

RS 38:2312

§2312. Notice and application

A. Each agency intending to contract for professional services shall notify the Division of Administration of such intention and shall provide the Division of Administration with all necessary information concerning the proposed project. The Division of Administration shall then evaluate the proposed project for purposes of determining the professional service to be required in order to refer the project to the proper board. The Division of Administration shall then advise the chairmen of the boards as to which selection board the proposed project has been referred.

If the chairman of any of the three professional selection boards objects to a referral made by the Division of Administration, said objection shall be submitted to the Division of Administration, whereupon the Division of Administration shall submit the information concerning the proposed project to a committee composed of the chairman of the Louisiana Architects Selection Board, the chairman of the Louisiana Engineers Selection Board, the chairman of the Louisiana Landscape Architects Selection Board, the head, or representative named by the head, of the user agency whose project is under consideration, and the head of the Division of Administration or his appointed representative. The members of the committee, by majority vote, shall designate which selection board shall have the authority and responsibility for selecting the prime professional for the project.

The committee shall notify the Division of Administration of its decision. The Division of Administration shall notify the board which has been designated the responsibility of selecting the prime professional for the project.

The designated board shall then advertise one time in the official state journal the following information: (a) the professional service required; (b) the name, location, and user agency for which the professional service is required; (c) time and instructions for applicants to submit applications for employment to the appropriate board; (d) general description of the project, and the availability of details upon request; (e) time frame in which the professional services must be completed; (f) the project budget; and (g) the fee, which shall be determined by the Division of Administration.

B. Any person who desires to be considered for a project may submit data to the appropriate selection board concerning his experience, previous projects undertaken, present state projects now being performed by him or his firm for an agency, scope and amount of work on hand, the names of key personnel who will be assigned to the project, and any other information that may be appropriate in selecting the person for the particular project under consideration. The boards may develop standard forms to be used for submitting such data.

Added by Acts 1975, No. 721, §1. Amended by Acts 1976, No. 525, §1.

RS 38:2311

§2311. Boards; creation, organization, powers, duties

A.(1) There are hereby created the following professional services selection boards:

(a) The Louisiana Architects Selection Board. The board shall be composed of eight members. Five shall be regular members, one elected from each of five districts set forth in Items (i) through (v) of this Subparagraph. Each member shall be elected in an election conducted by the Louisiana State Board of Architectural Examiners, under such rules and regulations to be promulgated by the Louisiana State Board of Architectural Examiners, in which election all properly licensed architects residing in Louisiana are eligible to vote for the same number of candidates as there are positions to be filled. The five elected architects shall be residents in the state of Louisiana and of the district from which they seek election, and no two architects shall be elected from the same architectural firm, agency, or partnership. In addition to the five regular members, whenever a particular project is under consideration, the head of the particular user agency or his representative shall participate as a sixth member; the participation of such member shall be restricted to matters directly affecting the project of his agency and he shall be entitled to vote on all matters affecting the project of his agency. In addition to the elected members and user agency representative, the assistant director of facility planning and control shall participate as the seventh member of the board. The districts shall be composed as follows:

(i) District 1: Orleans, Plaquemines, and St. Bernard.

(ii) District 2: Assumption, Jefferson, Lafourche, St. Charles, St. James, St. John the Baptist, St. Tammany, Terrebonne, and Washington.

(iii) District 3: Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, St. Helena, St. Martin, Tangipahoa, West Baton Rouge, and West Feliciana.

(iv) District 4: Acadia, Allen, Avoyelles, Beauregard, Calcasieu, Cameron, Evangeline, Grant, Iberia, Jefferson Davis, Lafayette, Natchitoches, Pointe Coupee, Rapides, Sabine, St. Landry, St. Mary, Vermilion, and Vernon.

(v) District 5: Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Jackson, LaSalle, Lincoln, Madison, Morehouse, Ouachita, Red River, Richland, Tensas, Union, Webster, West Carroll, and Winn.

(b) The Louisiana Engineers Selection Board. It shall be composed of six members. Two members shall be named in an election conducted by the Consulting Engineers Council of Louisiana, Inc., at which all properly licensed engineers, who are principals of firms with offices in Louisiana, may vote for the same number of candidates as there are positions to be filled, two members shall be named in an election conducted by the Louisiana Engineering Society at which all properly licensed engineers residing in the state of Louisiana may vote for the same number of candidates as there are positions to be filled. In addition to the four regular members, whenever a particular project is under consideration, the head of the particular user agency or his representative shall participate as a fifth member; the participation of such member shall be restricted to matters directly affecting the project of his agency and he shall be entitled to vote on all matters affecting the project of his agency. All members shall reside in the state of Louisiana and no two engineers shall be appointed or elected from the same engineering firm, agency, or partnership.

(c) The Louisiana Landscape Architects Selection Board. It shall be composed of six members. Four members shall be named in an election conducted under the auspices of the Louisiana Society of Landscape Architects at which all properly licensed landscape architects residing in Louisiana may vote. In addition to the four regular members, whenever a particular project is under consideration, the head of the particular user agency or his representative shall participate as a fifth member; the participation of such member shall be restricted to matters directly affecting the project of his agency and he shall be entitled to vote on all matters affecting the project of his agency.

(2) The director of Facility Planning and Control, or his designee, shall be the eighth member of the board established by Subparagraph (a) of Paragraph (1) and the sixth member of the boards established in Subparagraphs (b) and (c) of Paragraph (1) and shall have the same voting rights and powers as the other members of the respective boards. All elected members of the boards shall be elected for a term of one year.

(3) No person involved in the sale or promotion of materials, equipment, or supplies related to construction, landscaping, or horticulture activities, shall be eligible to serve on any of the aforementioned selection boards.

B. Members of the boards may be removed for just and reasonable cause during their terms at the discretion of the respective appointing authority, in which event the appointing authority shall appoint a new member to fill the unexpired term of the removed member. All other vacancies shall be filled by the appointing authority for the unexpired term. No person may serve more than two consecutive one-year terms, or any part thereof. After a member's term has expired, that member shall not be eligible to serve on the board for a period of at least two years.

C. No member or firm of which a member is an associate, employee, stockholder, or partner shall be eligible to receive agency contracts during the term of his service on such board and for a period of six months thereafter. No member shall perform services as a consultant to any firm which has received a state agency contract from the board on which that member serves during the year of the board member's service and for one year thereafter.

D. A majority of the members on each of the boards shall constitute a quorum, and a majority vote shall be required in all votes for the selection of persons for professional services. The director of facility planning and control of the division of administration shall not hold the position of, or act as, a chairman of the boards.

E. The board shall have the power and authority, after public notice and a hearing thereon, to adopt and amend such rules and regulations as may be necessary for the performance of their duties as enumerated in this Part. Copies of the rules and regulations shall be furnished to any person by the boards upon written request, for which a nominal fee to defray printing costs may be charged.

F. The domicile of each of the boards shall be Baton Rouge, Louisiana.

G. The Division of Administration shall provide each of the boards with the facilities, office space, staff, and funding necessary to the performance of its duties.

H. Board members shall serve without compensation, except that they shall be reimbursed according to the state schedule for per mile travel reimbursement to and from meetings of the board.

I. Each board shall establish, and make its selection based upon, a formal, written qualifications-based selection procedure.

Added by Acts 1975, No. 721, §1. Amended by Acts 1976, No. 525, §1; Acts 1979, No. 164, §1; Acts 1982, No. 696, §1, eff. Aug. 2, 1982; Acts 1988, No. 966, §1, eff. July 27, 1988; Acts 1999, No. 921, §1, eff. July 7, 1999.

RS 38:2313

§2313. Selection of persons for professional services; participation in mentor-protégé program

A. Each person who is to be retained or employed to perform professional services by an agency shall be selected by the boards from properly licensed architects, engineers, and landscape architects. Each of the boards shall consider those persons who make application for employment on any particular project.

B. The following guides, among other factors that the boards may deem appropriate, shall be used by the boards in selecting persons for professional services:

(1) Professional training and experience, both generally and in relation to the type and magnitude of work required for the particular project;

(2) Capacity for timely completion of the work, taking into consideration the person's or firm's current and projected workload and professional and support manpower;

(3) Past and current professional accomplishments, for which opinions of clients or former clients and information gathered by inspection of current or recent projects may be considered;

(4) The nature, quantity, and value of agency work previously performed and presently being performed by the person after the effective date of this Part, it being generally desirable to allocate such work among persons who are desirous and qualified to perform such work.

(5) Past performance on public projects, including any problems with time delays, cost overruns, and design inadequacies for which the designer was held to be at fault, involved in prior projects as evidenced by documentation provided by the Facility Planning and Control Department of the office of the governor;

(6) An analysis provided by the Facility Planning and Control Department of the office of the governor of whether problems as indicated in Paragraph (5) herein resulted in litigation between the public entity and the person performing professional services, particularly if the designer is currently involved in unsettled litigation with a public entity or has been involved in litigation with a public entity where the public entity prevailed.

C. The boards may, for each individual job or project, establish those qualifications and guidelines they deem necessary to select the person to be retained or employed for such job or project.

D. The boards shall make their selections of persons for a project within sixty days after notification by the Division of Administration as required herein.

E. Nothing in this Section shall be interpreted as denying the right of the prime professional to select, with the approval of the head of the facility planning and control department, the person or persons to perform supplemental professional services for a capital outlay project.

F. The boards may, for any contract governed by the provisions of this Part, include participation in a mentor-protégé program as provided by R.S. 51:1753.1 and 1753.2 as one of the guides used for selection of persons for a project in accordance with Subsection B of this Section.

Added by Acts 1975, No. 721, §1. Amended by Acts 1976, No. 525, §2; Acts 1982, No. 697, §1; Acts 1999, No. 1284, §1.

RS 38:2314

§2314. Prohibitions, penalties

A. Each contract entered into by an agency for professional services shall contain a prohibition against contingent fees as follows: "The person performing the professional services warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement. For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration."

B. No contract for professional services shall be granted to any person, corporation, firm, association, or other organization refusing to execute the affidavit required by R.S. 38:2224.

C. Any individual, corporation, partnership, firm, or company, other than a bona fide employee of the person performing the professional service, acting on behalf of his employer, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or the making of a contract for professional services, shall be fined not more than ten thousand dollars, or imprisoned for not more than one year, or both, and any such person or any group, association, company, corporation, firm, or partnership thereof, who shall offer to pay, or pay, any fee, commission, percentage, gift, or any other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services, shall be fined not more than ten thousand dollars, or imprisoned for not more than one year, or both.

D. Any agency official or board member or employee of either who offers to solicit or secure, or solicits or secures, a contract for professional services and is to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration, contingent upon the award or making of such a contract for professional services between an agency and any individual person, company, firm, partnership, or corporation shall be guilty of public bribery as provided by R.S. 14:118.

E. In addition to the penalties provided herein, any person who is in violation of any of the prohibitions listed in this section and who is licensed by any regulatory or professional board in order for him to practice his trade, profession or vocation in this state, shall have his license suspended for not less than one year, nor more than ten years, by the licensing authority.

Added by Acts 1975, No. 721, §1. Amended by Acts 1982, No. 845, §1.

RS 38:2315

§2315. Equal opportunity

Every person shall be guaranteed equal employment opportunities in the selection of persons for professional services and such selection of persons for professional services and such selection shall not discriminate against any person because of race, religion, national ancestry, age, sex, or physical condition. If any person or persons violates the provisions of this section, they shall be subject to the same penalties as provided in R.S. 38:2314(A).

Added by Acts 1975, No. 721, §1.

RS 38:2316

§2316. Applicability

Except as provided in R.S. 38:2311(C), the provisions of this Part shall not apply to professional service contracts in which the estimated project budget cost is five hundred thousand dollars or less.

Added by Acts 1975, No. 721, §1. Amended by Acts 1982, No. 618, §1; Acts 1999, No. 921, §1, eff. July 7, 1999; Acts 1999, No. 1013, §1, eff. July 9, 1999.

RS 38:2317

§2317. Ownership of documents

A. Any and all plans, designs, specifications, or other construction documents resulting from professional services paid for by any public entity shall remain the property of the public entity whether the project for which they were prepared was constructed or not. Except as otherwise provided herein, such documents may be used by the public entity to construct another like project without the approval of, or additional compensation to, the design professional.

