in the executive branch.

Given the recent scandals involving members of the previous administration, some might question the prudence of handing responsibility for the selection process to the executive branch. However, those scandals

occurred despite the fact that the council itself had the selection power. And, beginning next year, the newly adopted Office of Inspector General will be able to provide a degree of oversight far beyond what was possible in the past.

Transferring responsibility for the contracting process from the Parish Council to the executive branch would result in a better alignment of powers and responsibilities within parish government. BGR believes that the change would benefit Jefferson Parish.

Should the transfer occur, it would be essential to limit the president's discretion because he faces the same risks of politics, patronage and campaign contributions that the council faces. The choice of contractors should be left to evaluation committees. Once a committee has selected the highest-ranked proposal, the parish president should either sign off on the selection or terminate the procurement. All of these reforms could be enacted by ordinance.

Currently, the Parish Council also has the power to ratify the final contract. An argument can be made for the council to keep that authority, once the administration has negotiated and prepared the final contract.

Keeping final contract approval with the council could serve as a check on the new authority given to evaluation committees. It would preserve a component of the current process that promotes transparency and provides an opportunity for greater scrutiny: consideration of contracts in a high-profile public meeting. It would also mirror the approval power that the charter grants the Parish Council for bid contracts.

If the council does retain the ratification power, it should be limited to an up or down vote on the final contract, with a written explanation accompanying any rejection.

Regardless of whether the council retains contract ratification power, the parish's approach needs to be thoroughly reconstructed, particularly with regard to the discretion of elected officials over contractor selection.

Giving the Parish Council latitude in its consideration of price for nonprofessional service contracts creates the potential for manipulation of the selection process. Under the current arrangement, the council can claim that price is either critically or minimally important in a certain situation in order to steer a contract to a favored vendor.

of price for nonprofessional service contracts creates the potential for manipulation of the selection process. Under the current arrangement, the council can claim that price is either critically or minimally important in a certain situation in order to steer a contract to a favored vendor.

The parish's approach to price in nonprofessional services procurements, adopted last year, was motivated by the belief that a low-ball price should not compensate for poor qualifications. Also, because a final price is negotiated after selection, the council thought it made no sense to give a fixed weight to a figure that could change.⁵⁷

While the change may have been enacted with the best of intentions, it unfortunately removes firms' incentive to offer their most competitive prices.⁵⁸ The parish might be able to negotiate slightly lower prices after selecting a contractor, but it will have lost the leverage necessary to get the best possible price for the parish.

There are other ways for the parish to guard against awarding contracts to low-ball bidders with poor qualifications. It can set a minimum technical score and disqualify firms that score below it. If the parish wants to prevent price proposals from prejudicing the evaluation committee's review of non-price criteria, it can simply require that price proposals remain sealed until the committee has scored all other criteria.

There is no downside to considering price when state law allows it. Failing to do so can result in the parish overpaying for certain services. The Parish Council should address this weakness by requiring price proposals whenever possible and by adopting the safeguards discussed above, rather than banning price from the evaluation committees' scoring.

Justifying the Use of RFPs

Jefferson Parish's code gives the parish the option of procuring nonprofessional services through either a sealed bid process or a more subjective RFP Process. The parish should use the latter only for services that require creative, technical or other unique skills and for situations in which the parish is seeking different approaches to providing a particular service. When it issues an RFP, the parish should explain in writing why a sealed bid process would not be practical or advantageous for the parish.

OTHER NEEDED IMPROVEMENTS

Beyond the issues of discretion in contractor selection and the council's authority over the process, contracting in Jefferson Parish suffers from a number of other flaws, including inadequate consideration of price, decentralized procurement administration and the lack of a monitoring program.

Considering Price

State law prevents local governments from considering price in the selection of architects and engineers. For all other services, the parish is free to consider cost proposals.

The parish's treatment of price differs for professional and nonprofessional services. In the case of professional services, the code allows, but does not require, the parish to include pricing in the criteria considered and scored by evaluation committees. Often, however, the parish does not do so. In a review of professional service contracts awarded since fall 2010, BGR could not discern a consistent pattern for when the parish does and does not consider price.

