

Legal Services

PUBLIC CONTRACTING FOR LEGAL SERVICES

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A Collaborative Effort

By

**Bureau of Governmental Research
Public Affairs Research Council
The Public Law Center**



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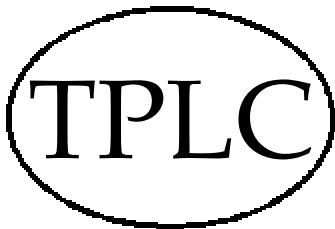
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INTRODUCTION AND SUMMARY

The Public Law Center (TPLC), the Public Affairs Research Council (PAR), and the Bureau of Governmental Research (BGR) undertook this study of contracting for outside legal services by state and local government entities at the request of the Kendall Vick Public Law Foundation. Our objective was to survey the laws and regulations governing such contracting at the state and local levels of government and to review the actual contracting practices of selected state and local entities.

This study was not designed to be an exhaustive analysis of all the issues involved in public contracting for legal services. Rather it was intended to provide factual information which would enable us to identify areas of concern and provide a basis for additional inquiry.

We agreed at the outset with the Vick Foundation that, given the large number of public entities at the state and local level, we would not look at all of them. Our objective was to conduct a selective survey of specific laws and public entities at the state and local levels of government. At the local level we collected information on a representative sample in the New Orleans metropolitan area. Ultimately we obtained infor-

mation on 115 state agencies, 18 representative local entities, and 372 state and local legal services contracts.

Our ability to collect information was greatly facilitated at the state level by the existence of a central repository for legal services contracts. The Office of Contractual Review (OCR) houses most state contracts, subject to a few exceptions. This repository provides one-stop shopping for information about contracts for outside legal services. In addition, state budget request forms provided in one location a three-year overview of outside legal services—the prior year's actual expenditures, the amount budgeted for the current year, and funds requested for the next budget cycle.

Our attempts to collect information at the local level were hampered by the absence of a similar system for centralized collection of outside legal services contracts for most of the local government entities we studied. *We strongly recommend the creation of a central repository for outside legal services contracts within all local government entities.* Establishing such a central repository for all local legal services contracts would make such information more readily available to the press, the public,

and civic organizations, thereby promoting transparency and laying the groundwork for further useful analysis of practices in this sensitive area of governmental operations. No good purpose is served by the current disparity between the relatively easy access to legal services contracts and information at the state level and the relative difficulty of accessing such contracts and information at the local level of government.

In the course of our study, we examined several aspects of legal services procurement: the process for choosing between in-house or outside counsel; the procurement process for outside counsel; compensation rates; documentation and record keeping; and monitoring and evaluation.

Our study illuminated several stark contrasts between the legal framework governing legal services contracting at the state and local levels of government. State law gives considerable guidance on contracting for professional services in general and specifically addresses contracting for legal services. In contrast, local governments are by and large left to devise their own methods for selecting outside counsel. Because legal services contracting at the local level is generally much less well defined by legal constraints, it is much more vulnerable to inappropriate action.

Regrettably, the principal similarity between state and local legal services contracting is the lack of formal analysis and documentation with respect to the attorney selection process. Although state agencies are required to document their cost-benefit analyses, monitoring plans and attorney evaluations, much of the documentation reviewed was pro-forma and lacked thoughtful consideration. The documentation problem was even more serious at the local level, with some entities not even using written contracts for their legal work. With one limited exception, local entities surveyed did not perform cost-benefit analyses. None conducted formal attorney evaluations at the end of projects.

Most government entities (state and local) have no formal, written procedure guiding the attorney selection process. Very few government agencies at either the state or local level are required to follow a competitive process, such as a Request for Qualifications (RFQ) or a Request for Proposals (RFP) process. Although the pros and cons of RFQ and RFP procedures are not studied in detail in this report, a broader application of these processes has the potential to enhance competition.

We also encountered problems obtaining data on payments made to outside attorneys. This data is not compiled centrally for state or local entities. Our analysis of compensation data showed that

most attorneys are paid in accordance with a scale mandated by the Office of the Attorney General (OAG) for entities required to seek OAG approval. Within the range provided by the OAG, however, amounts can fluctuate widely. Even though the compensation table has not been altered since 1992, sufficient numbers of law firms and attorneys appear interested in providing legal services to the government at those rates.

Because of the number of entities outside the scope of our study and flaws in the reporting process, it is difficult to estimate the total amounts expended by state and local government for outside legal counsel. State agencies let more than \$30 million worth of contracts annually, but the actual payments made are less. At the local level, school districts report paying lawyers about \$6 million a year. Other local entities (including 302 cities, 64 parishes and numerous special districts, boards and commissions) do not report to the state, but their legal services costs are substantial. Fifteen local government entities in the New Orleans metropolitan area alone spent over \$13 million on outside legal services during the year studied.

While we recognize that legal requirements and agency policies and procedures cannot prevent all possible contracting ills, we believe that the potential for inefficiencies and favoritism in contracting can be reduced by analyzing each

agency's needs for counsel, requiring greater competition in attorney selection, improving contract monitoring, and making more and better data available to the public.

We hope that this study will afford a starting point from which others may choose to launch additional studies of these and other issues. Further inquiries might focus, for example, on total expenditures for legal services contracting; the linkages between campaign contributions and legal services contracts; and what competitive models would work best in selecting competent, cost-effective counsel for state and local governmental agencies and entities.

NOTE:

This report summarizes our study's findings. More extensive reports may be viewed or downloaded from either the PAR (www.la-par.org) or BGR (www.bgr.org) web sites. These reports provide a more detailed discussion of the legal requirements, contracting procedures, individual agency examples and contract management issues. They also include data collected on contracts for selected public entities.

METHODOLOGY

We employed a three-pronged approach for this study. TPLC examined the legal authority and requirements for legal services contracting. PAR examined contracting by state agencies, and BGR focused on contracting at the local level.

Both PAR and BGR limited data collection to legal services contracts in effect during all or part of the last complete fiscal year of the contracting entity. This was the July-June fiscal year 1999-2000 for state agencies and calendar 1999 or a fiscal year ending in 2000 for local governmental entities.

PAR obtained initial basic information on most state agency legal services contracts from the state's computerized database [Integrated Statewide Information System (ISIS)]. More detailed information was obtained by examining contracts on file at the Office of Contractual Review, reviewing annual agency budget requests, interviewing personnel and examining files of selected agencies, and surveying state agencies not contacted in person. These efforts provided information on 115 state agencies and 237 legal services contracts.

BGR focused on legal services contracting by municipalities,

parishes, special districts, school boards, levee districts and port commissions in the New Orleans metropolitan area. (Levee districts and port commissions are technically state agencies but function in a limited local area.) It reviewed a representative sample of governmental units of varying sizes, types and responsibilities from the New Orleans metropolitan area. In the absence of a central database, each local jurisdiction had to be contacted individually. Both a written questionnaire and personal interviews were employed. BGR contacted 18 agencies and obtained information on 135 contracts.

In addition, we reviewed earlier studies of legal services contracting in Louisiana. These reviews, which were usually part of an examination of professional services procurement, include the following:

1. PAR, *Government Contracting for Professional Services* (1980), examined the broader question of professional services contracting by state agencies but also considered legal services contracting issues.

2. BGR, *Private Contracts for Public Business: An Analysis of Professional Service Contracts* (1990), examined professional services

selection procedures in six governmental entities in New Orleans, including the city itself.

3. BGR, *Contracting Professional Services by Five Parish School Boards* (1998), examined the contracting practices and procedures of five metro New Orleans area school boards.

4. Commission for the Review and Improvement of Services Procurement, *CRISP Report* (1999), reviewed state executive branch contracts for professional services using teams within each agency.

5. Legislative Auditor, *Department of Justice Selection of and Authorized Rates for Legal Services Contractors Used in Civil Cases and Personal Injury Claims Against the State* (2000), conducted a performance audit of the Justice Department, the state's largest user of outside legal services.

6. American Bar Association, *Model Procurement Code for State and Local Governments* (1979, updated in 2000), dealt with purchasing in general and includes provisions for special professional services, including attorneys.

