

LOUISIANA PUBLIC SERVICE COMMISSION

GENERAL ORDER

Docket R-33197 In re: Rules Governing Selection of Contract Employees by the Louisiana Public Service Commission

(Decided at the November 6, 2014 Business and Executive Session)
(Supersedes August 4, 2004 General Order in its entirety)

I. PURPOSE

These rules, adopted in accordance with Article IV § 21 of the Louisiana Constitution of 1974 and La. R.S. 45:1180, shall govern the procedure to be utilized in the selection of contract employees retained by the Louisiana Public Service Commission (“LPSC” “Commission”) to fulfill its constitutional mandate. This General Order amends and supersedes in its entirety Commission General Order dated August 4, 2004.

II. CONDITIONS UNDER WHICH CONTRACT ATTORNEYS 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, inadequate levels of expertise or experience within the existing Commission staff, or extraordinary circumstances require the assistance.

III. PROCEDURE TO BE UTILIZED

A. Formal RFP Process Required

Except as otherwise provided for herein, a formal Request for Proposals (“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 total maximum compensation, including all professional fees, but not expenses, will exceed 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 proposed in the bid, unless the Commission specifically authorizes a greater amount. The formal RFP process shall be as follows:

1. Notice of an RFP for each appointment shall be given by emailing such RFP to all pre-qualified persons or firms on the respective lists of qualified counsel and consultants (sometimes collectively referred to herein as “Consultant List”)¹ on file with the Commission for each particular contract when issued, at least twenty (20) days before the last day that proposals will be accepted. This 20 day advance notice may be shortened by the Secretary or 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, and it shall clearly define the tasks to be performed under the contract, the criteria to be used in evaluating the proposals, the time frame within which it is anticipated that the work must be completed, as well as specifications of billing guidelines.

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

B. No Formal RFP Process Required

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

In instances where no formal RFP process is required, the Commission Staff may select one or more qualified counsel and/or consultants (whichever applies) from the Consultant Lists which are compiled and kept on file at the Commission. Except in the event 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 in the request. The request shall provide sufficient detail regarding the appointment. All responsive proposals complying with the expense and cost limitation of the preceding paragraph responses shall be submitted to the Commission for formal vote at a properly noticed Business and Executive Session or at a Special Executive Session.

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 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, taking into consideration the evaluation factors set forth in the Request for Proposal, the criteria and qualifications set forth herein, actual and potential conflicts of interest, bias in the subject matter of the proceeding, prior performance evaluations, 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: Notice 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 and a representative client list. 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 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 their qualifications.

F. Performance Evaluations

Following completion of a proceeding wherein counsel or consultants were retained pursuant to this Order, the Staff member(s) assigned to the project will complete a performance evaluation on the form attached hereto. This form may be modified as required from time to time.

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: Representatives of 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.

Representatives of 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, representative of an applicant must be admitted to practice before the court of original jurisdiction as well as the applicable federal appellate 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, representatives of applicants shall disclose all previous, current, and anticipated future representation of clients, through testimony or otherwise, before the LPSC, or other similar local, state, or federal bodies charged with the regulation of public utilities, involving any matter that arises out of or is substantially related by common factual, legal, or regulatory issues to a matter for which the consultants are seeking to be retained, regardless of whether this representation would be

considered a conflict of interest as described above. Representatives of applicants must have professional liability insurance providing coverage in the minimum amount of one million dollars (\$1,000,000.00) per claim.

B. Consultants: Representatives of 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, representatives of applicants shall disclose all previous, current, and anticipated future representation of clients, through testimony or otherwise, before the LPSC or other similar local, state, or federal bodies charged with the regulation of public utilities, involving any matter that arises out of or is substantially related by common factual, legal, or regulatory issues to a matter for which the consultants are seeking to be retained, regardless of whether this representation would be considered a conflict of interest.

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").

The Commission, at its discretion, may direct Commission Staff to solicit proposals (either pursuant to a formal RFP, or not, as permitted by this Order) for contracts without requiring a total estimated budget. In such instances, the RFP or request shall specify that a total estimated budget is not required, but require that hourly billing rates be included, and maintained, for the duration of the contract. Additionally, in contracts awarded pursuant to this exception, the Commission may negotiate lower hourly rates than proposed. The RFP or request and the responsive proposals shall conform to this Order in all other respects. Absent a specific directive of the Commission, all RFPs or requests shall require a total estimated budget.

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.

VI. COMMISSION CONSIDERATION

The above General Order was considered by the Commission at its November 6, 2014 Business and Executive Session. On Motion of Commissioner Skrmetta, seconded by Commissioner Campbell, and unanimously approved, Staff's Recommendation and draft General Order was adopted.

IT IS THEREFORE ORDERED THAT

1. Staff's Recommendation, recommending the amendments to the August 4, 2004 General Order, as outlined above, is hereby adopted.
2. This order shall be effective immediately and shall apply to all RFPs and to all Commission hires subsequent to its adoption.

**BY ORDER OF THE COMMISSION
BATON ROUGE, LOUISIANA**

November 10, 2014

/S/ ERIC F. SKRMETTA

DISTRICT I

CHAIRMAN ERIC F. SKRMETTA

/S/ CLYDE C. HOLLOWAY

DISTRICT IV

VICE CHAIRMAN CLYDE C. HOLLOWAY

/S/ FOSTER L. CAMPBELL

DISTRICT V

COMMISSIONER FOSTER L. CAMPBELL

/S/ LAMBERT C. BOISSIERE

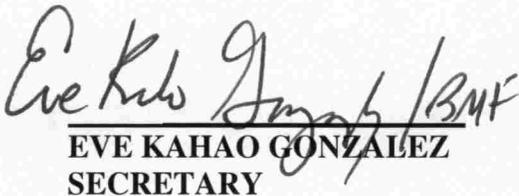
DISTRICT III

COMMISSIONER LAMBERT C. BOISSIERE, III

S/ SCOTT A. ANGELLE

DISTRICT II

COMMISSIONER SCOTT A. ANGELLE


EVE KAHAO GONZALEZ
SECRETARY

RFP PERFORMANCE EVALUATION

RFP# _____

Contractor Name: _____

Total Bid Amount: _____ **Fees** _____ **Expenses**

Actual Amount Billed: _____ **Fees** _____ **Expenses**

Beginning and End Date of Engagement _____ **Begin** _____ **End**

Contract Modifications:

Number: _____ **FA Docket Y/N**

Reasons for modification:

Scope of Representation:

Deliverable Products:

Problems encountered, if any:

Billing Issues, if any:

Overall Performance (check one) _____ **Satisfactory** _____ **Unsatisfactory**

Weak Points:

Strong Points:

Would you recommend the Commission Retain this consultant again? Y/N

Name, Date and Signature of Reviewer: