

Regular Session, 2009

SENATE BILL NO. 308

BY SENATOR MCPHERSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TRANSPORTATION/DEV DEPT. Provides for the selection of certain consultants by DOTD. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 48:285, 286(A)(1) and (B), 287, 288, 289(B), the introductory
3 paragraph of 290(B), the introductory paragraph of 290(C), and (D), 291, the
4 introductory paragraph of 292(B), 292.1(B), 293, and 294, relative to employment
5 of consultants; to provide relative to the requirements for employment of consultants
6 by the Department of Transportation and Development; to provide for an effective
7 date; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 48:285, 286(A)(1) and (B), 287, 288, 289(B), the introductory
10 paragraph of 290(B), the introductory paragraph of 290(C), and (D), 291, the introductory
11 paragraph of 292(B), 292.1(B), 293, and 294 are hereby amended and reenacted to read as
12 follows:

13 §285. Purpose

14 It is the purpose of this Part to prescribe the policy of the Department of
15 Transportation and Development and other grantee agencies applicable to
16 employment of consultants for construction and preconstruction engineering
17 services, research, planning, environmental, and other activities by a competitive

1 process and a noncompetitive process, except those services under the authority of
2 R.S. 39:1481 through 1526, R.S. 48:250.2, R.S. 48:250.3, and R.S. 48:292.1.

3 §286. Retaining of consultants warranted; authorization

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

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

9 * * *

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

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

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

29 (4) When it is determined by the chief engineer, assistant secretary for

1 operations, assistant secretary for planning and programming, or assistant
 2 secretary of public works, hurricane flood protection, and intermodal transportation,
 3 whichever is applicable to the project, that there is a need for an outside consultant,
 4 the selection shall be made in accordance with the provisions of this Part.

5 §287. Advertisement; solicitation list; response procedures; ~~participation in~~
 6 ~~mentor-protégé program~~

7 A. A notice of intent to select a firm for performing consultant services and
 8 to request responses from qualified firms/teams **firms and teams** shall be distributed
 9 as follows: **advertised by posting it on the department's Internet website. The**
 10 **department shall maintain a solicitation list of consultant firms and teams. The**
 11 **department may send an email notice to consultant firms and teams on its**
 12 **solicitation list to notify of the posting of an advertisement for consultant**
 13 **services on the department's Internet website. In the case of planning, research,**
 14 **or other specialty services, the department or the Louisiana Transportation**
 15 **Research Center may send notices to firms which, to the knowledge of the**
 16 **department or the Louisiana Transportation Research Center, may have**
 17 **experience in such services.**

18 (1) ~~Through advertisement in the Daily Journal of Commerce.~~

19 (2) ~~Through advertisement in the Baton Rouge State Times newspaper.~~

20 (3) ~~By mailing to the firms on the department solicitation list as provided for~~
 21 ~~in this Section.~~

22 (4) ~~In the case of planning, research, or other specialty services, notices may~~
 23 ~~be sent to firms which, to the department's knowledge, may have experience in such~~
 24 ~~services.~~

25 (5) ~~By means of other newspapers, trade journals, and other forms of media~~
 26 ~~which may be appropriate for specialty services, and to insure adequate response.~~

27 B. Notices shall be advertised a minimum of ~~fourteen~~ **ten business** days prior
 28 to the deadline for receipt of responses.

29 C. If the ~~evaluation committee~~ **department** deems that the number of

1 responses received is inadequate, the project may be readvertised using additional
2 media or publications in an attempt to solicit additional responses.

3 ~~D.(1) The project control engineer of the department shall maintain a~~
4 ~~solicitation list of consultant firms who, for a fee determined by the department, may~~
5 ~~receive copies of the notices for services.~~

6 ~~(2) The department shall mail notices to firms listed on the department's~~
7 ~~solicitation list for all advertised projects.~~

8 E. D.(1) The advertisement shall detail all information to be submitted in
9 response to the advertisement. In all cases, a properly completed current department
10 ~~standard~~ response form shall be submitted by applicants. The response forms shall
11 be made available **by the department** ~~from the Consultant Contract Services~~
12 ~~Section~~. If additional information to that provided by the response form is required,
13 it shall be so noted in the advertisement.