When it comes to nonprofessional services, the parish requires respondents to submit a proposed price. However, the code prevents the evaluation committee from considering price in its scoring. Instead, the evaluation committee simply forwards the price proposals to the Parish Council, along with the results of its technical review of proposals.

Giving the Parish Council latitude in its consideration

Requiring Committee Evaluation

For professional service contracts outside the scope of the parish's four standing evaluation committees, the parish code allows, but does not require, the Parish Council to establish a review committee. If the Parish Council does create a committee, the code calls for it to include representatives from the council's research and budget office, the requesting department and the parish attorney's office, along with any other parish employee that the council or parish president deems necessary for a proper review.⁵⁹

Parish officials could not recall an instance where a professional service was not assigned to a committee for review. Nonetheless, it would be desirable to enshrine the practice in the code.

Centralizing Procurement

Jefferson Parish's contracting operations are scattered across parish government. First, a department proposes a draft bid, RFP or SOQ and submits it to a committee of administration officials. The committee reviews it to determine whether the proposed method of procurement is appropriate, refines criteria and weights for RFPs and SOQs, and makes revisions to specifications for bid procurements.

For bids and nonprofessional services, the purchasing department manages the remainder of the process, from advertisement of the solicitation through the opening of bids or the evaluation of proposals. The purchasing department plays no such role for professional service contracts. These steps are instead administered by the council clerk's office and the department requesting services.

The ABA's *Model Procurement Code* and the National Institute of Governmental Purchasing recommend centralizing procurement operations in a single office led by a chief procurement officer.⁶⁰ The *Code* notes that, "to operate effectively ... there [must] be central leadership to provide direction and cohesion."⁶¹ In particular, the ABA argues that the complexity of professional service contracting makes oversight through a centralized process advisable.⁶²

To this same point, the National Institute of Governmental Purchasing (NIGP) has passed a resolution urgently recommending that governments centralize purchasing authority.⁶³ The resolution cites the important role that the professional procurement office plays in providing open and effective contracting.

The Jefferson Parish charter requires the finance department to administer a central purchasing system for the parish and each of its departments.⁶⁴ However, the parish interprets the relevant language as calling for a centralized payment system for contracts, rather than a centralized office to oversee all contract evaluation processes.

Jefferson Parish would benefit from such a centralized office, led by a chief procurement officer who meets appropriate educational and certification requirements. The office would be responsible for administering all procurement activities, including those related to professional services. The parish could create such an office simply by consolidating the administration of the process for professional services contracts in the purchasing department.

A centralized procurement office would help to determine what method of procurement – an SOQ, RFP or sealed bid – is the best approach for each particular service contract. It would then work with parish departments in drafting and advertising solicitations, and review them to ensure that they contain a clear scope of work, relevant evaluation criteria and appropriate weighting. It would also ensure that any renewal options included in the contract are limited to reasonable periods of time.

The office would coordinate the evaluation committee process to guarantee openness and adherence to parish procurement procedures. This would include coordinating the participation of the members of the technical and financial evaluation committees that are appointed by local professional associations. The procurement office would be responsible for making sure that these seats are filled and that, once a member's term expires, new appointments are made on schedule.

Finally, the office would work with the user department and the parish attorney's office in the drafting of

the contract, and serve as a central repository for all user department reports concerning contractor performance.

Strengthening Monitoring

Jefferson Parish lacks a standard process for monitoring and documenting contractor performance. Parish officials say that user departments track contractors' work, but the parish does not have formal procedures for monitoring that performance and documenting it for future reference. Without such a program, the parish risks receiving less from contracts than it bargained for.

To address this, user departments should file written, standardized progress reports and post-completion reports that would be maintained in the procurement office, indexed by the contractor's name and cross-referenced by officers and principals of the business. Checking evaluation of past performance would be a required part of all evaluation committees' review of any future proposals from that contractor.

A contract monitoring system would reduce the parish's reliance on the institutional memory of key individuals and provide a comprehensive history of the work product of firms that are likely to continue to pursue contracts in the future.