LEGAL SERVICES CONTRACTING PROCEDURES

Before collecting data on state and local agencies and entities, we identified elements of professional services contracting we consider essential to an effective program. These include: cost-benefit analyses for the use of in-house and outside counsel, an optimal competitive process for the choice of outside counsel, adequate and accessible documentation, written procedures, and contract management and oversight. Each of these elements is discussed below.

The Use of In-House or Outside Counsel

Legal Requirements

Louisiana's governmental bodies and agencies require a wide range of legal services, which are provided in a number of ways. At the state level, the attorney general is responsible for providing legal services to all state agencies, officers, boards and commissions. Most of these entities are also authorized to obtain their own legal services, either by hiring legal staff or by contracting with private attorneys.

In the latter case, a state board or commission may retain or employ counsel to represent it in any special matter by submitting a resolution setting out the rea-

sons for the representation and the proposed compensation. Written approval is required from the governor and the attorney general. The law specifies public entities (including a number of levee boards) that do not need written permission but may employ special counsel as needed.

At the local level, the ability to retain in-house and outside counsel varies according to the type of entity. In the case of municipalities operating under the Lawrason Act (the majority of municipalities), the mayor, with confirmation by the board of aldermen, may appoint a municipal attorney. Such municipalities may also employ special counsel under certain circumstances. The powers of home rule municipalities are defined by their charters.

Parishes must use district attorneys as their regular counsel, except as otherwise provided by law. The requirement does not apply to Orleans Parish, parishes that have adopted home rule charters providing for the hiring of their own counsel, and certain other parishes that are given, and exercise, the right to opt out of representation by the district attorney.

District attorneys also serve as the regular attorney for parish

and city school boards and every state board or commission domiciled within their districts. The provision is subject to numerous other exceptions, including exceptions for state boards and commissions domiciled in Baton Rouge, entities in charge or in control of state institutions, and various specifically exempted institutions, such as the Board of Assessors for Orleans Parish and the New Orleans Board of Liquidation, City Debt. Other entities, such as hospital service districts, are given the right to select their own attorneys.

Police jury parishes cannot employ special counsel unless a real necessity exists. Home rule parishes do not need attorney general approval for legal services contracts, however, if their charter provides for retention of general or special counsel.

State law also requires attorney general approval for the retention of special counsel by school boards and other local and state boards. The statute exempts certain specific boards and districts from the requirement.

State law places legal services for the issuance of bonds, notes, or other instruments of indebtedness of parishes, school boards, and all state boards and commis-

sions under the supervision and authority of the attorney general.

Cost-Benefit Analyses

Where entities have the authority to retain outside counsel, decisions as to the use of in-house or outside counsel should be based on a written cost-benefit analysis that takes into account a number of considerations. These include the adequacy of available services (such as from a parent department's legal staff, the attorney general, or a district attorney), the nature of the work to be done, and relative cost factors.

Many agencies contract out for services in legal areas that are specialized or non-routine. For instance, the Department of Natural Resources (DNR) requires services of highly specialized oil and gas attorneys, who would be unlikely to work for the state on an in-house basis. The Department of Transportation and Development (DOTD) requires outside assistance in highly specialized expropriation matters. The New Orleans Sewerage & Water Board (S&WB) spent over \$600,000 in 1999 for counsel to represent it in natural gas proceedings before the New Orleans City Council. The City Council itself spent over \$1.8 million that year for outside counsel to deal with utility and telecommunications regulatory matters.

Although state law requires that state agencies conduct a cost-benefit analysis before contracting

with outside counsel, few make more than a perfunctory effort or actually prepare a written cost-benefit analysis. The decision to contract is more often made informally.

With one limited exception, the surveyed local government entities do not conduct any systematic, formal review of whether their needs could be met more efficiently through the use of in-house counsel. Rather, such decisions are made on the basis of the professional judgment of elected or appointed officials or their advisors through an informal process. The one exception is St. Bernard Parish, which considers the cost of in-house counsel in its annual comparison of the cost of its self-insurance program with the cost of commercial insurance. In the absence of cost-benefit studies, whether expanded in-house legal staff would save tax dollars is an open question.

As Appendix C indicates, the local government jurisdictions and entities surveyed in the metropolitan New Orleans area generally have limited in-house support. Increasing such support is worth considering where agencies make extensive use of outside counsel.

Hiring qualified in-house counsel is complicated by pay and civil service issues. A recent informal survey by a local government indicated that, in the New Orleans area, private sector associate attorneys with five years of experience earned \$60,000 to \$70,000 a year

at mid-sized law firms. Associate state civil service attorneys with similar experience earned between \$32,000 and \$43,000 a year.

Although the gap is reduced if benefits are factored in, gaps of that magnitude can make it difficult to attract qualified employees. Some entities reduce the differential by allowing in-house attorneys to maintain a limited private law practice or by entering into contracts with attorneys to function as in-house counsel.

Other aspects of the civil service can make the retention of such counsel unattractive. Civil service protection can make it difficult to terminate an employee, while contracts may allow for termination upon notice.

Contracting for Outside Counsel

At the State Level

State law generally exempts legal services contracts for state agencies from competitive bidding or competitive negotiation under the Public Bid Law. However, state law does require the Louisiana Public Service Commission (LPSC) to adopt uniform rules for selecting contract employees, including when an RFP shall or shall not be utilized. Current LPSC rules require an RFP for any contract with a maximum amount of compensation greater than \$50,000. However, the LPSC is not bound to this amount by state law, and the number is sub-

ject to change at any time by an order of the LPSC.

The State Bond Commission follows a similar process called Solicitations for Offers (SFO) to select bond counsel. Recent legislation requires the Board of Ethics and the Board of Contractors to issue RFPs to select attorneys for collection suits.

The rationale for the state s bid law exemption for professional services is that competence is considered more important than cost. Although a competitive process is not required, an agency must negotiate with the highest qualified person for all contracts that the agency head determines in writing are fair and reasonable to the state. The agency head must take into account (in order of priority) professional or technical competence, technical merits of offers, and compensation. The law does not define highest qualified nor does it specify what is to be negotiated.

Few state agencies have committed to writing the criteria by which they select outside counsel. While state law mandates a few formal steps, the selection process is usually undocumented. This, together with turnover at the decision-making level, makes it difficult to determine how past decisions were made. Among the state agencies we visited, few maintain documents explaining the selection decisions. Staff comments were helpful but not subject to verification.

By Local Entities

The requirements for hiring outside counsel varied from local entity to local entity. Decisions to hire outside counsel may be based on recommendations of the mayor, parish president, board or commission, chair, or various employees. For example, the executive director of the Port of South Louisiana makes recommendations to his board, and the Orleans Levee District s in-house counsel, a civil service employee, provides recommendations to the board president.

Only a few of the entities surveyed employ a formal competitive selection procedure for legal counsel. These include the Port of South Louisiana, East Jefferson General Hospital (EJGH), West Jefferson Medical Center (WJMC), the S&WB, and the City of New Orleans.

The Port of South Louisiana issues requests for proposals for legal work if the cost is anticipated to exceed \$100,000, a threshold that eliminates most contracts from the RFP procedure. The parish of Jefferson created EJGH and WJMC. The Jefferson Parish council selects outside counsel for the two Jefferson Parish hospitals, using an RFQ procedure established by a Jefferson Parish ordinance. At the S&WB an in-house committee reviews the RFQ/RFPs, ranks them, and sends them to a board committee. The board committee in turn makes a recommendation to the

full board (which includes four elected officials) for final approval.

The New Orleans City Charter also requires competitive selection procedures for professional services for the executive branch and the council. The charter mandate has been implemented through a mayoral executive order and a council rule. Both the executive order and the council rule require the use of an RFQ/RFP procedure and advertising for contracts of more than \$15,000, subject to exceptions such as for emergency situations and renewals of certain contracts.

A council staff committee reviews proposals against written criteria and sends written, unranked evaluations of up to five proposals to the appropriate council committee. The council standing committee reviews the staff s evaluations and selects an applicant to submit to the full council for final selection.

