

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

In re: Rules Governing Selection of Contract Employees by The Louisiana Public Service Commission

~~(Decided at the July 21, 2004 Business & Executive Session)~~

I. PURPOSE

~~Pursuant to La. R.S. 45:1180, the Louisiana Public Service Commission (“Commission”) was directed to “adopt uniform rules and procedures to be utilized in the selection of ... contract employees.” The procedures were to, at a minimum, “set forth the conditions under which a request for proposals shall or shall not be utilized...” La. R.S. 45:1180(C)(1)(a)(emphasis added). As a result, the Commission is authorized to use its discretion in making the determination as to when it is necessary to issue requests for proposals (“RFPs”) and when it is not. These rules, adopted in accordance with Article IV § 21 of the Louisiana Constitution of 1974 and La. -R.S. 45:1180(e)(1)(a), shall govern the procedure to be utilized in the selection of contract employees retained ~~under authority of La. R.S. 45:1180~~ by the Louisiana Public Service Commission (“LPSC” “Commission”) to fulfill its constitutional mandate. This General Order amends, and supercedes in its entirety, Commission General Order dated ~~January 17, 2003~~ August 4, 2004~~

~~This General Order was considered by the Commission at the July 21, 2004 Business and Executive Session. On motion of Commissioner Sittig, seconded by Commissioner Campbell and unanimously adopted, the Commission voted to approve and adopt this General Order.~~

II. CONDITIONS UNDER WHICH CONTRACT ATTORNEYS OR CONSULTANTS OR CONSULTANTS SHALL BE RETAINED

Contract attorneys and/or consultants shall be retained by the Commission in those instances in which the Commission has determined that such assistance is necessary for the Commission to fulfill its constitutional mandate, due to insufficient available manpower, ~~or~~ inadequate levels of expertise or experience within the existing Commission staff, or extraordinary circumstances require the assistance.

III. PROCEDURE TO BE UTILIZED

No Formal RFP Process Required

~~Contracts for consulting or legal services which have a maximum amount of compensation, including all professional fees but excluding expenses, which does not exceed fifty thousand dollars (\$50,000.00), may be awarded without the necessity of an RFP. The expenses allowed for such services shall be limited to twenty percent (20%) of the total amount of compensation agreed upon in the contract, unless the Commission specifically authorizes a greater amount. In such instances, the Staff may select one or more qualified counsel and/or consultants (whichever applies) from the lists of qualified counsel and consultants (sometimes collectively referred to herein as “Consultant Lists”) which are compiled and kept on file at the~~

~~Commission.¹ Except in the event of a Procurement Emergency, Qualified Counsel and/or Consultants will be asked to submit proposals for Staff review within twenty five (25) days. A Commission vote approving the retention and the budget shall be taken at the earliest available opportunity.~~

~~In addition, no RFP shall be required for services performed by contract attorneys and consultants on any matter that arises out of or is substantially related by common factual, legal or regulatory issues to an active matter for which the contract attorneys or consultants were previously retained, where the Commission, in its discretion, finds that it is in the public interest to avoid unnecessary duplication of effort or expense. Such matters may include, but are not limited to, appeals of active matters and proceedings before the LPSC, FERC, SEC, FCC, and any other judicial or regulatory body. In such instances, the retention shall be approved by Commission vote, and a budget shall be submitted and approved for the additional services to be rendered.~~

A. Formal RFP Process Required

Except as otherwise provided for herein, a formal RFP process is required for consulting service contracts for matters before the Commission (for both contract attorneys and/or consultants) when it is anticipated that with a total maximum compensation, including all professional fees, but not expenses, in will exceed excess of fifty thousand dollars (\$50,000.00). The expenses allowed for such services shall be limited to twenty percent (20%) of the total amount of compensation agreed upon in the contract proposed in the bid, unless the Commission specifically authorizes a greater amount. The formal RFP process shall be as follows:

1. Notice of the Request For Proposals for each appointment shall be given by emailing such RFP to all pre-qualified persons or firms on the respective Consultant List(s) on file with the Commission for each particular contract when issued, at least ~~twenty-five~~fifteen (215) days before the last day that proposals will be accepted. This 15 day advance notice may be waived by the Commission when extraordinary circumstances require a shorter notice period. The RFP may also be posted on the Commission's official web site and included in the Commission's Official Bulletin. All proposals that meet the requirements of the RFP shall be submitted to the Commission for formal vote at a properly noticed Business and Executive Session or at a Special Executive Session.
2. The RFP shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the contract, the criteria to be used in evaluating the proposals, the time frames within which it is anticipated the work must be completed, as well as specifications of billing guidelines.