B. The designer shall not be liable for injury or damage resulting from any re-use of plans, designs, specifications, or other construction documents by a public entity, if the designer is not also involved in the re-use project.

C. The designer may re-use his design documents however he so desires.

D. The right of ownership provided for in this Section shall not be transferable.

E. Prior to the re-use of construction documents for a project in which the designer is not also involved, the public entity shall remove and obliterate from the construction documents all identification of the original designer, including name, address, and professional seal or stamp.

Acts 1982, No. 693, §1; Acts 1991, No. 177, §1, eff. July 2, 1991.

RS 38:2318

§2318. Prescription

A. Any action by the state or an agency against any person or other entity concerning a professional services contract for public works construction entered into by such person or other entity with the state or an agency shall prescribe five years from the acceptance of the project to which the services performed under the contract are related.

B. Any action against the state or an agency by any person or entity concerning services he has performed pursuant to a professional services contract for public works construction he has entered into with the state or an agency shall prescribe five years from the acceptance of the project to which the services performed under the contract are related.

C. This Section shall not be limited by R.S. 38:2316.

Acts 1999, No. 743, §1.

RS 38:2318.1

PART VII-A. LOUISIANA "NO BIDDING OF DESIGN PROFESSIONAL SERVICES" POLICY

§2318.1. Louisiana "No Bidding of Design Professional Services" policy

A. It is the policy of the state of Louisiana, its political subdivisions, and agencies to select providers of design professional services on the basis of competence and qualifications for a fair and reasonable price. Neither the state nor any of its political subdivisions or agencies may select providers of design services wherein price or price-related information is a factor in the selection.

B. However, the provisions of this Section shall have no effect on and shall not supersede any contract permitted pursuant to the provisions of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950 relating to the authority for the Department of Transportation and Development to enter into design-build contracts and the authority of the Louisiana Transportation Authority to enter into public-private partnership contracts, R.S. 38:85, 2225.2.1, or 2225.2.2 relating to the authority for certain political subdivisions to enter into design-build contracts, or R.S. 34:3523, relating to any port project that a notice of intent is advertised for in accordance with R.S. 34:3523, prior to December 31, 2015.

C. It is the policy of the state of Louisiana that all records, as defined in R.S. 44:1(A)(2)(a), involved or dealing with the selection of design professional services shall be open to the public in accord with the intent of Louisiana Constitution Article XII, Section 3, and R.S. 44:31.

Acts 2006, No. 407, §1, eff. July 1, 2006; Acts 2007, No. 373, §1, eff. July 10, 2007; Acts 2008, No. 391, §1; Acts 2012, No. 755, §2, eff. June 12, 2012.

RS 38:2318.2

PART VII-B. PERCENT FOR UNIVERSAL DESIGN PROGRAM

§2318.2. Percent for Universal Design Program; established

A. Recognizing the declaration of rights underlying the state's constitution, government is instituted to protect the rights of the individual and provide for the good of the whole; hence, the legislature declares it to be the public policy of the state that a portion of money spent by the state and state agencies on the construction or renovation of state buildings should be spent on implementing principles of universal design. In pursuit of this policy, the Percent for Universal Design Program is established for the purpose of providing for the implementation of such principles in or on state buildings and grounds to move beyond minimum accessibility requirements, maximize accessibility for all users regardless of their functional capabilities, and bring to the attention of architects, builders, and the public at large the vast benefits that can be realized by implementing universal design principles in the construction and renovation of all buildings, including those privately owned and personal residences.

B. The following terms as used in this Section shall have the meaning provided in this Subsection unless the context clearly indicates otherwise:

(1) "Renovation" does not include a project the principal purpose of which is the rehabilitation of plumbing, heating, ventilating, air conditioning, or electrical systems.

(2) "State building" means any building, facility, structure, or park built or renovated using state funds that will be owned by a department or agency in the executive, judicial, or legislative branch of state government, including any state-owned lands or space surrounding or integral to the building. "State building" does not include bridges, tunnels, or sewers, unless such structures are adjuncts of the principal element of the project.