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

20 F. E. There shall be no advertisement when noncompetitive selection is
21 required **utilized**. ~~The provisions of this Part shall not supersede the provisions of~~
22 ~~R.S. 47:820.51.~~

23 ~~G. Any request for proposal for any contract governed by the provisions of~~
24 ~~this Part may include incentives as provided herein to encourage participation in the~~
25 ~~mentor-protégé program as provided by R.S. 51:1753.1 and 1753.2 provided that~~
26 ~~such participation is not in conflict with federal provisions relative to the~~
27 ~~procurement of such services:~~

28 ~~(1) Requests for proposals may contain provisions for incentives for work~~
29 ~~completed ahead of schedule. Such incentives shall be not less than five percent~~

1 ~~greater than incentives awarded to contractors who are not mentor-protégé program~~
 2 ~~participants.~~

3 ~~(2) Participation in the mentor-protégé program may be included as a~~
 4 ~~specific criterion to be considered in awarding a contract.~~

5 §288. Audit requirements

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

11 B. Any consultants doing business with the department shall be required to
 12 submit to the department audit assurance as set forth in the "Consultant Contract
 13 Services Manual" ~~of Instructions for Preparation of Engineering Proposals~~, **except**
 14 **that consultants doing business with the Louisiana Transportation Research**
 15 **Center shall comply with its "Manual of Research Procedures."** Guidance may
 16 also be obtained from the audit section of the department.

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

24 §289. Compliance with Civil Rights Act of 1964

25 * * *

26 B. As prescribed in Title 49 of the Code of Federal Regulations ~~Section 23~~
 27 **Part 26**, the department shall ensure that maximum opportunity is afforded to
 28 **socially and economically** disadvantaged ~~and women-owned business enterprises~~
 29 **individuals** to compete for and participate in consultant contracts.

1 §290. Requirements of consultants

2 * * *

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

5 * * *

6 C. ~~Additional requirements~~ **Requirements** or considerations for consultants
7 for preconstruction or construction services and planning, environmental or research
8 studies are, as follows:

9 * * *

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

16 * * *

17 §291. Selection procedure; evaluation ~~committee~~ **teams**; ~~evaluation criteria~~

18 A. ~~A committee~~ **Except for research projects, an evaluation team**
19 consisting of five department ~~engineering~~ personnel shall evaluate the qualifications
20 of the responding consultant firms, ~~and report the results of the evaluation to the~~
21 ~~secretary for all projects except research projects.~~ **The consultant contract services**
22 **administrator, or his authorized designee, shall serve as chairman of the**
23 **evaluation team. The consultant contract services administrator, or his**
24 **authorized designee, shall select evaluation team members from department**
25 **personnel who possess experience and qualifications relevant to services to be**
26 **performed for the project.** ~~These personnel will be section heads, or one of their~~
27 ~~immediate assistants, as designated by the section head. Committee members shall~~
28 ~~serve four year terms, except in the case of retirement or promotion. The sections~~
29 ~~from which the personnel will be drawn are: Road Design, Bridge Design, Traffic~~

* * *

§293. Competitive selection

A. (1) Upon ~~the~~ **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 committee~~ **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 ~~committee~~ **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 ~~none of the firms on the short list are out-of-state firms and~~ 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 ~~therefor~~ **for selection of other than the first ranked consultant firm on the short list.** If any of the firms on the short list are out of state, ~~the secretary may pick from the short list with no explanation of his choice.~~ All responding firms will be notified of the selection. The ~~committee~~ **team** will not consider recommendations by others in their evaluation of the firm's qualifications. The ~~committee~~ **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. ~~The chairman of the Louisiana Transportation Research Center Policy Committee shall recommend to the secretary the final selection of the consultant as determined through review procedures by the research project review committee and center director. The procedures used shall be the same as those provided for non-~~

