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Mayor-Elect Mitch Landrieu
2020 St. Charles Avenue
New Orleans, Louisiana 70115

Re: Best Practices for the Award of Professional Service Contracts

Dear Mayor-Elect Landrieu:

At your request, the Office of Inspector General reviewed the charter provisions, ordinances, and procedures relating to the procurement of professional service contractors and consultants for City departments. You also requested a comparative analysis of the procurement practices adopted by the State of Louisiana and the cities of Baton Rouge, Chicago, Houston, New York, Salt Lake City, and San Francisco. This letter compares the City of New Orleans' current procedures with the practices used by the entities you designated, as well those employed by the City of Atlanta, which has historically been compared with New Orleans. This letter also describes best practices for professional services contracting, recommended by national professional organizations and adopted by many American cities.

Professional Services Contracts in New Orleans

Under the New Orleans City Charter, all professional service contracts (with the exception of such contracts procured by the City Council for its own use) must be signed by the Mayor or, with the Mayor's authorization, the Director of Finance or the Director of Property Management.¹

Prior to 1995, there were no written guidelines for awarding professional service contracts in the Charter or City Code. In November 1995, New Orleans voters approved a Charter amendment requiring contracts for professional services administered by any department or agency of the executive branch of City government to be awarded on the basis of a competitive selection process established by executive order of the Mayor.² The Charter now provides that the threshold amount for requiring use of a competitive process may be established by City Council ordinance.³ In February 1996, the City Council set the threshold amount at \$15,000.⁴

¹ New Orleans City Charter § 6-308(1).

² *Id.*, § 6-308(5)(b).

³ *Id.*, § 6-308-(5)(d).

The first executive order signed in September 1996 assigned control over the professional service procurement process to the Chief Administrative Officer and called for an evaluation of all proposals received in response to any RFP by a selection panel. The selection panel consisted of: the CAO; the Deputy CAO (if the services involved capital projects, architects, or engineers); the director of the department or agency seeking the professional services; and the City Attorney (if the services were legal services). The selection panel would receive all proposals and evaluate them by applying specified criteria, including specialized experience, competence, performance history, and cost. These selection panels met and deliberated in private. Once the selection panel had identified the three highest ranked proposals, the Mayor would select one of these three proposals or reject them all.

A similar process remained in place (with some minor changes by executive order in 2002 and 2004) until 2005, when a new executive order expanded the membership of the selection panel to include a "community member" outside of City employment with specialized knowledge or expertise in the relevant field of service. In 2008, another executive order amended the process to remove the requirement that the Mayor select one of the three proposals ranked highest by the selection panel. The Mayor, in his sole discretion, could now select any proposal, multiple proposals, or reject them all. *This change undermined the fundamental purposes of the competitive selection process, which are to guard against favoritism and to ensure that the City receives the best value, as determined by the evaluation criteria.*

In October 2008, the City Council requested and obtained a legal opinion from the Louisiana Attorney General which stated that the meetings of the selection panels were subject to the open meeting law and could not be held in private. The City Council soon thereafter passed an ordinance that would require the selection panel meetings to be held in accordance with the open meeting law. The Mayor vetoed the ordinance and issued a new executive order in February 2009, disbanding the selection panel process entirely. The current executive order allows for evaluation by an individual who may complete an evaluation form based on criteria stated in the request for proposals, but no written evaluation is required. The executive order makes it clear that the Mayor may use or disregard the evaluator's recommendation, if any exists, and the Mayor has complete discretion to select or reject any proposal regardless of ranking.

The U.S. Department of Housing and Urban Development (HUD) recently reviewed the City's selection process and determined that it does not comply with federal procurement standards applicable to federally funded contracts. In response to HUD's criticism, the Mayor issued an executive order in January 2010, establishing new procedures for awarding professional services contracts funded with Community Development Block Grant funds. Among other requirements, these procedures require the Mayor to select the highest ranking proposal,

⁴ New Orleans City Code § 2-7 (established by M.C.S., Ord. No. 17,423, § 1, 2-15-96).

based on the selection criteria stated in the request for proposals. With respect to professional services contracts that are not funded by federal grants, however, the City continues to use a process that allows the Mayor to award contracts without regard for the advertised evaluation criteria. *In this respect, the City lags far behind most of the nation in adopting modern procurement practices.*

The Louisiana Supreme Court observed that the driving force behind the civic support for the 1995 Charter amendment mandating a competitive selection process for professional services contracts was a desire to “minimize or restrict political patronage in the award of consultant contracts.”⁵ To implement this Charter provision meaningfully, the City must change its current practices by adopting a fair and open process for contractor selection that is insulated from political pressures. This letter summarizes key elements of procurement practices recommended by professional organizations and adopted by other cities.

