

REVISED STATUTES 48: 285 - 294

PART XIII-A. EMPLOYMENT OF CONSULTANTS

§285. Purpose

It is the purpose of this Part to prescribe the policy of the Department of Transportation and Development and other grantee agencies applicable to employment of consultants for construction and preconstruction engineering services, research, planning, environmental, and other activities by a competitive process and a noncompetitive process, except those services under the authority of R.S. 39:1481 through 1526, R.S. 48:250.2, R.S. 48:250.3, and R.S. 48:292.1.

Acts 1991, No. 784, §1; Acts 2007, No. 40, §1, eff. Jan. 1, 2008; Acts 2009, No. 255, §1, eff. July 1, 2009.

§286. Retaining of consultants warranted; authorization

A. There are three conditions which shall warrant the retention of the services of consultants by the department:

(1) The magnitude of the work involved in a project is determined to be so taxing to the department's available manpower that it will be necessary to defer other essential work if the work is performed by the department staff.

(2) The work required by a project is determined to be of such a specialized nature that the department will be required to go outside its own staff for experts in the appropriate fields to accomplish the work.

(3) The time frame within which the work must be completed is determined to be such that the department cannot undertake the work and maintain its program on schedule.

B.(1) When it is determined by any department section that consulting services are warranted, the section head shall submit a recommendation to the chief engineer, assistant secretary for operations, assistant secretary for planning and programming, or assistant secretary of public works, hurricane flood protection, and intermodal transportation, whichever is applicable to the project, stating the need and the supportive reasons for the services, including a description of the project and the estimated cost of the work to be performed.

(2) The chief engineer, assistant secretary for operations, assistant secretary for planning and programming, or assistant secretary of public works, hurricane flood protection, and intermodal transportation, whichever is applicable to the project, shall decide if the need to use consultants for professional services for a project is warranted based upon information provided by the section head and the criteria established by Subsection A of this Section.

(3) Approval, when granted, shall be considered as being of a general nature, including not only the obvious components of the project which are immediately identifiable, but also ancillary components identified at any time during the life of the project. An additional selection process shall be used for ancillary components when the total of such ancillary components amounts to more than seventy-five percent of the original contract.

(4) When it is determined by the chief engineer, assistant secretary for operations, assistant secretary for planning and programming, or assistant secretary of public works, hurricane flood protection, and intermodal transportation, whichever is applicable to the project,

that there is a need for an outside consultant, the selection shall be made in accordance with the provisions of this Part.

Acts 1991, No. 784, §1; Acts 1998, 1st Ex. Sess., No. 35, §1; Acts 2009, No. 255, §1, eff. July 1, 2009.

§287. Advertisement; solicitation list; response procedures

A. A notice of intent to select a firm for performing consultant services and to request responses from qualified firms and teams shall be advertised by posting it on the department's Internet website. The department shall maintain a solicitation list of consultant firms and teams. The department shall send an email notice to consultant firms and teams on its solicitation list to notify of the posting of an advertisement for consultant services on the department's Internet website. In the case of planning, research, or other specialty services, the department or the Louisiana Transportation Research Center may send notices to firms which, to the knowledge of the department or the Louisiana Transportation Research Center, may have experience in such services.

B. Notices shall be advertised a minimum of ten business days prior to the deadline for receipt of responses.

C. If the department deems that the number of responses received is inadequate, the project may be re-advertised using additional media or publications in an attempt to solicit additional responses.

D. (1) The advertisement shall detail all information to be submitted in response to the advertisement. In all cases, a properly completed current department response form shall be submitted by applicants. The response forms shall be made available by the department. If additional information to that provided by the response form is required, it shall be so noted in the advertisement.

(2) The applicant shall transmit the response form and any other required information, to the department prior to the deadline shown in the advertisement. Responses which do not meet the requirements provided for in this Subsection shall not be considered. The department shall consider false or misrepresented information furnished in response to the advertisement as grounds for rejection.