1 ~~research projects.~~

2 ~~€.~~ (1) The general criteria and weighting factors to be used by the evaluation
3 ~~committee~~ **team** ~~and the Louisiana Transportation Research Center~~ in evaluating
4 responses to requests for consultant services are as follows:

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

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

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

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

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

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

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

19 ~~(3) The written records produced during the evaluation and selection process~~
20 ~~are subject to the Public Records Act, R.S. 44:1 et seq.~~

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

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

1 **Procedures."**

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

4 §294. Contract types

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

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

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

17 (a) Length and description of project.

18 (b) Services required.

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

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

22 (2) **Except for Louisiana Transportation Research Center projects,**
 23 ~~After~~ a consulting firm has been chosen ~~by the secretary,~~ such firm shall be invited
 24 to submit a proposal within a time limit. Construction and preconstruction proposals
 25 shall conform to the **"Consultant Contract Services Manual"** ~~of Instructions for~~
 26 ~~Preparation of Engineering Proposals.~~ Research proposals shall conform to the
 27 **Louisiana Transportation Research Center's "Manual on Research**
 28 **Procedures"** ~~Research and Development Manual.~~ This proposal shall be analyzed
 29 by the technical personnel of the involved units and a pre-award audit ~~shall~~ **may** be

1 obtained.

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

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

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

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

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

22 (a) Length and description of project.

23 (b) Services required.

24 ~~(c) Estimated number of tracings.~~

25 ~~(d)~~ **(c)** Material or information to be furnished by the department.

26 ~~(e)~~ **(d)** Fees by phase of work.

27 ~~(f)~~ **(e)** General information, including an outline of the selection process,
28 including the criteria/categories used to evaluate the responses and the weighting
29 factors for each.

30 (2) Fees shall be determined by using the department's ~~manhour~~ **man-hour**

1 estimate, the latest average of applicable wage rates, and the latest average overhead,
 2 together with a contingency where appropriate and a profit computed in accordance
 3 with the department's standard procedure. These fees shall not be subject to further
 4 negotiation.

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

10 Section 2. This Act shall become effective upon signature by the governor or, if not
 11 signed by the governor, upon expiration of the time for bills to become law without signature
 12 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 13 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 14 effective on the day following such approval.

The original instrument was prepared by Cathy Wells. The following digest,
 which does not constitute a part of the legislative instrument, was prepared
 by Linda Nugent.

DIGEST

McPherson (SB 308)

Present law prescribes the policy of DOTD applicable to the retaining of consultants for construction and preconstruction engineering services, research, planning, environmental, and other DOTD activities by a competitive and noncompetitive process.

Proposed law retains present law, but excludes design-build consultants from the provisions of present law.

Present law provides that conditions which warrant retaining consultants are the magnitude, complexity, or time requirement of a project. Provides that the decision of a need for using consultants be made by the chief engineer or the assistant secretary of public works hurricane flood protection, and intermodal transportation of DOTD based upon recommendation of the appropriate section head.

Proposed law retains present law and adds the assistant secretary for operations and the assistant secretary for planning and programming to those authorized to retain consultants.

Present law provides that the approval includes not only the obvious components of a project, but ancillary components identified at any time during the life of the project. Present law requires an additional selection process be used for ancillary components when the total of such ancillary components amounts to more than 50% of the original contract.

Proposed law retains present law but increases the requirement for an additional selection process to 75% of the original contract.

Present law requires that the intention of selecting a consultant be advertised through the Daily Journal of Commerce, the Baton Rouge State Times, a DOTD solicitation list, and other media as determined by the department for a minimum of 14 days prior to the deadline for receipt of responses.