Improving Transparency

The parish could enhance the transparency of its contracting processes in the following ways:

Create written procedures. The parish provides some procedural information and key documents on the purchasing department's website, and has an internal manual for bid procurements. It does not have a manual explaining the parish's other contracting processes.

A manual that combines the parish's array of charter, code and administrative requirements would provide interested firms and the general public with a clear guide for each stage of the parish's various contracting processes. Such a manual would encourage accountability and public trust by providing objective standards against which the actions of parish officials could be measured. The parish could use the purchas-

ing manuals published by Loudon County, Va.,⁶⁵ Pinellas County, Fla.,⁶⁶ and Anne Arundel County, Md.,⁶⁷ as guides. Of the purchasing manuals that BGR reviewed, these stood out as exemplary.

Require Additional Disclosures. Currently, the parish code requires that prime contractors and their officers, directors and owners disclose all campaign contributions to Jefferson Parish elected officials during the previous two years. It does not, however, require subcontractors and their principals to disclose their campaign contributions, nor does it require contractors, subcontractors or their principals to disclose any family or business relationships with parish officials. It should.

A recent change to the parish code requires annual financial disclosures from the Technical Evaluation Committee's three citizen members. The Parish Council should impose a similar requirement on the citizen members of the Financial Evaluation Committee and require all citizen evaluators to certify that neither they nor their immediate family members have an economic interest in the firms subject to their review.⁶⁸

CONCLUSION

Given the problems surrounding contracting in recent years, the moment has arrived for Jefferson Parish to rethink its procurement processes for service contracts.

The parish already incorporates a number of good practices into these processes. In most cases, appropriately constituted committees review proposals using criteria and weights. Meetings are open and the results of the evaluations recorded. However, the benefits from these practices are undermined by striking defects in key areas.

When it comes to contracting, Jefferson Parish has an atypical distribution of government powers. Decision-making authority is located in the legislative branch, rather than the executive. This is abnormal for a government with an elected executive and creates a misalignment of responsibility and powers.

More importantly, parish law bestows upon the council an extraordinary amount of discretion in select-

ing service contractors. The Parish Council is free to ignore the work and recommendations of evaluation committees. Compounding the discretion problem is the Parish Council's custom of deferring to recommendation of the councilmember in whose district a project is located.

The arrangement creates the risk that contracts will be awarded based more on relationships than on an in-depth analysis of what makes most sense for taxpayers. It can also produce disastrous results. The years-long delay and ballooning cost overruns of the Jefferson Parish Performing Arts Center illustrate the perils of this approach.

There are further weaknesses in Jefferson's contracting process.

The parish gives inadequate consideration to price when evaluating service contracts. Under the parish code, consideration of price is optional for professional service procurements. In the case of nonprofessional services, price is not part of the evaluation committee's scoring of proposals. This obscures the basis for award, removes the incentive for contractors to offer their best price and opens the door for manipulation of the selection process.

Committee review is not required in all cases. In addition, the parish can opt for a subjective RFP Process in some cases where a bid process would be more appropriate.

Contract administration in Jefferson Parish is spread across parish government, and no single entity is charged with working toward the sound functioning of all contracting processes. The parish also lacks a strong monitoring program to hold contractors accountable for current work and provide a record of contractor performance for future reference.

Fortunately, a charter amendment is not necessary for comprehensive reform. The parish can address all of the aforementioned weaknesses administratively and via modifications to the parish's code of ordinances.

RECOMMENDATIONS

As noted above, the Jefferson Parish Council's role in the contracting process is abnormal. Transferring responsibility for contracting from the Parish Council to the executive branch would better align responsibilities and powers. BGR believes that it is in the best interest of the parish to take this step.

However, regardless of who controls the process, it is far more critical to rein in the nearly unfettered discretion of elected officials. BGR's recommendations focus on this fundamental issue. The changes should be made regardless of whether the Parish Council or the executive branch controls the contracting process.