E. There shall be no advertisement when noncompetitive selection is utilized.

Acts 1991, No. 784, §1; Acts 1999, No. 1284, §3; Acts 2009, No. 255, §1, eff. July 1, 2009.

§288. Audit requirement

A. Any consulting firm doing business with the department shall maintain accounting records which segregate job costs as prescribed by the department's audit section. Negotiated contracts may require a pre-award audit. Post audits may also be required. Predetermined fee contracts may be audited during the course of the contract, or within three years of final contract payment.

B. Any consultants doing business with the department shall be required to submit to the department audit assurance as set forth in the "Consultant Contract Services Manual", except that consultants doing business with the Louisiana Transportation Research Center shall comply with its "Manual of Research Procedures". Guidance may also be obtained from the audit section of the department.

C. Contracts entered into with the department may specify a manpower relationship which the consultant will be expected to maintain. For engineering contracts, this relationship shall be based on the total of the estimated engineering, supervision, and principal man-hours expressed as a percentage of the total estimated man-hours in all salary classifications. The department shall monitor this relationship by means of the consultant's progress schedules, invoices, or audits.

Acts 1991, No. 784, §1; Acts 2009, No. 255, §1, eff. July 1, 2009.

§289. Compliance with Civil Rights of 1964

A. Department personnel when selecting consultants and contractors who are doing business with the department shall comply with Title VI of the Civil Rights Act of 1964, as amended to provide that no person in the United States shall, on the basis of race, color, sex, or national origin, be excluded from participation in any program or activity receiving federal financial assistance.

B. As prescribed in Title 49 of the Code of Federal Regulations Part 26, the department shall ensure that maximum opportunity is afforded to socially and economically disadvantaged individuals to compete for and participate in consultant contracts.

Acts 1991, No. 784, §1; Acts 2009, No. 255, §1, eff. July 1, 2009.

§290. Requirements of consultants

A. Preconstruction or construction services consultant engineering firms shall meet the following requirements to be considered for employment by the department:

(1) At least one principal of a firm under consideration shall be a registered professional engineer in the state of Louisiana.

At least one principal or other responsible member shall be currently registered in Louisiana as a professional engineer in the major discipline required for the project. In the case of a land surveying contract, one principal or responsible member shall be currently registered as a professional land surveyor in Louisiana.

(2) At least one principal or responsible member shall have had a minimum of five years experience in responsible charge of the engineering field or fields involved.

B. To be considered for employment for planning, or environmental studies, a consulting firm must meet the following requirements:

(1) At least one of the principals of the firm shall be professionally competent in the field or fields of expertise required for the project.

(2) At least one principal or responsible member of the firm shall have had a minimum of five years experience in responsible charge of or major expertise in the field or fields involved.

C. Requirements or considerations for consultants for preconstruction or construction services and planning, environmental or research studies are, as follows:

(1) Special qualifications to meet particular project needs may be established by the department. These qualifications shall be published in the advertisement for consultant services if established.

(2) A minimum manpower requirement shall be published in the advertisement for consultant services where appropriate.

(3) The department will not consider joint ventures for consulting services, except in rare cases and only after written justification.

D. Sub-consultants providing engineering or land surveying services are bound by the requirements for consultants. Sub-consultants providing other than engineering or land surveying services must demonstrate that qualified personnel are in responsible charge. All sub-consultants are subject to department approval, either at the time of selection or thereafter.

E. Firms may be disqualified from being selected when such firm:

(1) Has received a letter stating that the firm is significantly behind the approved time schedule for completion of any phase of an existing contract with the department.

(2) Has a record of unsatisfactory performance on department projects.

Acts 1991, No. 784, §1; Acts 2009, No. 255, §1, eff. July 1, 2009.

§291. Selection procedure; evaluation teams

A. Except for research projects, an evaluation team consisting of five department personnel shall evaluate the qualifications of the responding consultant firms. The consultant contract services administrator, or his authorized designee, shall serve as chairman of the evaluation team. The consultant contract services administrator, or his authorized designee, shall select evaluation team members from department personnel who possess experience and qualifications relevant to services to be performed for the project. In addition other persons as determined by the chairman may be called for informational purposes. At least three members of the selected team shall evaluate the qualifications of responding consultants. The consultant contract services administrator, or his designee, serves ex officio and does not evaluate the responding consultant firms. The consultant contract services administrator, or his designee, shall report the results of the evaluation team members to the secretary for all projects except Louisiana Transportation Research Center projects.