Proposed law removes the requirement of advertising in certain media and requires the advertisement to be posted on the DOTD website for a minimum of 10 business days prior to the deadline for receipt of responses. Proposed law authorizes DOTD to send electronic notices to firms on its solicitation lists and to speciality firms. Further authorizes the publication in additional media or publications if the response to the first solicitation is inadequate.

Proposed law requires consultants doing business with the LA Transportation Research Center (LTRC) to comply with the LTRC Manual of Research Procedures. Requires consultants doing business with DOTD to maintain audit records with segregate job costs as prescribed by DOTD's audit section.

Present law requires compliance with the Civil Rights Act of 1964 by both contractors and department personnel when selecting consultants. Proposed law retains these provisions and requires DOTD to ensure a maximum opportunity is afforded to socially and economically disadvantaged individuals.

Present law creates an evaluation committee within DOTD to evaluate and recommend responding applicants to the secretary of DOTD for consulting work on construction and pre-construction engineering service, planning, environmental, and related activity projects.

Proposed law provides for the consultant contract services administrator or his authorized designee to select evaluation team members from DOTD personnel who possess experience and qualifications relevant to services to be performed for the projects.

Present law authorizes the LTRC policy committee to evaluate and recommend responding applicants to the secretary of DOTD for consulting work on research projects.

Present law establishes evaluation criteria to be used by the evaluation committee and the LTRC in making recommendation.

Present law requires the secretary or his designee to document the reasons why the first ranked consultant was not chosen if none of the firms on the short list are out-of-state firms.

Proposed law requires the secretary or his designee to document his reasons why the first ranked consultant was not chosen regardless if the consultant is from out of state or not. Further, removes the authorization for the secretary or his designee to pick from the short list without an explanation of his choice.

Proposed law requires LTRC to utilize the selection criteria and weighting factors in the LTRC Manual of Research Procedures and any special evaluation criteria and weighing factors specified in the advertisement to evaluate responses to RFP's for research consultants. All written records produced during the evaluation and selection process are public records.

Present law provides for noncompetitive negotiation selections in special and rare circumstances where the necessary expertise is available from limited sources, the extension of services is required from an earlier satisfactorily completed contract, or a project requires immediate action. Present law requires the section head to receive approval from the assistant secretary of public works, hurricane flood protection, and intermodal transportation of DOTD to determine whether a consultant is needed for certain projects.

Present law provides for a small engineering consultant program for employment on selected department projects to provide opportunities for small engineering consultants who possess minimal experience on department projects to gain experience in the performance of preconstruction engineering services on selected dept. projects. Restricts the estimated cost of projects to not exceed \$500,000.

Proposed law removes the \$500,000 restriction and limits the contract fee to no more than the federal highway administration small purchase limit.

Present law authorizes DOTD to utilize either cost plus fixed fee with a maximum limitation or lump sum contract for either competitive or noncompetitive selections.

Proposed law retains present law and authorizes DOTD to use cost per unit of work or specific rates of compensation, in addition to cost plus fix fee and lump sum.

Present law specifies the selected firm has 10 days from being notified by DOTD of their selection to execute the contract and if such firm fails to execute the contract, DOTD is required to select another firm from the original respondents.

Proposed law allows the selected firm 10 business days to execute and return the contract to DOTD. If such firm fails to return the executed contract to DOTD, DOTD may select another firm from the original list or republish the notice of intent.

Present law requires the project control engineer to maintain a solicitation list of consultant firms who may receive copies of notices for services and requires DOTD to mail notices to each of those firms for all advertised work.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 48:285, 286(A)(1) and (B), 287, 288, 289(B), 290(B)(intro para), 290(C)(intro para) and (D), 291, 292(B)(intro para), 292.1(B), 293, and 294)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill.

1. Requires notices be advertised a minimum of 10 business days.
2. Requires the secretary, or his designee, to document the reasons for his selection of a consultant if his selection is not number one on the short list.

Senate Floor Amendments to engrossed bill

1. Technical amendments