The Decision-Making Framework

To ensure that all service procurements receive measured, objective review, the Parish Council should amend the code to:

- Assign all service procurements above a certain threshold to an appropriate evaluation committee for review using relevant and weighted criteria.
- Require the Parish Council or the parish president to approve the selection of the evaluation committee's highest ranked respondent or terminate the procurement. Any termination should be accompanied by a statement of the reasons for the action.

To obtain the best possible combination of price and quality for services, the Parish Council should amend the code to:

- Require, where state law allows it, parish evaluation committees to consider price in their evaluations of interested firms.
- Establish in all its SOQs and RFPs minimum technical scores below which a firm cannot be selected.
- For Routine Engineering jobs, award contracts to prequalified firms on a random basis or through mini-competitions using randomly

selected subsets of pre-qualified firms.

- Reduce the dollar limit for using the Routine Engineering Process to \$100,000.
- Require the parish government to use sealed bids for nonprofessional service procurements unless there is a compelling reason for utilizing the more subjective RFP Process. There should also be a requirement for the parish government to explain in writing its reason for bypassing a sealed bid process.
- Subject contracts for personal services to either the parish's RFP or bid processes.

A Centralized Procurement Office

To improve contract administration in the parish, the parish government should:

- Create a centralized, professional procurement office in the executive branch, responsible for the smooth functioning of all parish contracting processes. The office should be led by a chief procurement officer who meets appropriate education and certification requirements. The parish could achieve such centralization simply by consolidating the administration of professional services contracts in the purchasing department.

Transparency

To strengthen the integrity of and public confidence in the evaluation and selection process, the Parish Council should amend the parish code to:

- Require disclosure of campaign contributions by or on behalf of subcontractors.
- Require all contractors, subcontractors and their principals to disclose any family or business relationships with parish officials or employees.
- Require all citizen members of evaluation committees to submit financial disclosures and certify that neither they nor their immediate

family members have an economic interest in the firms subject to their review.

- Create a procurement manual that provides a clear guide to each step of the contracting process.

Contract Monitoring

To promote quality work and to hold contractors accountable for their performance, user departments should:

- Monitor and document contractor performance on an ongoing basis. Checking performance evaluations should be a required component of any review of future proposals by a contractor to perform work for the parish.