For contracts requiring the mayor s signature, an executive branch committee evaluates legal services proposals in light of written criteria. The committee submits written evaluations of the three best proposals to the mayor for final selection. In both cases elected officials have wide latitude in making a final selection of outside legal counsel.

Although the entities discussed above use formal selection procedures, elected officials or their appointees have wide latitude

in making the final selection of outside legal counsel. In jurisdictions and entities without formal competitive selection procedures, elected officials and board members appointed by elected officials similarly play pivotal roles in the selection of outside counsel. Professional judgment is frequently cited as the basis for selecting outside counsel.

For most entities, with or without competitive selection procedures, governing boards or councils vote on the selection of outside counsel at public meetings. (Some entities, such as a sheriff's office, do not have a governing board, and the elected official's selection of counsel is therefore not the subject of a public meeting.)

Governmental organizations and their outside counsel sometimes develop long-standing relationships as a result of counsel's expertise in specific areas or familiarity with the organization. For 42 years the Public Belt Railroad employed the same law firm as general counsel. Other entities have retained the same firms or individual attorneys for over twenty years. Absent some serious dissatisfaction with counsel or a legal requirement for periodic advertising or the use of an RFQ or RFP process, many political subdivisions keep the same lawyers.

Even where entities have procedures governing the choice of outside counsel, they are not always followed. For example, New Orleans executive branch legal services contracts are subject

to an RFP process. The process may be waived in a defined emergency, but written notice must be given to the city council. Contract documents indicate that the RFP process has been waived in the past on account of an emergency, but the council has not received notice.

Observations on Competitive Selection Procedures

Proponents of competitive processes for choosing counsel maintain that competition is the best remedy for political patronage and favoritism in government contracting. Critics argue that a formal, competitive system to select attorneys is a waste of time and resources and that it could discourage some attorneys from submitting applications, particularly for the more demanding RFPs.

Both proponents and opponents have their points. We believe that it is possible, however, to structure a competitive process that is appropriate in its burden to the services to be provided. Such a system would utilize different approaches depending on the scope and nature of the work.

By way of example, an entity might contact a number of pre-qualified firms for contracts with a maximum value under a reasonable threshold. The same entity might require an RFQ procedure for legal service contracts within an intermediate range and the more complicated RFP process for larger, more complex matters.

In an RFQ process, the governmental entity would attempt to negotiate price and conditions with the firm rated the best qualified from among the respondents. If this fails, the entity would proceed to negotiations with the next most highly qualified candidate. An RFP would stipulate the requirements of the job and invite applicants to submit their qualifications, a proposed approach to the problem, and a price.

In any case, an effective RFQ/RFP process must contain three key elements: (1) outreach designed to maximize competition, (2) written evaluations of applications by professional staff using stated criteria, and (3) elimination or minimization of the role of elected officials in the selection of a contractor.

Approval Processes at the State Level

Although state agencies are not required to follow competitive bid procedures, they must comply with the state's procurement law (Professional, Personal, Consulting and Social Services Procurement Act). That law applies to any expenditure of *public funds* over two thousand dollars by an *executive branch state agency* for outside legal services. Regulations governing the administrative process by which state agencies, boards and commissions can procure professional services have been promulgated by OCR.

The Office of Contractual Review, which is in the Division of Administration, has established the process by which state agencies, boards and commissions can procure professional services. Typically, a state agency must submit a contract for legal services for approvals to four separate agencies: the Office of Contractual Review, the Office of the Attorney General (OAG), the Office of Risk Management (ORM), and the Department of Civil Service.

OCR Approval. State agencies of the *executive branch* that use *public funds* must have legal services contracts approved by OCR. Some state agencies are specifically exempted. Levee boards and port authorities, for example, are exempt because they are not considered part of the executive branch. Contracts paid with self-generated money such as a licensing board's fees are also exempt from OCR oversight. Another example would be Louisiana Public Service Commission contracts paid by the regulated utilities involved in the cases for which the attorneys were hired.

OCR has delegated authority to most state agencies to enter into contracts under \$20,000 without OCR approval. These smaller contracts, however, must still have the other three agency approvals. Agencies must keep files on small contracts and report them to OCR on a quarterly basis.

OCR supervises the approval process and checks to see that the

TABLE 1
Maximum Hourly Fee Schedule for
Legal Services Contractors

| Number of Years Experience | Hourly Fee |
|----------------------------|------------|
| 10 or more years | \$150.00 |
| 5 or more years | \$135.00 |
| 3 to 5 years | \$120.00 |
| < 3 years | \$100.00 |
| Paralegal services | \$45.00 |
| Law clerk services | \$25.00 |

SOURCE: Attorney General Memo issued January 30, 1992.

contract meets all necessary requirements. The agency must certify to OCR that the proposed services are not readily available from state employees, that a written plan has been developed for supervision and review of the contracted services, that a cost-benefit analysis has been performed, and that specific objectives of the contracted services and methods to determine contract performance have been established.

OCR enters each contract into a computerized database, files a copy of the contract and accompanying statements, and prepares an annual report. The contracting agency must administer and monitor the progress of each contract and file a report with the OCR upon its completion.

Other Approvals. The ORM, also in the Division of Administration, must sign off on the contracts to ensure that they do not involve tort cases that should fall under its purview. The Civil Service Department checks the required assertion by the agency that the contract is not being used to circumvent civil service rules and that the work cannot be done by regular state employees.

The OAG checks to see that the contract attorney meets a set of minimum standards and that the compensation is within the guidelines set by the office, as shown in Table 1. The OAG also applies this schedule to contracts of certain local entities. In those instances where highly specialized expertise is required, contracts may exceed the OAG schedule subject to special approval.

DATA ON LEGAL SERVICES CONTRACTS

The following is a brief analysis of data on legal services contracts obtained in the course of this study. Three appendix tables provide summary data compilations on the use of contracts by agencies. The full reports of this study contain the detailed data along with a more extensive commentary.

DATA AT THE STATE LEVEL

Tort Case Data

At the state level, all tort cases (where someone sues a state agency seeking restitution or payment for an injury or loss) are handled by the Office of Risk Management and the Office of the Attorney General. Tort cases account for most of the state's contracts for outside legal services.

In-house attorneys in the OAG handle roughly 80% of the ORM tort defense cases. The remainder are contracted to private lawyers who are appointed by the OAG but actually work for ORM. The private attorney contracts with ORM, reports to an ORM adjuster and is paid by ORM.

In 2000, the legislative auditor conducted a performance audit of the state's use of contract

attorneys for tort cases. The report listed 1,702 legal services contracts awarded to roughly 200 firms by ORM for which payments were made in FY 1999-2000. The unaudited data indicated total payments of \$11.4 million. The largest number of contracts assigned to one firm was 73; the largest total amount paid to one firm was \$774,915 (in this instance, for only six cases).

Due to the recent study and availability of data on tort cases, this study has focused its attention, at the state level, on documenting the non-tort legal services contracts.

The State Information System

A special ISIS report, requested for this study, listed all vendors with state legal services contracts during a three-year period in descending order of the total contract amounts. The list included approximately 400 separate vendors and showed that contracts totaling \$136.7 million were approved during the three years.

Most vendors were private law firms. However, a surprisingly large number (60) of these contracts were with other state or local agencies or publicly funded nonprofit organizations. The

largest public vendor was the Office of the Attorney General, which in 1999-2000 received \$10.5 million for legal work it performed for other public agencies.

Some 340 private legal firms received contracts worth \$84.7 million during the three-year period. Firm totals ranged from a high of \$6.7 million to a low of one dollar. The top 25 firms, each with more than \$750,000 in contracts, accounted for \$43.3 million more than half of the total. Another 50 firms had totals ranging from \$250,000-\$750,000. A small number of contracts assigned nominal dollar values (\$1-2) were being paid on a contingency fee basis usually for collection services.

Based on the three years examined, OCR reviewed, approved and reported an average of roughly \$28 million a year in state contracts with law firms. This figure, however, excludes some agencies and some smaller contracts that are exempt from OCR review.