B. The Louisiana Transportation Research Center project selection procedure shall be in accordance with the Louisiana Transportation Research Center "Manual of Research Procedures" for Louisiana Transportation Research Center projects.

Acts 1991, No. 784, §1; Acts 2009, No. 255, §1, eff. July 1, 2009.

§292. Noncompetitive negotiation selections

A. In special and rare circumstances, noncompetitive selection may be utilized. These circumstances include, but are not limited to:

(1) Specialty contracts where the necessary expertise is available only from one or a few sources.

(2) The extension of services by the original consultant required on a project for which the contract has been satisfactorily completed and closed out at an earlier date.

(3) Contracts requiring immediate action.

B. The section head, after ascertaining the need for a noncompetitive selection, shall request approval from the secretary or his authorized designee through the chief engineer, assistant secretary for operations, assistant secretary for planning and programming, or assistant secretary of public works, hurricane flood protection, and intermodal transportation, whichever is applicable to the project, to engage a specific firm to perform the required services. The request shall be in written form containing the following information:

- (1) The justification for a noncompetitive selection.
- (2) The recommended firm and the reason for the recommendation.
- (3) The type of contract recommended.
- (4) The approximate cost.

C. For federal aid projects, the noncompetitive selection shall be submitted to the appropriate federal agency for approval at an early stage.

D. For research projects, the determination for noncompetitive selection shall be based upon a recommendation by the Louisiana Transportation Research Center to the secretary and documented as required in R.S. 48:292(B).

Acts 1991, No. 784, §1; Acts 1998, 1st Ex. Sess., No. 35, §1; Acts 2009, No. 255, §1, eff. July 1, 2009.

§292.1. Small Engineering Consultant Program

A. The department may establish a program to prequalify small engineering consultants for employment on selected department projects. The program shall be known as the "Small Engineering Consultant Program", hereafter referred to in this Section as the "program". The program shall provide opportunities for small engineering consultants who possess minimal experience on department projects to gain such experience in the performance of preconstruction engineering services on selected department projects. The participation by small engineering consultants in the selected projects shall provide firms with an opportunity to earn an experience rating which will enable those firms to compete on other projects. For purposes of this Section, preconstruction engineering services include all professional services before initiation of construction, including but not limited to surveys, environmental analysis, design, and bidding analysis.

B. The estimated contract fee shall not exceed the Federal Highway Administration small purchase limit.

C. (1) Engineering consultants interested in participating in the program shall annually apply for prequalification. Only a small engineering consultant whose firm meets the qualifications provided by this Paragraph at the time of application may participate in the program:

- (a) It has been in business for a continuous period of at least three years.
- (b) It is registered and in satisfactory standing with the Louisiana secretary of state as provided by law.
- (c) It is licensed by the Louisiana Professional Engineering and Land Surveying Board.
- (d) It employs at least one employee who will be in responsible charge of engineering work and who is properly licensed by the Louisiana Professional Engineering and Land Surveying Board.

(e) It employs the equivalent of no more than three professional engineers, including professional engineers employed on a part-time basis.

(f) It has not been competitively selected by the department for preconstruction engineering work within the three years previous to the date of the application for the program.

(2) The department shall annually solicit on its web site a request for qualifications for participation in the program. The solicitation shall identify all of the requirements necessary to apply and qualify for participation in the program.

(3) The department shall provide to any engineering consultant who wishes to apply for prequalification the required standard form request for qualifications, which is to be completed and submitted to the department.

(4) Except as provided in Subsection E of this Section, the department shall accept for participation in the program any consultant who timely submits a complete, standard form request for qualifications and whose completed request clearly demonstrates that the consultant meets the requirements of this Section. The prequalification period is one year, after which the consultant may reapply for participation.