END NOTES

- 1 See comments from administration officials from the hearing held November 17, 2011, before the Louisiana Legislative Audit Advisory Council to discuss problems with the project.
- 2 Louisiana Legislative Auditor, “Jefferson Parish Government Performing Arts Center,” October 12, 2011, pp. 20-21.
- 3 To view the reports, which cover of a wide range of public bodies in southeast Louisiana, including the City of New Orleans, the Sewerage & Water Board of New Orleans, the New Orleans Aviation Board, and the school boards in Jefferson, Orleans, Plaquemines, St. Bernard and St. Tammany parishes, visit www.bgr.org/reports.
- 4 Michael E. Purdy Associates, LLC. See www.mpurdy.com.
- 5 Martin, Lawrence and John Miller, *Contracting for Public Sector Services* (Herndon, Va.: National Institute of Governmental Purchasing, 2006).
- 6 *Service Contracting: A Local Government Guide*, LeRoux, Kelly ed. (Washington: ICMA Press, 2007).
- 7 Those cities and counties were: Clearwater, Fla.; Fairfax County, Va.; Fort Collins, Colo.; Independence, Mo.; Kansas City, Mo.; Las Vegas; Lees Summit, Mo.; New Orleans; Palo Alto, Calif.; Phoenix; Raleigh, N.C.; San Diego; Santa Ana, Calif.; Wake County, N.C.; and Wichita, Kan.
- 8 This provision includes landscape architecture services. La. R.S. 38:2318.1.
- 9 Jefferson Parish Charter, Sec. 4.02(G)(1).
- 10 Jefferson Parish Charter, Sec. 4.02(G)(3).
- 11 Jefferson Parish Charter, Sec. 4.02(G)(2).
- 12 The other two processes, for design-build and personal services, are discussed on p. 5.
- 13 BGR review of Jefferson Parish Council meeting minutes for 2011.
- 14 The parish defines a professional service as “work rendered by an independent contractor who has a professed knowledge of some department of learning or science...” The definition explicitly includes accountants, architects, claims adjusters, consultants, doctors, dentists, engineers, landscape architects, land surveyors, lawyers and veterinarians, but is not limited to these professions. For the parish’s full definition, see: Jefferson Parish Code of Ordinances, Sec. 2-926.
- 15 Jefferson Parish Code of Ordinances, Sec. 2-931.
- 16 La. R.S. 38:2318.1.
- 17 Jefferson Parish Council, Ordinance Summaries 23514 and 23516, adopted May 9, 2012.
- 18 The parish code refers to the American Council of Engineering Companies by its former name, the Consulting Engineers Council of Louisiana. Jefferson Parish Code of Ordinances, Sec. 2-611 et seq.
- 19 Jefferson Parish Code of Ordinances, Sec. 2-621 et seq.
- 20 Jefferson Parish Code of Ordinances, Sec. 2-875.4 et seq.
- 21 Jefferson Parish Code of Ordinances, Sec. 2-875.25 et seq.
- 22 Jefferson Parish Code of Ordinances, Sec. 2-927(b)(2). If the council does name a committee, the code calls for a specific membership that includes representatives from the council’s research and budget office, the requesting department and the parish attorney’s office, along with any other parish employee deemed necessary by the council or parish president. See: Jefferson Parish Code of Ordinances, Sec. 2-929(a).
- 23 Jefferson Parish Code of Ordinances, Sec. 2-929(a).
- 24 Jefferson Parish Code of Ordinances, Sec. 2-927(b)(1).
- 25 If the contract is not negotiated and ratified within one year of the council’s selection, the selection becomes null and void. Jefferson Parish Code of Ordinances, Sec. 2-933.
- 26 Jefferson Parish Code of Ordinances, Sec. 2-926.
- 27 BGR review of Jefferson Parish Council meeting minutes for 2011. The calculation does not include those nonprofessional services awarded through a bid process.
- 28 See recommendation letters from Technical Evaluation Committee to Parish Council associated with Parish Council resolutions 115274 through 115277, dated September 22, 2010, and resolutions 116221, 116224, 116226 and 116227, dated February 23, 2011.
- 29 Of the 64 contracts awarded over that period, 51 were through the Routine Engineering Process. BGR review of minutes from all Parish Council meetings, 2010-2011.
- 30 Ordinance Summary Nos. 23461 and 23462, adopted by the Jefferson Parish Council February 15, 2012.
- 31 Jefferson Parish Code of Ordinances, Sec. 2-895. For non-professional service procurements less than \$15,000, the parish follows its uniform purchasing procedures, set forth in Sec. 2-902 et seq.
- 32 Ordinance Summary No. 23434, adopted by the Jefferson Parish Council February 15, 2012. The resolution authorizing the

advertisement of the RFP may call for the appointment of other employees of the parish to sit on the committee.

33 A change to the parish code adopted in September of 2011 removed the requirement that each respondent submit a proposed price. The requirement was reinstated with the Parish Council's adoption of Ordinance Summary No. 23434, on February 15, 2012.

34 Jefferson Parish Council, Ordinance Summary No. 23434, adopted February 15, 2012.

35 Jefferson Parish Code of Ordinances, Sec. 2-895(9).

36 Jefferson Parish Code of Ordinances, Sec. 2-935.12.

37 At least one member of the committee must be a professional engineer. Jefferson Parish Code of Ordinances, Sec. 2-626.

38 Jefferson Parish Code of Ordinances, Sec. 2-935.16. .

39 Louisiana Administrative Code, Title 34, Part V, Ch. 1, Sec. 103(A)(1).

40 Jefferson Parish Code of Ordinances, Sec. 2-960 et seq.

41 Jefferson Parish, "Emergencies," provided by Jefferson Parish Purchasing Department to BGR February 14, 2012. The policy defines an emergency as: "An unforeseen mischance bringing with it destruction or injury of life or property of the imminent threat of such destruction or injury... whereas the mischance will not admit of the delay incident to advertising as provided in this part."