State Budget Agency Requests

Each state budget unit must submit annually a request listing all professional services contracts and identifying the firm or person contracted, the purpose of the

contract, the actual payments made in the prior year, the current budget amount, and next year's request. A specific expenditure class is provided for legal services. Requests do not provide information on contracts funded through the capital outlay budget or with self-generated or private funds.

Unfortunately, the annual state agency budget requests sometimes proved disappointing as a source of legal services contract data. The quality of the data supplied varied. Some agencies lumped legal and other professional services together or provided little or no description of the law firm or the contract purpose. Often, the request showed only part of an agency's actual spending.

Only \$4.8 million was reported spent on legal services in FY 1999-00 by agencies that had appropriations for legal services for the current year totaling \$13.4 million; those same agencies were requesting another \$13.3 million for 2001-02. This remarkable disparity in the budget request data apparently occurs because agencies request sufficient appropriations to cover the maximum amount of all contracts in effect, although few actually pay the maximum contract amount, particularly in one year.

Interviews With Selected State Departments

Appendix A summarizes data (on the use of in-house and out-

side counsel) derived from interviews with personnel in 15 of the 20 state departments. The departments excluded were either highly fragmented organizations or included numerous semi-autonomous agencies. Basic data for many of these smaller agencies was obtained, however, from a mail survey. The appendix table includes only contracts for non-tort related legal work, since ORM tort case contracts are discussed separately above.

There are as many in-house/outside counsel arrangements as there are agencies. Some agencies use outside counsel for all of their legal services, whereas others have upwards of 21 attorneys on staff and outside contracts as well. Several agencies have ruled out hiring in-house attorneys for certain subject matters because the area of law was so specialized or the need was so infrequent that it would not be cost efficient.

Mail Survey of State Agencies

Over 100 state boards and commissions responded to a short form survey, including many whose legal services contracts neither have to be filed with the OCR nor listed on a state budget request. Respondents indicated whether they employed in-house counsel, the number of outside legal contracts, the maximum contract amounts, and payments made

during FY 1999-2000. These agencies reported spending over \$2.5 million on 103 outside legal services contracts. (See Appendix B for a summary listing of these responses.)

Most responding agencies used outside counsel, with most smaller boards having a single attorney on contract. Few have in-house counsel. The Louisiana Ethics Administration Program, a notable exception, has five in-house attorneys. Some quasi-independent agencies use the services of attorneys employed by the department in which they are organized. Only one board reported using the services of the OAG.

DATA AT THE LOCAL LEVEL

One of the more challenging aspects of this study was obtaining data from the diverse sample of political subdivisions and agencies that operate on the local level. The absence of uniform statewide requirements and procedures, together with the lack of any centralized data, complicated the collection effort.

The results of the survey of selected entities in the New Orleans area indicate that local governments pay significant amounts for outside legal counsel. See Appendix C for a summary of the data collected from the local entities.

CONTRACT DOCUMENTATION

The maintenance of organized contract documentation is critical to the monitoring and evaluation of performance.

State Entities

Information at the state level is largely centralized. The Office of Contractual Review houses most state contracts, subject to a few exceptions. This repository provides much information about contracts for outside legal services. In addition, state budget request forms provide in one location a three-year overview of outside legal services—the prior year's actual expenditures, the amount budgeted for the current year, and funds requested for the next budget cycle. Although there are gaps in the databases (for example, many entities do not comply with the requirement for separately listing legal contracts on the budget forms), the centralized repository and reporting requirements greatly facilitated the collection and analysis of information at the state level.

Local Entities

The most serious documentation lapse encountered by BGR was the failure of many local governments to use formal written contracts to retain local counsel.

Letter agreements or simply verbal agreements are used in most cases. Use of written contracts spelling out the relationship between the public entity and the legal services contractor can serve a number of purposes, not the least of which is providing disclosure of relevant terms and conditions to the public.

Most local governmental entities surveyed appeared to maintain existing records pertaining to outside legal services in a reasonable manner. Bills, budget information, contracts or engagement letters (if used), and other pertinent information were in most cases readily available for inspection.

There were notable exceptions. The Regional Transit Authority and the district attorney representing St. Tammany Parish did not produce all the information requested. The Law Department for the City of New Orleans, which is legally charged with maintaining in its archives every contract to which the city is a party, had information on some of its own contracts readily available. However, it could initially provide no list of outside counsel or contract information for other departments, boards, and agencies of city government. Subsequent information provided by the department was incomplete.

Establishing a central repository for all local legal services contracts would make relevant information more readily available to the press, the public, and civic organizations; promote transparency; and lay the groundwork for further useful analysis of practices in this sensitive area of governmental operations. Centralized reporting could be implemented in several different ways:

(1) The Legislature could enact a statute requiring all local government entities to file contracts for outside legal services with OCR or another state office. This approach, however, could prove to be overly burdensome or costly for state government.

(2) Alternatively, a new statute might require each local government entity to establish (by ordinance or resolution and by a certain date) its own system for reporting such information internally to a single office within the local government entity (e.g., the chief administrative office or the legal department). The new law might also require local entities to report to some state official (e.g., the attorney general) regarding their system of identifying the appropriate contact person. Any such legislation must be crafted with an awareness of and sensitivity to the constitutional protections afforded home rule jurisdictions.

(3) Localities could act on their own initiative to establish such a system by charter revision, ordinance or executive order. Leaving the initiative wholly with the discretion of local governments, however, will result in a

lack of uniformity or inaction by many local jurisdictions.

We urge state and local government leaders to take the necessary steps to establish a system for centralized collection of legal services contracts within local units

of government. The relatively easy access to legal services contracts and information at the state level underscores the relative difficulty of accessing such contracts and information at the local level of government.

WRITTEN PROCEDURES

For state agencies, state law provides a comprehensive set of written procedures for professional services contracting, governing the steps from initial preparation of a cost-benefit analysis to final evaluation of performance.

Each agency has its own needs and would benefit from having its own set of policies that reflect and expand upon the statutory ones. If the agency writes its own detailed policies, it might be more likely to comply fully with the state's legal requirements instead of simply paying them lip service. Although some agencies have developed written policies expanding on state policy, many others have not. Some of the policies that have developed in state agencies are described in greater detail below.

BGR found no example of a comparable set of comprehensive written procedures at the local level. This is not to say that local government entities have no writ-

ten policies and procedures at all. Municipal and parish charters, statutes affecting a particular agency, and local ordinances dictate practices for some units of government regarding outside legal counsel. Written administrative policies sometimes supplement legal requirements. For the entities surveyed, the written requirements generally covered basic issues such as whether approval by a board or council is necessary to employ outside counsel.

Although a few entities surveyed had detailed written policies on various aspects of their legal services contracting, none addressed all the issues covered by state law for state agencies. The New Orleans Aviation Board's Outside Counsel Policies and Procedures has some of the more comprehensive requirements, including supervision of outside counsel, reporting requirements, and billing protocols. The Orleans Levee District (OLD) has

detailed written procedures for billing and contracting. OLD also has adopted a written fee schedule. The City of New Orleans has a policy memorandum that spells out the administrative process for obtaining professional services, including legal services.

Where they exist, written laws and procedures are not always followed. For example, Section 4-403 of the New Orleans City Charter generally requires council approval of the retention of and compensation paid to special counsel by departments and boards. According to council staff, this provision is not followed. As another example, the New Orleans Civil Service Commission's rules require that professional services contracts be reviewed and approved by its director. Counsel for the Sewerage & Water Board indicates that the agency does not follow this rule with its legal services contracts.

MANAGING OUTSIDE COUNSEL

State Agencies

The law requires state agencies to have contract monitoring plans and to use evaluations. Over the years, however, these have become rather standardized and are given little attention.

State agencies differ in their monitoring capacities and approaches. Most legal services contracts contain a monitoring provision that describes the type of contact the attorney is supposed to have with the agency. For litigation work, the attorney typically must submit status reports and correspondence or other documents related to the case.

