

**CITY OF NEW ORLEANS
CHIEF ADMINISTRATIVE OFFICE**

POLICY MEMORANDUM NO. 8 (R)

SEPTEMBER 24, 2014

TO: All Departments, Boards, Agencies and Commissions
FROM: Andrew D. Kopplin, First Deputy Mayor/ Chief Administrative Officer
SUBJECT: PROFESSIONAL SERVICES CONTRACTS

I. PURPOSE

This policy establishes a competitive selection process and methodology for professional services contracts.

II. POLICY

The Mayor has the legal authority to establish a competitive selection process by executive order for professional services for the City except those administered by the City Council. Executive Order MJL10-05 establishes the competitive selection process for City offices, departments, boards, commissions, agencies, public benefit corporations and other entities of the Executive Branch of City government ("User Entities") pursuant to the Home Rule Charter. Contracts for \$15,000 or less are exempt from the competitive selection process established in MJL 10-05.

Before the Mayor executes a contract with his signature, it must be routed and approved in accordance with CAO Policy Memorandum 122(R). By City Charter, a function of the Department of Law is to prepare or approve as to form and legality all contracts, documents and instruments creating any legal or conventional obligation affecting the City, indicated by an approval line on the contract signature page. In accordance with this Policy, the Department of Law shall review, revise and negotiate the contract language to minimize and/or absolve the City from potential liability. Funds for a contract should be requisitioned prior to routing the contract in accordance with this policy and CAO Policy Memorandum 122(R).

III. LEGAL AUTHORITY

A. Home Rule Charter

Sections 4-206(1)(h) & (i) empower the Mayor to sign contracts and to see that the terms and conditions of all contracts are faithfully executed.

Section 4-302(5) authorizes the Chief Administrative Officer to "prescribe accepted standards of administrative practice to be followed by all offices, departments, and boards."

Section 4-401(5) provides that the City Attorney is to "Prepare or approve as to

form and legality, all contracts... creating any legal or conventional obligation affecting the City.”

Section 4-404(2) requires that certified copies of all contracts become a part of the Law Department’s archives.

Section 6-103(3) provides that the approval of an expenditure schedule by the Chief Administrative Officer shall constitute a budgetary allotment which shall be binding upon such office, department or board, and the Department of Finance shall approve or issue no requisition, purchase order, voucher or check that is not in accordance with such allotment.

Section 6-107 describes the term “encumbrance” as a commitment for expenditure of an appropriation evidenced by a valid requisition properly approved.

Section 6-308 provides for the Mayor to sign all formal written contracts, except those administered by the Council; any agency may propose a contract; the Department of Law must approve all contracts for form and legality before the Mayor signs; for approval by the Department of Finance prior to signature of all contracts involving a financial obligation by the City.

Sections 6-308(5)(b) & (d) authorize a competitive selection process established by executive order for professional service contracts and allow a threshold amount for use of the competitive selection process to be set by ordinance.

B. Executive Orders

Executive Order MJL10-05 establishes the competitive selection process and gives the details of its execution.

C. Ordinances

City Code Section 70-456 *et seq.* states that the City shall provide opportunities to businesses owned and controlled by socially and economically disadvantaged persons to participate meaningfully in the contracting activities of the city that involve public spending or private projects that utilize public funding or incentives and provides legal parameters therefor.

D. Rules of the Civil Service Commission, City of New Orleans (“Rules”)

Rule III, Section 6 of the Rules authorizes the Director of City Civil Service to review and approve all professional services contracts in advance of their effective dates to ensure compliance with Civil Service Law, as that term is defined in the Rules.

E. CAO Policy Memoranda

CAO Policy Memorandum 122 (R) sets out the protocol for routing and approving executive branch contracts.

CAO Policy Memorandum 46(R) establishes policies and procedures for the Disadvantaged Business Enterprise ("DBE") Program.

IV. DEFINITION OF PROFESSIONAL SERVICES

Professional Services are those that include work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to attorneys, doctors, dentists, nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, appraisers, business consultants, investment advisors, and claims adjustors. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skill.