42 The requirement to disclose campaign contributions made over the previous two years extends also to the company's officers, directors and any employees owning 25% or more of the company. Jefferson Parish Code of Ordinances, Sec. 2-923(b)(2) (a).

43 Jefferson Parish Council, Resolution No. 118250, adopted January 25, 2012.

44 Jefferson Parish Council, Ordinance No. 24,011, adopted May 11, 2011.

45 American Bar Association, *2000 Model Procurement Code for State and Local Governments*, Sec. 5-205(3), and Sec. 5-205.09 of the American Bar Association's *2000 Model Procurement Code for State and Local Governments, Recommended Regulations*, approved August 2002. Also, Sec. 3-203(7) and associated commentary on p. 28.

46 See comments from administration officials from the hearing held November 17, 2011, before the Louisiana Legislative Audit Advisory Council to discuss problems with the project.

47 Ibid., p.20.

48 Ibid., p.21.

49 Ibid.

50 Ibid, p.8.

51 For an in-depth explanation of how such a process might work, see the City of San Diego's request for qualifications for its 2012-2013 consultant rotation list, www.sandiego.gov/purchasing/pdf/12_13rfq.pdf.

52 For example, a survey of local governments in the state of Washington found that the range extended from \$3,000 to \$350,000, with an average of \$80,000. Municipal Research and Services Center of Washington, *Contracting for Architectural and Engineering Services Webinar*, August 30, 2011, p. 36.

53 Though not widespread, BGR found examples of other governments that require such a consideration. See Florida Statutes, Sec. 287.055(4)(b), which states that state agencies and local governments "shall consider ... the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms." See also: Wyoming Statutes, Sec. 9-2-1031(a).

54 Jefferson Parish Charter, Sec. 3.03(A).

55 The governments contacted were: Clearwater, Fla.; Fairfax County, Va.; Fort Collins, Colo.; Independence, Mo.; Kansas City, Mo.; Las Vegas; Lees Summit, Mo.; Palo Alto, Calif.; Phoenix; Raleigh, N.C.; Santa Ana, Calif.; Wake County, N.C.; and Wichita, Kan.

56 Telephone interviews conducted with representatives of the Wisconsin City/County Management Association the Missouri City Management Association, and the International City/County Management Association, January 11 and 12, 2012.

57 This change came following some controversy over a recent landfill management contract, where IESI had the best technical score, but finished second in the rankings to Waste Management because Waste Management proposed a lower price. The council thought price was weighted too heavily. The council awarded the contract to IESI.

58 It also is contrary to the *Model Procurement Code's* recommendation that RFPs disclose the relative importance of price and other factors. Failing to disclose the importance of price leaves the basis for award unclear. American Bar Association, *2000 Model Procurement Code for State and Local Governments*, Sec. 3-203(5).

59 Jefferson Parish Code of Ordinances, Sec. 2-929(a).

60 American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, 2006, Sec. 2-301, pg. 16;

and National Institute of Governmental Purchasing, “Resolution 1002: Centralized Purchasing,” adopted Nov. 11, 1995.

61 American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, 2006, Sec. 2-301, Commentary, pg. 16.

62 American Bar Association, *The 2000 Model Procurement Code for State and Local Governments*, 2006, Sec. 2-302, Commentary, pg. 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.

63 National Institute of Governmental Purchasing, “Resolution 1002: Centralized Purchasing,” November 11, 1995.

64 Jefferson Parish Charter, Sec. 4.02(A)(8).

65 *Loudon County Procurement Resolution*, adopted by the Board of Supervisors on June 21, 2011, www.loudoun.gov/Default.aspx?tabid=1290.

66 Pinellas County, Purchasing Policy and Procedure Manual, www.pinellascounty.org/purchase/Purchasing%20Procedure%20Manual.pdf.

67 Anne Arundel County, Purchasing Manual, October 23, 2008, www.aacounty.org/CentServ/Purchasing/Resources/Purchasing-Manual.pdf.

68 State ethics law already prevents public servants from participating in an evaluation of firms in which they or their immediate family members have an economic interest. La. R.S. 42:1112.

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