(5) Upon prequalification, a small engineering consultant shall continuously meet the program qualifications. A prequalified small engineering consultant shall immediately notify the department in writing if the firm ceases to meet program qualifications during the one-year prequalification period.

D.(1) The department shall send each prequalified small engineering consultant a request for a letter of interest to perform preconstruction engineering work for individual projects included in the program.

(2) Prequalified consultants who wish to be considered for selection on an individual project shall timely submit to the department a letter of interest signed by a principal of the firm.

(3) The department shall prepare a short list that includes the five responding small engineering consultants who are geographically located closest to the construction project, and the consultants on the short list shall be considered for selection for preconstruction engineering work on the project. If fewer than five prequalified small engineering consultants submit a letter of interest, then all such consultants shall be on the short list and considered for selection.

(4) The department shall select a small engineering consultant from the short list on the basis of an announced and publicly viewable random selection. The department may enter into a contract with the selected prequalified consultant for preconstruction engineering work. Unless provided otherwise in the request for letter of interest, compensation for preconstruction engineering services shall be paid as a predetermined lump-sum fee.

(5) A consultant may not be selected for more than five projects through this program.

E.(1) The department shall not prequalify or shall remove a prequalified consultant firm under the following circumstances:

(a) It employs more than the equivalent of three professional engineers.

(b) It loses its engineering license.

(c) The professional engineer in responsible charge of the engineering work for the project loses his engineering license, except when licensed staff is immediately available to replace the loss.

(d) It receives an average performance rating of less than 1.4 on three department projects.

(e) It applies to and is selected by the department for preconstruction engineering work under competitive selection criteria as provided in this Part.

(f) A prequalified consultant firm requests removal from the program in writing. Written requests for removal shall be addressed to the department's chief engineer or his designee.

(g) It has been selected to perform five projects through this program.

(2) A prequalified consultant removed from the program may not re-qualify for the program for a period of three years from the date of removal unless a written corrective action plan is submitted by the consultant to the department's project manager and the plan is approved by the chief engineer or his designee.

Acts 2007, No. 40, §1, eff. Jan. 1, 2008; Acts 2009, No. 255, §1, eff. July 1, 2009.

§293. Competitive selection

A. (1) Except for Louisiana Transportation Research Center projects, upon termination of the deadline for receipt of responses, the evaluation committee team shall confer and evaluate said responses. A point-based rating system based upon the evaluation criteria and weighting factors provided for in this Section shall be used by the team in its evaluation. Interviews may be used as necessary for evaluation. However, if interviews are a requirement, the advertisement shall so state.

(2) The team shall then prepare and present to the secretary a short list of the three highest rated consultant firms provided there are at least three qualified firms. The secretary or authorized designee shall make the final evaluation and selection from the list. If the secretary or authorized designee selects other than the first ranked consultant firm from the short list, the secretary or authorized designee shall document his reasons for selection of other than the first ranked consultant firm on the short list. All responding firms will be notified of the selection. The team will not consider recommendations by others in their evaluation of the firm's qualifications. The team may be assisted by other department personnel. On those projects for which partial or full funding is supplied by others, the secretary or authorized designee may consider recommendations by the entity supplying the funds. This recommendation must be for a firm on the short list. The recommendation is not binding on the secretary or authorized designee.

B.(1) The general criteria and weighting factors to be used by the evaluation team in evaluating responses to requests for consultant services are as follows:

(a) Experience, both firm and individual, key staff personnel, as related to the project under consideration, weighting factors of three and four respectively.

(b) Past performance on department projects, weighting factor of six.

(c) Current work load, weighting factor of five.

(d) Firm size as related to project magnitude, weighting factor of three.

(e) Location where work will be performed, weighting factor of four except that a weighting factor of six is used for Urban System projects.

(f) Any special evaluation criteria specified in the advertisement required to meet particular project needs.