The Department of Labor has a unique monitoring process. It selects one day each year on which outside counsel who are selected to do collection and bankruptcy work must sign contracts at the department. On contract day, outside counsel receive training in the department's policies and procedures; meet the staff; and discuss their experiences and changes in the law with their peers.

State procurement law requires the completion of an evaluation at the end of each contract or case. Performance evaluations or monitoring reports must

be filed with OCR within sixty days after the termination of a contract. These evaluations offer an analysis of past performance for future administrations to use in selecting attorneys. However, many agency personnel stated that the rehiring decision put little weight on the evaluation, which was more often reviewed as an afterthought. The evaluations reviewed for this study typically consisted of a single-page pro forma statement. In many cases the evaluations were incomplete or absent.

One agency invites firms not performing according to its expectations to meet with the department to discuss any problems prior to the contract renewal date. Firms getting the call reportedly have begun terminating their contracts rather than subject themselves to the evaluation interview.

In some agencies, accounting or human resources personnel review bills submitted by outside counsel; in others, only attorneys review the bills. DOTD assigns a staff attorney to each contract attorney. The staff attorney attends as many proceedings relating to the case as possible. This supervising attorney and the general counsel both review all bills. The Office of Risk Management has adjusters trained to deal with attorneys and to analyze bills.

Most bills reviewed for this study showed sufficient detail in describing the services provided and the amount of time devoted to the work in the required time increments. However, it is not clear that all state agencies have personnel adequately trained to analyze the billing data they receive.

Local Entities

At the local level, methods of monitoring outside counsel's billing and performance varied from jurisdiction to jurisdiction. The New Orleans Aviation Board (NOAB) and Orleans Levee District (OLD) enroll NOAB's general counsel or OLD's senior counsel as additional counsel of record in litigation so that they can review all significant pleadings prepared by outside counsel. Periodic case status reports are required. In-house counsel for the S&WB and St. Bernard Parish monitor cases handled by outside counsel. The chief deputy (an attorney) of the Jefferson Parish Sheriff's Office (JPSO) holds regularly scheduled status conferences with contract lawyers on cases where the potential liability may exceed \$25,000.

In-house counsel (where available), accounting personnel, and top administrators generally

review bills from outside counsel. Some entities, such as JPSO and the Port of South Louisiana, have key executives who happen to be lawyers assigned to review bills submitted by contract attorneys.

Familiarity with legal proceedings in general or a specific

case being handled by outside counsel can assist in determining the reasonableness of bills submitted. However, in the absence of written billing procedures, the task of reviewing bills becomes more difficult no matter who performs the review.

No local government entity surveyed uses formal written performance evaluations in connection with outside counsel. Thus, neither good nor bad performance is documented for the benefit of the public and the entity's own institutional memory.

RECOMMENDATIONS

- 1. All governmental entities should use written contracts when retaining outside counsel.**
- 2. Each local governmental entity should maintain in a single location copies of all legal services contracts and the related documentation including cost-benefit analyses, selection process information, billing and payment data, and evaluations.**
- 3. All legal services contracts should be let using a competitive selection process appropriate to the services to be provided, designed to obtain a sufficiently broad pool of applicants, and calculated to eliminate or minimize the role of elected officials in the final selection of a contractor.**
- 4. Each state agency and local governmental entity should develop and implement comprehensive written policies and procedures for selecting counsel and managing legal services contracts.**
- 5. The state should develop a method for compiling and centralizing data regarding the actual expenditures state agencies make pursuant to legal services contracts including the possible expansion of the ISIS database to include the total paid on each contract at its completion.**
- 6. The state budget office should require agencies, when submitting annual budget requests, to comply with existing requirements regarding the proper identification and description of legal services contracts.**

APPENDIX A

State Governmental Entities

| Governmental Entity | Agency Total Spent on Outside Contracts | In-house Counsel | Total Legal Services Contracts | Legal Firm/Attorney | Total Spent on Each Contract | Maximum Contract Amount ^a | Top Hourly Rate | Legal Services Provided |
|--|---|------------------|--------------------------------|---------------------------------------|------------------------------|--------------------------------------|-----------------|-------------------------|
| Agriculture and Forestry, Dept. of | \$736,862 | 1 | 7 | Gelpi & Associates | \$397,114 | \$400,000 | \$85 | L |
| | | | | Gelpi & Associates | \$154,104 | \$320,000 | \$85 | GC |
| | | | | Albondi, Foster * | \$100,000 | \$100,000 | \$330 | SI |
| | | | | Bryan & Jupiter | \$62,288 | \$70,000 | \$70 | HO |
| | | | | Rodney, Bordenave * | \$13,091 | \$40,000 | \$85 | SI |
| | | | | Garvey, Smith * | \$5,354 | \$13,000 | \$240 | SI |
| | | | | Seale, Smith | \$4,911 | \$20,000 | \$70 | B |
| Public Service Commission | \$417,788 | 5 | 6 | Stone, Pigman * | \$236,064 | \$285,000 | n/a | SI |
| | | | | Breazeale, Sachse */ Nixon, Peabody * | \$81,647 | \$275,000 | n/a | SI |
| | | | | Stone, Pigman * | \$46,635 | \$94,500 | n/a | SI |
| | | | | Stone, Pigman * | \$22,364 | \$49,000 | n/a | SI |
| | | | | Stone, Pigman * | \$17,084 | \$129,000 | n/a | SI |
| | | | | Lemle, Kelleher * | \$13,991 | \$48,000 | n/a | SI |
| Elections and Registration ^d | \$126,809 | 0 | 5 | Celia Cangelosi | \$61,373 | \$80,000 | \$150 | GC |
| | | | | Breazeale, Sachse * | \$27,647 | \$50,000 | \$150 | P, GC |
| | | | | Carey T. Jones | \$29,116 | \$40,000 | \$150 | GC |
| | | | | Tarcza & Gelderman | \$6,799 | \$10,000 | \$150 | GC |
| | | | | Avant & Falcon | \$1,875 | \$10,000 | \$150 | P |
| State Civil Service | \$16,933 | 1 | 2 | K. Williamson | \$6,300 | \$40,000 | \$700/ case | AR |
| | | | | Norman Ershler | \$10,633 | \$20,000 | | AR |
| Culture, Recreation and Tourism ^e | \$47,132 | 1 | 2 | Avant & Falcon | \$44,007 | \$70,000 | \$100 | P |
| | | | | Stipe & Associates | \$3,125 | \$12,000 | \$100 | GC |
| Environmental Quality ^f | \$71,416 | 16 | 3 | Randall P. Garrett | \$42,300 | \$230,000 ^b | \$100 | SI |
| | | | | Raymond Lamonica | \$13,594 | \$84,500 ^b | \$125 | GC, L |
| | | | | Taylor, Porter, Brooks * | \$15,322 | \$35,000 ^c | \$100 | P |
| Labor ^g | \$477,267 | 7 | 17 | Karl Hansen, Jr. | \$84,711 | n/a | cont. | C |
| | | | | McCullister & McCleary | \$84,410 | n/a | cont. | C |
| | | | | Chris L. Bowman | \$80,239 | n/a | cont. | C |
| | | | | Richards Law Firm | \$47,631 | n/a | cont. | C |
| | | | | Kean, Miller * | \$40,000 | \$250,000 | \$150 | L |
| | | | | Karl Hansen, Jr. | \$32,074 | \$75,000 | \$125 | B |
| | | | | Kean, Miller * | \$24,000 | \$25,000 ^b | \$150 | L |
| | | | | James A. Smith | \$18,277 | n/a | cont. | C |
| | | | | Robert W. Hallack | \$14,407 | n/a | cont. | C |
| | | | | Teat, Avery * | \$13,983 | n/a | cont. | C |
| | | | | Jeffrey Robinson | \$8,704 | n/a | cont. | C |
| | | | | Capella Law Firm | \$8,286 | n/a | cont. | C |
| | | | | McCullister & McCleary | \$7,850 | \$75,000 | \$125 | C |
| | | | | Henchy, Verbois * | \$5,887 | n/a | cont. | B |
| | | | | Kean, Miller * | \$3,000 | \$9,500 | \$150 | SI |
| | | | | Angela Lockett | \$1,386 | n/a | cont. | C |
| | | | | Richards Law Firm | \$1,200 | \$75,000 | \$125 | B |
| | | | | Hoyt, Forest * | \$1,191 | \$75,000 | \$125 | B |
| | | | | Capella Law Firm | \$31 | n/a | \$125 | B |
| | | | | Kean, Miller * | 0 | n/a | \$125 | L |
| Natural Resources | \$410,812 | 4 | 24 | Ottinger, Hebert * | \$58,088 | \$100,000 ^b | \$150 | L |
| | | | | Strain, Dennis, Mayhall * | \$56,245 | \$200,000 ^b | \$150 | OGML |
| | | | | Ottinger, Hebert * | \$49,380 | \$100,000 ^b | \$150 | OGML |
| | | | | R. Joseph Wilson | \$39,552 | \$40,000 | \$150 | OGML, L |
| | | | | Burke & Mayer | \$28,272 | \$50,000 | \$150 | OGML |
| | | | | Stockwell, Sievert * | \$26,978 | \$100,000 ^b | \$150 | L |
| | | | | Jack R. Brown | \$26,850 | \$44,000 | \$150 | SI |
| | | | | Miguel Swanwick | \$23,172 | \$240,000 ^b | \$150 | SI |
| | | | | Ottinger, Hebert * | \$20,627 | \$375,000 ^b | \$150 | OGML |
| | | | | Hosie, Frost, Large * | \$19,651 | \$100,000 | \$150 | OGML |
| | | | | Andrew Jumonville | \$15,909 | \$150,000 ^b | \$150 | OGML |
| | | | | George L. Carmouche | \$15,045 | \$45,000 ^b | \$150 | SI |
| | | | | Seale, Daigle & Ross | \$8,351 | \$50,000 ^c | \$150 | B |
| | | | | Biggs, Trowbridge * | \$6,100 | \$33,000 ^c | \$150 | SI |
| | | | | Avant & Falcon | \$5,000 | \$100,000 ^b | \$150 | P |
| | | | | Taylor, Porter, Brooks * | \$1,757 | \$29,900 | \$150 | SI |
| | | | | Ottinger, Hebert * | \$0 | \$100,000 ^b | \$150 | L |
| | | | | Ottinger, Hebert * | \$0 | \$100,000 ^b | \$150 | L |
| | | | | Ottinger, Hebert * | \$0 | \$60,000 | \$150 | L |
| | | | | Stockwell, Sievert * | \$0 | \$50,000 ^b | \$150 | L |
| | | | | Strain, Dennis, Mayhall * | \$0 | \$50,000 ^b | \$150 | L |
| | | | | Taylor, Porter, Brooks * | \$0 | \$40,000 ^b | \$150 | L |
| | | | | Gordon, Arata * | \$0 | \$30,000 | \$150 | GC |
| | | | | Breazeale, Sachse * | \$0 | \$25,000 ^c | \$150 | SI |