Standards for the recognition of status as a professional service include the following:

- A. Completion of training or advanced study in a specialized field;
- B. Exercise of skill based on experience and competence in a recognize discipline; and
- C. Adherence to technical standards and practices in a learned discipline that confers status and may espouse and endorse codes of common practice and use of recognized methods.

Evidence of professional status may include diplomas, certificates of education and training, licenses and membership in organization that endorse ethical standards and practices.¹

V. SELECTION OF CONTRACTOR

A. Competitive Selection Process for Contracts over \$15,000

For professional services contract over \$15,000, all User Entities shall follow the competitive selection process established by Executive Order MJL10-05.

B. Contracts for \$15,000 or less

¹ See Executive Order MJL 10-05, Sect. 5(a)-(c).

For professional services contracts with a total of \$15,000 or less, the User Entity, through its department head, shall issue a written justification proposing a contractor or a selection of contractors for the services sought, which justification shall be routed in ECMS in accordance with CAO Policy Memorandum 122(R). A User Entity may only contract with particular professional services contractor for up to a total of \$15,000 per calendar year without competitive selection as set forth in MJL 10-05. Nothing contained herein shall preclude the use of the competitive selection process for any professional services.

C. DBE

The City's DBE program applies to professional service contracts over \$15,000 in accordance with the City Code of New Orleans Section 70-456 *et seq.* and CAO Policy Memorandum 46(R).² For contracts totaling \$15,000 or less, in selecting a contractor, preference will be given to qualified individuals or businesses certified as DBE.

D. Local Preference Policy

In selecting a contractor under Section V(A) or V(B), preference will be given to a qualified individual or business located in Orleans Parish to the extent allowed by the funding source. A business is located in Orleans Parish if it (1) is headquartered in Orleans Parish or (2) has a principal place of business with an established place(s) of business within Orleans Parish from which a portion of the business' workforce are regularly based, and from which a substantial role in the business' performance of a commercially useful function or a substantial part of its operations is conducted. A location utilized solely as a post office box, mail drop, address for service of process, or telephone message center or any combination thereof, with no other substantial work function, shall not be construed as a principal place of business.

VI. PREPARATION, ROUTING AND REVIEW OF A CONTRACT

All professional services require contracts. By CAO Policy memorandum 122(R), a process to route and review contracts has been established, which User Entities shall follow.

VII. CONTRACT LANGUAGE

Each contract must contain certain language as instructed in paragraphs A through G of this section or should comply with the Professional Services Contract template attached to CAO Policy Memorandum 122(R). Only the Law Department may approve deviations in the contract language and/or deviations from the Professional

² See City Code of New Orleans Section 70-465.

Services Contract template.

- A. The introductory statement contains the date the User Entity intends the contract to begin and names the parties to the agreement. If necessary, the date the Mayor signed the contract may be filled in later as the execution date. The justification section follows to establish the premise for the agreement and briefly state the qualifications of the contractor to provide services.
- B. The Contractor's Obligations section should contain a clear, specific statement of the services to be provided both by the City and by the contractor. The description of the contractor's obligations should include as much detail as possible regarding the scope of work, tasks, deliverables, reporting requirements and performance measures as appropriate. The obligations of the City should include contract administration and details regarding payments to the contractor. Special conditions of payment, such as, retainage, invoicing and billing procedures, required documentation, and the like are included here.
- C. The Compensation section must include the "not to exceed" or maximum amount of the contract. The maximum amount should be further delineated by task, installment, rate of pay, or any other relevant payment terms, as appropriate.
- D. Professional Services contracts must contain paragraphs that exclude the contractor from benefits coverage, including:
 1. Independent Contractor Status
 2. Acknowledgment of Exclusion of Worker's Compensation Coverage
 3. Acknowledgment of Exclusion of Unemployment Compensation Coverage and
 4. Waiver of Benefits.

Wording of the aforementioned clauses is provided in the Professional Services Contract template attached.