B. No Formal RFP Process Required

1. Contracts for consulting and/or legal services which have are anticipated to result in a maximum bid amount of compensation, including all professional fees but excluding expenses, which does to not exceed fifty thousand dollars (\$50,000.00), may be awarded without the necessity of an RFP. The expenses allowed for such services shall be limited to twenty percent (20%) of the total bid amount of compensation agreed upon in the contract, unless the Commission specifically authorizes a greater amount.

In such instances described above, the Commission Staff may select one or more qualified counsel and/or consultants (whichever applies) from the lists of qualified counsel and consultants (sometimes collectively referred to herein as "Consultant Lists") which are compiled and kept on file at the Commission.² Except in the event

¹ ~~These Consultant Lists may be updated from time to time as specified herein.~~

² These Consultant Lists may be updated from time to time as specified herein.

of a Procurement Emergency, Staff will notify in writing Selected Qualified Counsel and/or Consultants who will be asked to submit proposals for Staff review within the time frame specified therein the request. The request shall provide sufficient detail regarding the appointment. ~~twenty-five (25) days. A Commission vote approving the retention and the budget shall be taken at the earliest available opportunity. All “under \$50K” responses shall be submitted to the Commission for formal vote at a properly noticed Business and Executive Session or at a Special Executive Session~~

~~1.2.~~ 2. In addition, no RFP shall be required for services performed by contract attorneys and/or consultants on any matter that arises out of, or is substantially related by common factual, legal or regulatory issues to, an active matter for which the contract attorneys or consultants were previously retained, where the Commission, in its discretion, finds that it is in the public interest to avoid unnecessary duplication of effort or expense. Such matters may include, but are not limited to, appeals of active matters and proceedings before the LPSC, FERC, SEC, FCC, and any other judicial or regulatory body. In such instances, the retention shall be approved by formal Commission vote, and a budget shall be submitted and approved for the additional services to be rendered.

C. *Procurement Emergency*

When exigent circumstances require the employment of attorneys or consultants to provide services on an emergency basis, the Secretary, after consultations with General Counsel and the Chairman of the Commission, may declare a procurement emergency. The declaration of a procurement emergency shall authorize the retention of qualified contract attorneys and consultants without the necessity of a formal RFP process. Under such circumstances, the attorneys and consultants shall submit a budget for Commission consideration and vote at the earliest practical time. All other requirements of these rules shall remain in full force and effect, specifically including, but not limited to, the Criteria and Qualifications set forth below.

D. *Selection of Contract Employees*

An Award, whether under normal procedure or emergency procurement made pursuant to Section III A-C, shall be made to the responsible offeror whose proposal is determined by the Commission to be the most advantageous ~~to the Commission,~~ taking into consideration the evaluation factors set forth in the Request for Proposal, the criteria and qualifications set forth herein, and price. When in the public interest, favorable consideration may be given to qualified Louisiana attorneys and consultants.

E. *List of Qualified Counsel and Consultants*

The Commission has, heretofore, compiled Consultant Lists. These Lists are comprised of individuals or firms who meet the minimum criteria and qualifications set forth below. From time to time, the Commission, at its sole discretion, may update and/or revise said Lists as it deems necessary in the following manner:

Attorneys: Notice published in the Louisiana Bar Journal, the Commission’s Official Bulletin and the Official State Journal specifying the criteria and qualifications set forth in this General Order by which attorneys shall be selected, and inviting all interested parties to submit professional resumes, a representative client list and a copy of their professional liability insurance face sheet for consideration.

Consultants: Noticed published in the Commission’s Official Bulletin and the Official State Journal specifying the criteria and qualifications set forth in this General Order by which consultants shall be selected, and inviting all interested parties to submit professional resumes, resumes and a representative client list, ~~and a copy of their professional liability~~

~~insurance face sheet for consideration.~~ When deemed appropriate, advertisements may also be placed in those national trade journals that serve the particular type of consultant desired.

From the applicants, the Secretary, with advice ~~of the~~from the Office of General Counsel, shall determine which attorneys and/or firms meet the qualification requirements and are eligible to represent the Commission. A file shall be kept containing the information submitted by all pre-qualified individuals and/or firms.