APPENDIX A - (Continued)

| Governmental Entity | Agency Total Spent on Outside Contracts | In-house Counsel | Total Legal Services Contracts | Legal Firm/Attorney | Total Spent on Each Contract | Maximum Contract Amount ^a | Top Hourly Rate | Legal Services Provided |
|--------------------------------|---|-----------------------|--------------------------------|---|------------------------------|--------------------------------------|-----------------|-------------------------|
| Transportation and Development | \$1,033,437 | 21 | 13 | Oats & Hudson ^h | \$501,169 | \$600,000 ^b | \$100 | MI |
| | | | | Bertrand & Soileau | \$236,586 | \$450,000 ^b | \$100 | E, MI |
| | | | | Pickering, Cotogno * | \$75,357 | \$125,000 | \$125 | SI |
| | | | | Jerry F. Davis | \$52,973 | \$150,000 ^b | \$100 | E |
| | | | | Owen J. Bordelon, Jr. | \$43,235 | \$150,000 ^b | \$85 | L |
| | | | | Avant & Falcon | \$37,709 | \$150,000 ^b | \$85 | P |
| | | | | Abrams & LaFargue | \$36,646 | \$150,000 ^b | \$85 | MI, E |
| | | | | Panzeca & D'Angelo | \$35,941 | \$300,000 ^b | \$85 | E, MI |
| | | | | Oscar Reed | \$11,856 | \$150,000 ^c | \$85 | E |
| | | | | Stacey Moak & Assoc. | \$1,960 | \$150,000 ^b | \$85 | E, MI |
| | | | | Calogero & Associates | 0 | \$150,000 ^b | \$85 | E |
| | | | | Rodney, Bordenave * | 0 | \$150,000 ^b | \$85 | MI |
| | | | | Randy P. Zinna | 0 | \$150,000 ^b | \$85 | GC |
| Wildlife and Fisheries | \$33,720 | 3 | 5 | Walter L. Smith, III | \$24,120 | \$24,800 | \$100 | P |
| | | | | Avant & Falcon | \$9,600 | \$20,000 | \$125 | P |
| | | | | Taylor, Porter, Brooks * | 0 | \$20,000 | \$150 | MI |
| | | | | Willard B. Babin | 0 | \$20,000 ^c | n/a | C |
| | | | | Roedel, Parsons, Koch * | 0 | \$40,000 ^b | n/a | L |
| Education | \$45,169 | 2 | 6 | Brustein & Managerot | \$15,210 | \$15,120 | n/a | GC |
| | | | | Taylor, Porter, Brooks * | \$8,115 | \$10,000 | \$100 | P |
| | | | | James Wood | \$7,569 | \$9,500 | n/a | HO |
| | | | | Madeline Carbonette | \$5,200 | \$9,500 | n/a | HO |
| | | | | Harris Coenhauer, Jr. | \$4,700 | \$9,500 | n/a | HO |
| | | | | Arthur Thomas | \$4,375 | \$9,500 | n/a | HO |
| Public Safety and Corrections | \$69,757 | 8 | 3 | McCalla, Thompson * | \$54,757 | \$79,757 ^b | \$25 | L |
| | | | | Jones, Walker * | \$10,000 | \$10,000 | n/a | SI |
| | | | | Steffes & Macmurdo | \$5,000 | \$6,500 ^c | \$150 | B |
| Treasury ⁱ | \$30,650 | 1 | 3 | Foley & Juddell/ Breazeale, Sachse * | \$23,150 | \$100,000 | cont. | SI |
| | | | | Jones, Walker * | \$7,500 | \$7,500 | \$150 | SI |
| | | | | DeValerio & Pease/ Milberg, Weiss * | 0 | n/a | n/a | L |
| Revenue ⁱ | \$118,691 | 14 | 25 | Adams and Reese | \$100,000 | \$100,000 ^b | \$150 | L |
| | | | | Taylor, Porter, Brooks * | \$9,085 | \$50,000 | \$150 | P |
| | | | | Celia Cangelosi | \$8,633 | \$50,000 ^b | \$130 | L, GC |
| | | | | Guarisco, Weiler * | \$973 | \$45,000 ^b | \$150 | L |
| | | | | Guarisco, Weiler * | n/a | \$950,000 ^b | cont. | C |
| | | | | Rainier, Anding * | n/a | \$800,000 ^b | cont. | C |
| | | | | Walter J. Krousel | n/a | \$703,250 ^b | cont. | C |
| | | | | Adams and Reese | 0 | \$500,000 ^b | \$150 | L |
| | | | | Adams and Reese | 0 | \$500,000 ^b | \$150 | L |
| | | | | Guarisco, Weiler * | n/a | \$450,000 ^b | cont. | C |
| | | | | Guarisco, Weiler * | n/a | \$400,000 ^b | cont. | C |
| | | | | Guarisco, Weiler * | n/a | \$356,953 ^b | cont. | C |
| | | | | Guarisco, Weiler * | n/a | \$300,000 ^b | cont. | C |
| | | | | Guarisco, Weiler * | n/a | \$300,000 ^b | cont. | C |
| | | | | Rainier, Anding * | n/a | \$300,000 ^b | cont. | C |
| | | | | Rodney, Bordenave * | n/a | \$276,468 ^b | cont. | C |
| | | | | Adams and Reese | n/a | \$200,000 ^b | cont. | C |
| | | | | Guarisco, Weiler * | n/a | \$155,931 ^b | cont. | C |
| | | | | William Guste, Jr. | n/a | \$150,000 ^b | cont. | C |
| | | | | Adams and Reese | n/a | \$150,000 ^b | cont. | C |
| Bowers and Bowers | n/a | \$66,948 ^b | cont. | C | | | | |
| Seale, Smith * | n/a | \$40,253 ^b | cont. | C | | | | |
| Bowers and Bowers | n/a | \$21,199 ^b | cont. | C | | | | |
| Bowers and Bowers | n/a | \$20,502 ^b | cont. | C | | | | |
| Seale, Smith * | n/a | \$10,185 ^b | cont. | C | | | | |
| Insurance | \$192,654 | 12 | 10 | Adams and Reese | \$48,572 | \$50,000 | \$150 | L |
| | | | | Julie Fusilier | \$38,905 | \$50,000 | \$150 | GC, L |
| | | | | Kean, Miller * | \$32,202 | \$50,000 | \$150 | GC, L, P |
| | | | | Gene Broussard | \$30,690 | \$49,900 | \$150 | GC |
| | | | | E. Barton Conradi | \$25,073 | \$50,000 | \$150 | HO, GC |
| | | | | Deborah Harkins | \$15,000 | \$15,000 | \$150 | GC, SI |
| | | | | Camille Gravel | \$2,212 | \$25,000 | \$150 | L |
| | | | | Adams and Reese | \$0 | \$25,000 | \$150 | GC |
| | | | | L. Kenneth Krogstad | \$0 | \$40,000 | \$150 | GC, SI |
| | | | | McCullister & McCleary | \$0 | \$50,000 | \$150 | GC |