Best Practices Recommended by National Organizations

The *Model Procurement Code for State and Local Governments* created by the American Bar Association in 1979 has been adopted in full by 16 states, including the State of Louisiana, and in part by more. It has also been adopted by thousands of local governments nationwide and is endorsed by professional organizations concerned with public procurement. The Model Procurement Code calls for centralizing procurement authority under a Chief Procurement Officer who is an independent professional free from political impediments. It also calls for evaluating proposals based solely on objective criteria and selecting the most advantageous proposal taking into consideration the stated criteria and cost.

The National Institute of Government Purchasing (NIGP), a non-profit organization with over 2,600 member agencies nationwide representing 16,000 government procurement professionals, recommends that all government entities centralize their purchasing authority to promote professionalism, high ethical standards, openness, responsibility, and accountability in government purchasing. The NIGP also recommends adopting a competitive process to ensure that professional service contracts are awarded based solely on the advertised criteria.

Practices Implemented in Other Jurisdictions

State of Louisiana

The State has implemented the recommendations contained in the ABA Model Procurement Code through centralized procurement authority within the Office of Contractual Review, an office of the Division of Administration. The ultimate authority for approval of the State’s professional service contracts is the State’s Director of Contractual Review, an officer appointed

⁵ *Alliance for Affordable Energy v. Council of the City of New Orleans*, 677 So.2d 424, 432 (La. 1996).

by and subject to removal by the State Commissioner of Administration. The role of elected officials in the process is limited to appointment of these officers.

Under State law, a competitive selection process is required for all consulting contracts totaling \$50,000 or more.⁶ Each consulting contract is subject to review by a procurement support team appointed by the Office of Contractual Review.⁷ The procurement support team must include one or more representatives of each of the following: (1) the Office of Contractual Review; (2) the user agency initiating the contract; (3) the Office of the Attorney General; and (4) the Legislative Fiscal Office.

The user agency, in conjunction with the procurement team, must conduct written or oral discussions with all proposers who submit proposals determined in writing to be "reasonably susceptible of being selected for award."⁸ Final selection of a contractor is made in accordance with written selection criteria identified in the RFP. After selecting a recommended contractor, the user agency must send a written selection memorandum to the Office of Contractual Review providing, at a minimum, a list of criteria used along with the weight assigned to each criterion; overall scores assigned to each proposal; and a narrative justifying the selection.⁹ The contract must be awarded to the proposer whose proposal "is determined in writing by the head of the user agency to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the Request for Proposals."¹⁰ The recommendation is accepted or rejected by the Director of Contractual Review.

Atlanta, Georgia

The City of Atlanta has implemented the recommendations of professional organizations by legislatively granting authority and responsibility for entering into all contracts, including contracts for professional or consultant services, to a Chief Procurement Office led by a Chief Procurement Officer (CPO).¹¹ The Atlanta CPO must have a master's degree in business administration, public administration or marketing, and five years of experience as a deputy chief procurement officer or equivalent in a contracting or procurement system of comparable size or scope.¹² A bachelor's degree may be substituted if the candidate has ten years or more experience in large scale corporate or government procurement.

The Atlanta CPO works directly with each city department or agency requesting contracted professional services (the "user agency") and allows each user agency to participate in the

⁶ La. R.S. 39:1496(B).

⁷ La. R.S. 39:1496(C)(2).

⁸ Louisiana Administrative Code, Title 34, § 145(5).

⁹ Louisiana Administrative Code, Title 34, § 145(7).

¹⁰ La. R.S. 39:1503(C).

¹¹ Atlanta Code of Ordinances § 2-1138(a) and (d).