In addition to the above, a consultant who wishes to be added to the Commission Consultant List for qualified attorneys and/or consultants may submit such a request to the Commission's Office of General Counsel for consideration. Such a request shall include the information required of attorneys and/or consultants described above demonstrating the firm's qualifications.

IV. CRITERIA AND QUALIFICATIONS

In order to be placed on one of the Commission's Consultant Lists, the following conditions and qualifications must be met:

A. Attorneys and Law Firms: Applicants shall at a minimum be experienced in the presentation of cases involving accounting, taxation and depreciation, or public utility regulation, or other regulatory issues on administrative and judicial levels, including the presentation of witnesses on direct examination, cross examination of adverse witnesses, the conduct of discovery, and the taking of appeals, with consideration given to indicia of competence such as previous experience and success handling complex cases, success on appeals, publications of a legal nature, educational achievement and other previous employment suggesting competence in the litigation of matters involving taxation, depreciation, accounting, public utility regulation, or financial dealings such as mergers; significant personal practice before regulatory agencies such as the SEC, FERC, FCC, or other similar entities may be a favorable factor. Firm size may be considered in matters likely to be prolonged, complex, or involving multiple forums.

Applicants shall have been admitted to practice before the Supreme Court of Louisiana and actively engaged in the practice of law for at least five (5) years. If the legal work involves litigation before a federal court, an applicant must be admitted to practice before the court of original jurisdiction as well as the applicable federal ~~appellate~~appeals court ~~and~~ the Supreme Court of the United States, or have no reason to believe that he/she would not be qualified to practice before the applicable federal appellate court or the Supreme Court of the United States. Previous, as well as present or future employment that could result in a conflict of interest as detailed in the Rules of Professional Conduct of the Louisiana State Bar Association shall be prominently and separately disclosed. In addition, applicants shall disclose all previous, current, and anticipated future representation of clients before the LPSC, regardless of whether this representation would be considered a conflict of interest as described above. Applicants must have professional liability insurance providing coverage in the minimum amount of one million dollars (\$1,000,000.00) per claim.

B. Consultants: Applicants shall at a minimum be experienced in analyzing in-depth the operations, books, and records of utility companies and qualified to render expert testimony with respect thereto, including but not limited to such matters as return on equity, capital structure, inter- and intra-class allocations, expenses recognized for rate making purposes, development of rate base, depreciation, and taxation. In addition, applicants shall disclose all previous, current, and anticipated future representation of clients before the LPSC, regardless of whether this representation would be considered a conflict of interest as described above.

Favorable consideration will be given to factors pointing toward competence, such as educational background and achievement, practical experience, length of time devoted to utility practice, publication of scholarly articles, and previous similar employment by other regulatory agencies, or practice before them, of a non-conflicting nature. Firm size may be a factor in complex matters. The submission of referrals is encouraged.

C. For both attorneys and consultants, favorable consideration may also be given to such factors as familiarity with the subject matter to be explored, or specific knowledge of a given company, provided such knowledge is deemed not suggestive of conflict.

V. BILLING GUIDELINES:

For all matters conducted on behalf of the Commission, prices will be quoted on an hourly basis and set forth a total estimated budget specifying separately fees and expenses and the work to be performed, neither of which amounts will be altered thereafter without Commission consent. No requests for alteration will be granted except in extreme circumstances to be determined by the Commission at its sole discretion pursuant to a Fee Adjustment Docket (“F.A. Docket”).

All bills will be rendered monthly and shall specifically identify and describe all work performed, the person performing such work, the time and charge for such work, and shall additionally show the total amount billed to date and the authorized original estimate. Bills will be rendered in strict accordance with the Commission’s guidelines. Expenses shall also be separately disclosed with detailed proof of such expenses attached.

Expenses, where applicable, shall be reimbursed at state authorized rates as specified in the Travel Policies and Procedures Memorandum issued by the State of Louisiana, Division of Administration in effect at the time such expenses are incurred (“Allowable Expenses”). This memorandum can be found at <http://www.doa.louisiana.gov/osp/travel/travelpolicy.htm>. Any expenses that exceed the Allowable Expenses shall be borne by the contract employee and shall not be reimbursed by either the Commission, or the correspondent utility, unless otherwise specified by the Commission.

This order shall be effective immediately and shall apply to all RFPs and to all Commission hires subsequent to its adoption.