APPENDIX A - (Continued)

SOURCE: Data compiled by the Public Affairs Research Council of Louisiana.

NOTES:

- * Law firm abbreviated for space.
- a. Unless footnoted, all contracts are one-year terms.
- b. Contract is for a three-year period.
- c. Contract is for a two-year period.
- d. An in-house position was created in July 2000 and some outside counsel contracts were canceled.
- e. Department of Culture, Recreation and Tourism has a contract with the Office of the Attorney General (OAG) totaling \$15,000 for the study year.
- f. Randall Garrett's contract with the Department of Environmental Quality limits the state's liability to \$50,000. Local municipalities pay for his services as bond counsel.
- g. Collection suits do not have maximum contract rates.
- h. The Federal Highway Administration paid 90% of the Oaks & Hudson contract.
- i. Department of Treasury has maintained a contract with the OAG for nineteen years for in-house legal counsel. The Interagency Transfer agreement totaled \$95,788.
- j. Contracts were held with the Department of Justice for \$51,107 and Division of Administration Law for \$50,000. Contingency fee contracts are paid by the debtor-taxpayer. Settlement below the amount owed must be approved by the Secretary of the Department.

Services Provided Key

AR=Appeals Referee
B=Bankruptcy
C=Collection
E=Expropriation

GC=General Counsel
HO=Hearing Officer
L=Litigation
MI=Multiple Issues

OGML=Oil Gas Mineral
SI=Single Issue
P=Personnel

APPENDIX B

Survey of State Governmental Entities

| Governmental Entity | Agency Total Spent on Outside Contracts | Maximum Contract Amount ^a | In-house Counsel | Outside Counsel | Hourly Rate Range | Legal Services Provided |
|---|---|--------------------------------------|------------------|-----------------|--------------------------|-------------------------|
| LICENSING BOARDS | | | | | | |
| Architectural Examiners | \$30,000 | \$35,000 | 1 | 1 | \$150 | GC |
| Auctioneers | \$3,258 | \$10,000 | 0 | 1 | \$100 | GC |
| Certified Public Accountants | \$54,000 | \$55,000 | 0 | 2 | \$150 | GC, L |
| Chiropractic Examiners | \$13,104 | \$40,000 | 2 | 2 | \$125-95 | GC |
| Contractors | \$94,401 | \$95,000 | 1 | 3 | \$150 | GC, HO |
| Dentistry | \$270,308 | n/a | 0 | 7 | \$150-125 | GC, L, MI |
| Dietetics and Nutrition | \$462 | \$2,500 | 0 | 1 | \$125 | GC |
| Embalmers and Funeral Directors | \$36,837 | \$52,500 | 1 | 2 | \$110 | GC |
| Interior Designers | \$3,207 | \$10,000 | 0 | 1 | \$100 | GC |
| Optometry Examiners | \$25,000 | \$25,000 | 0 | 1 | \$125 | GC |
| Physical Therapy Examiners | \$101,037 | \$90,000 ^b | 0 | 1 | \$100 | GC |
| Practical Nurse Examiners | 0 | \$50,000 ^c | 1 | 1 | \$150 | n/a |
| Private Investigator Examiners | \$29,635 | \$120,000 | 0 | 2 | \$150-125 | GC |
| Private Security Examiners | \$15,358 | \$24,000 | 0 | 1 | \$80 | GC |
| Psychologists | \$2,676 | \$12,000 | 0 | 2 | \$115-85 | GC |
| Prof. Counselors Board of Examiners | \$6,150 | \$30,000 ^c | 1 | 1 | \$85 | GC |
| Radio and Television Board | \$125 | \$4,500 | 0 | 1 | \$50 | GC |
| Real Estate Appraisers | \$1,213 | \$20,000 ^e | 0 | 1 | \$120 | GC |
| Real Estate Commission | \$29,978 | \$30,000 ^e | 0 | 1 | \$120 | GC |
| Social Work Examiners | \$57,140 | \$65,000 | 0 | 1 | \$125 | GC |
| Speech-Language Pathology and Audiology | \$2,839 | \$20,000 | 0 | 1 | \$100 | GC |
| Substance Abuse Counselors | \$5,272 | \$9,500 | 0 | 1 | \$85 | GC |
| Veterinary Medicine | \$46,702 | \$110,000 ^b | 0 | 1 | \$85 | GC |
| LEVEE, WATER DISTRICT/PORT COMMISSIONS | | | | | | |
| Bayou Lafourche Fresh Water District | \$19,126 | n/a | 0 | 1 | \$120 | GC |
| Bossier Levee District | 0 | n/a | 0 | 1 | \$100 | GC |
| Fifth LA Levee District | \$7,930 | n/a | 0 | 1 | \$90 | GC |
| Greater Baton Rouge Port Commission ^d | \$49,733 | n/a | 0 | 2 | \$114 | GC, L |
| Greater Lafourche Port Commission ^d | \$60,000 | n/a | 0 | 1 | \$5,000/mo. ^f | GC |
| Morgan City Harbor | \$21,291 | \$25,000 | 1 | 1 | \$75 | GC |
| North Lafourche Conservation, Levee and Drainage District | \$68,537 | n/a ^d | 0 | 1 | \$75 | GC |
| Red River Waterway Commission | \$310,645 | n/a | 0 | 4 | \$130 | GC, SI, L |
| Sabine River Authority | \$26,220 | \$46,000 | 0 | 2 | \$150 | GC |
| South Lafourche Levee District | \$9,428 | n/a | 0 | 1 | \$100-50 | GC |
| St. Bernard Port, Harbor and Terminal District | \$39,894 | n/a | 0 | 1 | \$150 | GC, L |
| Tensas Basin Levee District | \$44,354 | n/a | 0 | 1 | \$75 | GC |