¹² *Id.*, § 2-1138(e).

evaluation of proposals and to make recommendations.¹³ The CPO must use a competitive selection process to procure professional and consultant services, which includes the application of such criteria as previous experience, past performance, cost, and factors attesting to general competence to perform the services.¹⁴ The contract must be awarded to the highest rated proposer.¹⁵

Unlike New Orleans, the mayor of Atlanta does not participate directly in the procurement of professional services by user agencies, except where the services are being procured directly for the executive office of the mayor:

*Except in such cases where goods, services, supplies, construction services or consultant services are being procured for the executive office of the mayor as a using agency, no person employed in the executive office of the mayor shall serve as a member of a procurement evaluation team or shall participate in aspects of the procurement process related to the selection of an offeror for award of a contract. This prohibition shall include, but shall not be limited to, reviewing bids and proposals, evaluating or scoring bids and proposals, making recommendations and participating during interviews, discussions, and negotiations in connection with bids and proposals.*¹⁶

The Atlanta CPO is authorized to sign contracts on behalf of the mayor except in cases where the purchase amount exceeds \$100,000.¹⁷ Where the amount of the contract exceeds \$100,000, the mayor has the exclusive authority to sign the contract. The Atlanta mayor's "check" against the authority of the CPO is the ability to refuse to execute a contract and to cancel the procurement.

Baton Rouge, LA

The City-Parish government of East Baton Rouge Parish places central responsibility for procurement in a Division of Purchasing. Elected officials there play a direct role in the approval of contracts, though the mayor-president's authority is limited in certain cases by requiring mutual consent of the parish council. The mayor-president may approve all professional service contracts below \$50,000. Professional service contracts exceeding \$50,000 must be approved by the mayor-president, a majority of the parish council, and the parish attorney.¹⁸ The council

¹³ *Id.*, §2-1139(a).

¹⁴ *Id.*, §2-1193(d).

¹⁵ *Id.*, §2-11939(e).

¹⁶ *Id.*, § 2-1193(a).

¹⁷ *Id.*, § 2-1140.

¹⁸ Baton Rouge Code of Ordinances, § 1:702.

may grant approval for specific recurring professional services contracts by listing them in the annual operating budget.¹⁹

Each user department works with the Division of Purchasing to issue requests for proposals. The user department identifies the criteria used to evaluate the proposals in each request for proposal. A panel scores and ranks the proposals using the identified criteria.

Chicago, Illinois

Chicago has centralized procurement authority within the Department of Procurement Services headed by a Chief Procurement Officer (CPO). The CPO is appointed by the mayor, subject to approval by the city council.²⁰ The CPO serves a term of four years and may be removed only for cause after public hearing before the city council.²¹ The mayor's role in the procurement process is limited to the appointment and removal of the CPO.

The CPO is authorized to procure professional services through compliance with the Illinois Municipal Purchasing Act applicable to cities with population exceeding 500,000.²² The Illinois state law exempts "contracts for the services of individuals possessing a high degree of professional skill where the ability or fitness of the individual plays an important part" from competitive evaluation requirements.²³ All services not falling within this narrow definition are subject to competitive evaluation. For services exempt from competitive evaluation, Chicago's CPO delegates review of proposals to the Non-Competitive Procurement Review Board established by the CPO.²⁴ In such instances, the user agency must submit a written justification to the Review Board explaining why its recommended contractor should be awarded the contract. The CPO has the final decision and may accept or reject the Board's recommendation or request additional information.²⁵

In contrast, the Charter for the City of New Orleans expressly requires that all professional services contracts be awarded pursuant to a competitive process established by executive order of the Mayor.²⁶

Houston, Texas

¹⁹ Baton Rouge Code of Ordinances, § 1:702.

²⁰ Chicago Municipal Code § 2-92-010.

²¹ Chicago Municipal Code § 2-92-015.

²² Chicago Municipal Code § 2-92-010.

²³ 65 ILCS 5/8-10-4.

²⁴ <http://egov.cityofchicago.org/...dept&channelId=0&programId=0&entityName=Procurement+Services&deptMainCategoryOID=-536884118>

²⁵ *Id.*

²⁶ New Orleans City Charter § 6-308(5)(b).

Houston has centralized purchasing authority through the Strategic Purchasing Division headed by the City Purchasing Agent, who is appointed by the mayor. The mayor's role in procuring professional service contracts is limited to the selection of the City Purchasing Agent, who may approve contracts below \$50,000. The Houston City Council has the sole authority to approve or deny the award of professional service contracts exceeding \$50,000.²⁷

Generally, a buyer within the Strategic Purchasing Division is charged with working with the user agency to issue the request for proposals and evaluate proposals. The proposals are evaluated using written criteria established in the request for proposals. The Texas Professional Services Procurement Act requires that all government entities, including municipalities, must make the selection and award of professional services contracts: (1) on the basis of demonstrated competence and qualifications to perform the services, and (2) for a fair and reasonable price.²⁸ The selected proposal is then submitted to the council for approval.