- E. Each contract should also include the following provisions:
 1. Equal Employment Opportunity
 2. Non-Discrimination
 3. Incorporation Into Subcontracts
 4. Ownership Interest Disclosure
 5. Subcontractor Reporting
 6. Prohibition of Financial Interest in Agreement
 7. Prohibition on Political Activity
 8. Conflict of Interest
 9. Convicted Felon
 10. Non-Solicitation
 11. Audit and Oversight
 12. Jurisdiction

13. Choice of Law
14. Survival
15. Non-Exclusivity
16. No Third Party Beneficiaries
17. Termination for Convenience
18. Termination for Non-Appropriation
19. Termination for Cause
20. Duration and
21. Extension.

Additional provisions may be included as approved by the Law Department. Wording of the aforementioned clauses is provided in the Professional Services Contract template attached.

- F. A Duration clause shall state, "The term of this agreement shall be for one year, beginning the effective date hereof, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the CAO, which are derived from appropriations made by the City Council. This agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered." Any duration exceeding one year requires the explicit approval of the CAO.
- G. An Extension clause allows the City to extend the agreement without requesting additional proposals to permit continuity of service. Agreements may be extended by amendment in one-year increments, provided however, that the total duration of the Agreement, including the original term and any extensions, shall not exceed five years.

VIII. ENCUMBERING FUNDS

- A. The User Entity should requisition funds in the amount of the "not to exceed" or maximum amount of the contract. If the full amount of the contract is funded in the current budget year, the full amount of the appropriation shall be encumbered.
- B. For those contracts that extend beyond the City's fiscal year (i.e., multi-year contracts or single-year contracts spanning portions of two fiscal years), funds shall be encumbered as follows. In cases where funding is appropriated only for the current fiscal year, the User Entity may encumber only the current fiscal year appropriation if non-appropriation language is included in the compensation section specifying that (i) the balance of the total compensation is subject to availability, and (ii) the contract shall automatically terminate for any period for which funds are not encumbered without any further obligation of the City.
 1. Ex. 1: If a contract is for \$90,000 over a three year period and only \$30,000 is appropriated in the current fiscal year, the compensation section must include the non-appropriation language set forth above. The

remaining \$60,000 balance shall be encumbered from subsequent funds allotted by the CAO and appropriated by the Council during year two (\$30,000) and year three (\$30,000).

2. Ex. 2: If a contract is for \$50,000 over a one year period spanning two calendar years (e.g., July 1 - June 30 of the following year) and only \$25,000 is appropriated in the current fiscal year, the compensation section must include the non-appropriation language set forth above. The remaining \$25,000 balance shall be encumbered from subsequent funds allotted by the CAO and appropriated by the Council during the following year.
- C. To indicate that the funds have been encumbered, through the requisition process, the document identification number is recorded on the Electronic Contract Management System (ECMS). The User Entity must encumber funds for the contract in the City's financial system.
- D. If an executed contract is amended to change the maximum compensation, the amount must be changed in the financial system through a corresponding requisition sent to the Purchasing Bureau.
- E. Contracts funded by state, federal, or other grant sources should terminate in accordance with the terms and conditions of the applicable funding source.

IX. AMENDMENTS

If it is necessary to alter the terms or conditions of a contract, including but not limited to the duration or the maximum amount, an amendment must be prepared. All amendments must be routed, reviewed, and signed by the Mayor in the same manner as original contracts in accordance with CAO Policy Memoranda 8(R) and 122(R).

X. CONTRACT MONITORING AND ACCOUNTABILITY

The User Entity will monitor the progress of the contract work and file reports with the Purchasing Bureau in compliance with MJL 10-05, and such reports shall be provided to selection committees in future procurements as applicable.

XI. WAIVERS

Requests to waive any of these provisions must be approved by the Chief Administrative Officer in writing. Notwithstanding the foregoing, any deviations must also comply with the requirements of MJL 10-05 as applicable.

XII. INQUIRIES

Copies of Executive Order MJL 10-05 detailing the competitive selection process and CAO Policy Memorandum 122(R) detailing the routing and approval process of contracts are available from the Chief Administrative Office and on the City's website. Questions regarding this memorandum should be forwarded to the Chief Administrative Office at (504) 658-8900.

Andrew D. Kopplin
First Deputy Mayor and
Chief Administrative Officer

ADK/MKZ