APPENDIX B - (Continued)

| Governmental Entity | Agency Total Spent on Outside Contracts | Maximum Contract Amount ^a | In-house Counsel | Outside Counsel | Hourly Rate Range | Legal Services Provided |
|---|---|--------------------------------------|------------------|-----------------|-------------------|-------------------------|
| Terrebonne Levee and Conservation District | \$122,758 | n/a | 0 | 2 | \$135-85 | L, GC |
| RETIREMENT COMMISSIONS | | | | | | |
| Firefighters' Retirement System | \$35,632 | n/a | 0 | 2 | \$175-100 | GC, L, SI |
| LA School Employees' Retirement System | \$1,391 | n/a | 1 | 1 | \$150 | L |
| Teachers' Retirement System of LA | \$82,981 | \$196,000 | 2 | 4 | \$254-100 | SI, P, L |
| BOARDS | | | | | | |
| Cemetery Board (DED) | \$36,973 | \$40,000 ^c | 0 | 1 | \$150 | GC |
| Board of Pardons (DOC) | 0 | n/a | 1 | n/a | n/a | n/a |
| LSU Board of Supervisors | \$1,588,369 | \$5,400,000 | 0 | 5 | \$250-100 | SI, GC |
| LA Ethics Administration Program | 0 | n/a | 5 | n/a | n/a | n/a |
| Patients Compensation Fund Oversight Board | \$88,950 | \$125,000 | 0 | 3 | \$115 | GC |
| Rice Promotion Board. | \$1,200 | \$1,200 | 0 | 1 | \$85 | GC |
| Board of Elementary and Secondary Education | \$1,582 | \$15,000 | 0 | 1 | \$125 | n/a |
| Assessors' Retirement Fund | \$9,000 | \$25,000 | 0 | 1 | \$125 | GC |
| COMMISSIONS | | | | | | |
| EMS for Children Advisory Council | 0 | 0 | 1 ^g | 0 | n/a | n/a |
| EMS Certification Commission | 0 | 0 | 1 ^g | 0 | n/a | n/a |
| The Judiciary Commission of Louisiana | 0 | n/a | 2 F-T 3 P-T | n/a | n/a | n/a |
| State Racing Commission | 0 | n/a | 2 | n/a | n/a | n/a |
| Student Financial Assistance Comm. | 0 | n/a | 2 | 0 | n/a | n/a |
| Tax Commission | \$133,166 | \$187,873 | 0 | 3 | \$150-100 | GC |
| Used Motor Vehicle and Parts Comm. | \$60,958 | \$100,000 | 0 | 3 | \$150-135 | GC, L |
| AUTHORITIES | | | | | | |
| Ascension-St. James Airport and Transportation Authority | 0 | 0 | 0 | 1 | n/a | GC |
| Ernest N. Morjal New Orleans Exhibition Hall Authority ^h | \$183,000 | n/a | 1 | 2 | \$150-100 | GC |
| Tuition Trust Authority | 0 | n/a | 2 | n/a | n/a | n/a |

APPENDIX B - (Continued)

| Governmental Entity | Agency Total Spent on Outside Contracts | Maximum Contract Amount ^a | In-house Counsel | Outside Counsel | Hourly Rate Range | Legal Services Provided |
|---|---|--------------------------------------|------------------|-----------------|-------------------|-------------------------|
| MISCELLANEOUS | | | | | | |
| Division of Probation and Parole (Adult) | 0 | n/a | 2 | n/a | n/a | n/a |
| LA Medical Assistance Trust Fund Advisory Council | 0 | n/a | 1 | n/a | n/a | n/a |
| LSU Health Sciences Center | \$124,659 | \$397,000 ^b | 7 | 5 | n/a | GC, L, SI |
| LSU-Shreveport | \$14,540 | \$90,000 | 0 | 1 | \$145 | GC |
| LSU Pennington Biomedical Research Center | \$27,804 | \$100,000 | 0 | 1 | \$125 | SI |
| Office of Addictive Disorders (DHH) | 0 | n/a | 2 | n/a | n/a | n/a |
| State Military Department | \$1,335 | \$4,325 | 0 | 1 | \$100 | GC |
| University of New Orleans | \$160,856 | \$500,000 ^b | 0 | 2 | n/a | MI |
| INFORMATION FROM THE OFFICE OF CONTRACTUAL REVIEW | | | | | | |
| Board of LA Motor Vehicle | | \$62,500 | n/a | 1 | \$125 | n/a |
| Board of Medical Examiners | | \$1,194,000 | n/a | 3 | \$165-140 | n/a |
| Board of Supervisors for Community and Technical Colleges | | \$175,000 | n/a | 1 | \$150 | n/a |
| Board for Tax Appeals | | \$24,000 | n/a | 1 | \$125 | n/a |
| Board of Trustees | | \$322,775 | n/a | 4 | \$150 | GC, B, L |

SOURCE: Data compiled by the Public Affairs Research Council of Louisiana.

NOTES:

- a. Unless footnoted, all contracts are one-year terms.
- b. Contract is for a three-year period.
- c. Contract is for a two-year period.
- d. Contract exceeds three-year period.
- e. Real Estate Appraisers Board and Commission shared the contract.
- f. A retainer fee is paid on a monthly basis. Contract is for eight years.
- g. Attorney is assigned from Department of Health and Hospitals
- h. A portion of the total is subject to insurance reimbursement. The net amount should be \$120,000.
- i. Information compiled from the Office of Contractual Review, not from survey response.

Services Provided Key

AR=Appeals Referee
 B=Bankruptcy
 C=Collection
 E=Expropriation

GC=General Counsel
 HO=Hearing Officer
 L=Litigation
 MI=Multiple Issues

OGML=Oil Gas Mineral
 SI=Single Issue
 P=Personnel

APPENDIX C

Governmental Entities in the New Orleans Area

| Governmental Entity | Agency Total Spent On Outside Contracts | Active Contracts | Hourly Rates | In-House Attorneys |
|---|---|------------------|--------------|---|
| LOCAL AGENCY | | | | |
| City of Gretna | \$98,342 | 3 | \$75 | 1 P-T |
| City of Gretna Police Department | \$6,000 | 1 | Retainer | 1 P-T |
| City of New Orleans ^a | At least \$510,025 | 28 | \$50-175 | 56 (Law Dept.) |
| East Jefferson General Hospital | \$1,076,280 | 6 | \$90-175 | 2 |
| Jefferson Parish Sheriff | \$582,669 | 4 | \$80-115 | 2 |
| New Orleans Aviation Board | \$1,379,352 | 13 | \$100-150 | 1 |
| New Orleans Board of Liquidation, City Debt | \$164,943 | 4 | \$100-200 | 0 |
| New Orleans City Council ^b | \$1,973,895 | 8 | \$100-280 | Law Dept. provides services |
| New Orleans Public Belt Railroad | \$441,056 | 2 | \$110-150 | 0 |
| New Orleans Sewerage & Water Board | \$1,195,327 | 16 | \$75-265 | 8 |
| Orleans Parish School Board ^c | \$2,473,801 | 9 | \$90-150 | 1 |
| Regional Transit Authority ^d | \$1,300,000 | 15 | n/a | 7 |
| St. Bernard Parish | \$36,386 | 1 | \$90-120 | 1+ district attorney also provides services |
| St. Tammany Parish ^e | - | - | - | 2 F-T and 2 P-T asst. district attorneys |
| West Jefferson Medical Center ^f | \$487,805 | 1 | \$90-175 | 0 |
| STATE AGENCY/LOCAL JURISDICTION | | | | |
| LA Stadium and Exposition District ^g | \$241,395 | 3 | \$125-150 | 0 |
| Orleans Levee District | \$1,290,676 | 15 | \$100-150 | 1 |
| Port of South Louisiana | \$272,843 | 6 | \$135-175 | 0 |
| TOTAL | \$13,530,795 | 135 | | |

SOURCE: Data compiled by the Bureau of Governmental Research.

- a. Incomplete data.
- b. Predominantly for utility lawyers. The entire cost of legal counsel for electric and gas regulation is reimbursed by Entergy (which ultimately recoups the cost through an approved utility rate structure).
- c. In-house position eliminated in 2001.
- d. Budgeted for legal services; actual expenses not provided.
- e. Information not provided.
- f. Does not include two contracts for \$700 or less.
- g. Does not include legal services contracts for SMG, the firm that manages the Superdome and Arena.