New York, New York

The City of New York centralizes authority for establishing procurement policy in a Procurement Policy Board consisting of five members, three of whom are appointed by the mayor and two of whom are appointed by the city comptroller.²⁹ The board has established policies granting each individual user agency the authority to evaluate competitive sealed proposals. The mayor's role in the process is limited to the appointment of board members and the appointment of a professional City Chief Procurement Officer (CCPO) who coordinates and oversees the procurement activity of each individual user agency.

Each user agency head also appoints an Agency Chief Contracting Officer (ACCO) who organizes and supervises the procurement activity of the user agency. Proposals received by the user agency are evaluated by a committee appointed by the ACCO consisting of at least three persons with knowledge, expertise, and experience to make a fair and reasonable evaluation based on written criteria.³⁰ Each member of the committee submits a signed written rating sheet.³¹ The user agency's ACCO then makes a written recommendation for award subject to approval by the CCPO. The contract must be awarded to the respondent whose proposal is deemed most advantageous to the city based on the evaluations.³²

Prior to entering into a professional service contract, the user agency must give public notice of a hearing to receive testimony regarding the proposed contract. If no individuals request an

²⁷ <http://www.houstontx.gov/council/index.html>.

²⁸ Tex. Rev. Civ. Stat. § 2254.03.

²⁹ New York City Charter § 311(a).

³⁰ City of New York Procurement Policy Board Rules § 3-03(g).

³¹ *Id.*, § 3-03(g)(2).

³² *Id.*, § 3-03(g).

opportunity to speak at the hearing within a specified period of time following the public notice, the hearing may be canceled.³³

Salt Lake City, Utah

Salt Lake City has also adopted the centralized procurement model whereby a professional Chief Procurement Officer appointed by the mayor is charged with the authority to procure contracts for professional services after competitive evaluation of sealed proposals in conjunction with the recommendations of the user agencies.³⁴ Salt Lake City requires that competitive proposals be evaluated by the CPO and user agency in accordance with written criteria set forth in the request for proposals and other factors, including the proposer's ability to perform the work and the price.³⁵ The contract must be awarded to the proposer who submitted the proposal determined in writing to be "the most advantageous to the city" based on the evaluation factors.³⁶ The mayor's role in the procurement process itself is limited.

San Francisco, California

The City of San Francisco places centralized responsibility for procurement of all goods and contract services as well as administration of all other executive branch services in the hands of a City Administrator appointed by the Mayor and confirmed by the San Francisco Board of Supervisors (analogous to New Orleans' City Council).³⁷ The City Administrator serves a term of five years, and may be removed by the mayor subject to approval of the Board of Supervisors.

Similar to a CPO, the City Administrator is a non-elected professional who must have at least ten years of experience in governmental management or finance experience. The charter section creating the office of City Administrator specifically provides that the administrator may "award contracts without interference from the Mayor or Board of Supervisors."³⁸ Charter provisions regarding the Board of Supervisors expressly preclude the board from "dictat[ing], suggest[ing] or interfere[ing] with respect to any contract or requisition for purchase or other administrative actions or recommendations of the City Administrator or of department heads under the City Administrator[.]"³⁹

The City Administrator works directly with the user agencies to select professional contractors without the direct involvement of elected officials. A panel or multiple panels selected by the head of the user agency evaluates each proposal based on criteria including the proposer's

³³ New York City Charter § 326(a).

³⁴ Salt Lake City Code §§ 3.24.040 and 3.24.100(A).

³⁵ *Id.*, § 3.24.100(D)(3).

³⁶ *Id.*, § 3.24.100(D)(5).

³⁷ San Francisco Charter § 3.104.

³⁸ *Id.*, § 3.104(8).

³⁹ *Id.*, § 2.114.

expertise, qualifications and experience.⁴⁰ The City then negotiates a contract with the highest ranked respondent.⁴¹

Recommendation

To achieve the objectives of the 1995 Charter amendment and to help restore public confidence in the City's government, I recommend that the City adopt practices for the award of professional services that conform to modern procurement standards implemented by thousands of local governments nationwide, including the State of Louisiana and the cities of Atlanta, New York, Salt Lake City, and San Francisco. The standards call for professionalizing procurement decisions to minimize the influence of politics and to ensure open and fair competition. My Office would be pleased to review and comment on any legislation drafted to achieve these objectives, whether by executive order, ordinance, or proposed Charter revision submitted to the voters.

Sincerely,



E.R. Quatrevaux
Inspector General

⁴⁰ *Id.*, § 6.40(B).

⁴¹ *Id.*, § 6.40(C).