(2) These weighting factors are those usually used for preconstruction services selections. For other types of services or for special project requirements, the weighting factors may be varied based on the specific project requirements. Weighting factors to be used for each project will be stated in the project's advertisement.

C.(1) The Louisiana Transportation Research Center shall utilize the selection criteria and weighting factors in its "Manual of Research Procedures" and any special evaluation criteria and weighting factors specified in the advertisement required to meet particular project needs to evaluate responses to requests for proposals for research consultants.

(2) The director of the Louisiana Transportation Research Center shall recommend to the secretary or authorized designee the final selection of the consultant as determined by review procedures of the research project review committee and center director in accordance with its "Manual of Research Procedures".

D. The written records produced during the evaluation and selection process are subject to the Public Records Act, R.S. 44:1 et seq.

Acts 1991, No. 784, §1; Acts 1993, No. 375, §1; Acts 2003, No. 100, §1; Acts 2009, No. 255, §1, eff. July 1, 2009.

§294. Contract types

A. The department shall utilize either cost plus fixed fee with a maximum limitation, cost per unit of work, specific rates of compensation, or lump sum contracts for either competitive or noncompetitive selections. The fee shall either be negotiated or predetermined. In general, negotiated cost plus fixed fee contracts are used for larger projects with more complex and difficult to determine scopes of services, and pre-determined lump sum fee contracts are used for smaller projects with easier to determine scopes of services.

B. Procedures for utilizing negotiated lump sum fee, cost per unit of work, specific rates of compensation, or cost plus fixed fee with maximum limitation contracts shall be as follows:

(1) Advertisement as required by this Part shall include, but not be limited to the following:

(a) Length and description of project.

(b) Services required.

(c) Material or information to be furnished by the department.

(d) General information and an outline of the selection process, including the criteria/categories used to evaluate the responses and the weighting factors for each.

(2) Except for Louisiana Transportation Research Center projects, after a consulting firm has been chosen, such firm shall be invited to submit a proposal within a time limit. Construction and preconstruction proposals shall conform to the "Consultant Contract Services Manual".

Research proposals shall conform to the Louisiana Transportation Research Center's "Manual on Research Procedures". This proposal shall be analyzed by the technical personnel of the involved units and a pre-award audit may be obtained.

(3) The technical review personnel shall negotiate any differences between the man-hour estimates of the department and the consultant firm. Should attempts at agreement between the department and the consultant be unsuccessful, negotiations shall be terminated and another selection shall be made. This process will continue until agreement is reached with a firm or team.

(4) Fees will be based on the negotiated man-hours, the audited salary and overhead rates of the firm or team subject to the department's salary and overhead maximums, the designated contingency percentage, and the computed fixed fee. The department's standard fixed fee computation includes consideration for complexity, overall fee size, and magnitude of the firm's overhead.

(5) The contract will be executed following agreement on the required work effort. The firm shall have ten business days from the date of mailing to execute and return the contract to the department. Should the firm fail to timely execute and return the contract, the department may either select another firm from the original respondents or republish the notice of intent.

C. Procedures for utilizing non-negotiated predetermined lump sum fee, cost per unit of work, specific rates of compensation, or cost plus fixed fee with a maximum limitation shall be as follows:

(1) Advertisement as required by the Part shall include, but not be limited to the following:

- (a) Length and description of project.
- (b) Services required.
- (c) Material or information to be furnished by the department.
- (d) Fees by phase of work.
- (e) General information, including an outline of the selection process, including the criteria/categories used to evaluate the responses and the weighting factors for each.

(2) Fees shall be determined by using the department's man-hour estimate, the latest average of applicable wage rates, and the latest average overhead, together with a contingency where appropriate and a profit computed in accordance with the department's standard procedure. These fees shall not be subject to further negotiation.

(3) The contract will be executed following notification of selection. The selected firm shall have ten business days from the date of mailing to execute and return the contract to the department. If the firm fails to timely execute and return the contract, the department shall select another firm from the original respondents or republish the notice of intent.

Acts 1991, No. 784, §1; Acts 2009, No. 255, §1, eff. July 1, 2009.