(3) "State funds" or "state money" shall not include federal funds or insurance proceeds for the construction, replacement, renovation, or improvement of a state building damaged by a natural catastrophe when conditions governing the expenditure of such monies specifically preclude their use for the utilization and implementation of universal design features, nor shall it include state monies used as a match for such federal funds or insurance proceeds.

(4) "Universal design" as more fully defined in Subsection C of this Section, means certain design features that are not currently required by the Americans with Disabilities Act of 1990, although they may be used to satisfy the Americans with Disabilities Act requirements and when so utilized, the cost may be applied in satisfaction of the two percent monetary requirement of this Section.

C. Universal design is a principle of design guiding a wide range of design disciplines including environments, products, and communications including all of the following:

(1)(a) Equitable Use. The design is useful and marketable to people with diverse abilities.

(b) Guidelines. Provides the same means of use for all users: identical whenever possible; equivalent when not. Avoids segregating or stigmatizing any users. Incorporates provisions for privacy, security, and safety that should be equally available to all users. Makes the design appealing to all users.

(2)(a) Flexibility in Use. The design accommodates a wide range of individual preferences and abilities.

(b) Guidelines. Provides choice in methods of use. Accommodates right or left handed access and use. Provides adaptability to the user's pace.

(3)(a) Simple and Intuitive Use. Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level.

(b) Guidelines. Eliminates unnecessary complexity. Consistent with user expectations and intuition. Accommodates a wide range of literacy and language skills. Arranges information consistent with its importance. Provides effective prompting and feedback during and after task completion.

(4)(a) Perceptible Information. The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.

(b) Guidelines. Uses different modes (pictorial, verbal, tactile) for redundant presentation of essential information. Provides adequate contrast between essential information and its surroundings. Maximizes "legibility" of essential information. Differentiates elements in ways that can be described which includes making it easy to give instructions or directions. Provides compatibility with a variety of techniques or devices used by people with sensory limitations.

(5)(a) Tolerance for Error. The design minimizes hazards and the adverse consequences of accidental or unintended actions.

(b) Guidelines. Arranges elements to minimize hazards and errors: most used elements, most accessible; hazardous elements eliminated, isolated, or shielded. Provides warnings of hazards and errors. Provides fail-safe features. Discourages unconscious action in tasks that require vigilance.

(6)(a) Low Physical Effort. The design can be used efficiently and comfortably and with a minimum of fatigue.

(b) Guidelines. Allows user to maintain a neutral body position. Uses reasonable operating forces. Minimizes repetitive actions. Minimizes sustained physical effort.

(7)(a) Size and Space for Approach and Use. Appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture, or mobility.

(b) Guidelines. Provides a clear line of sight to important elements for any seated or standing user. Makes reach to all components comfortable for any seated or standing user. Accommodates variations in hand and grip size. Provides adequate space for the use of assistive devices or personal assistance.

D. Except as otherwise provided in this Section, whenever more than two million dollars of state funds, whether obtained from the sale of bonds or otherwise, is to be spent by a state agency for the construction or renovation of a state building, the agency that contracts for the construction or renovation shall expend two percent of the state money to utilize and incorporate universal design principles.

E. Nothing in this Part shall supercede, restrict, or limit the application of the following laws:

- (1) The Americans with Disabilities Act of 1990 (42 U.S.C. §1201 et seq.).
- (2) The Rehabilitation Act of 1973 (29 U.S.C. §701 et seq.) and ensuing regulations.
- (3) The Fair Housing Act (42 U.S.C. §3601 et seq.).
- (4) R.S. 40:1731 through 1744.
- (5) R.S. 49:148 through 148.3.

F.(1) The commissioner of administration may adopt rules not inconsistent with the stated intent of this program to implement the provisions of this Section. The commissioner may also solicit the assistance and advice of the Louisiana Chapter of the American Institute of Architects in determining whether a particular design feature complies with the intent and principles of universal design. Neither the Louisiana Chapter of the American Institute of Architects nor any member thereof shall be liable for any opinion, assistance, or advice rendered pursuant to this Section. No member of the general public shall have a cause of action for damages against the state, the commissioner of administration, nor any employee of the division of administration for the inclusion or failure to include a particular design feature.

(2) The rules provided for in this Section shall contain standards for construction and renovation and this Section shall not be implemented until such rules have been finally promulgated in accordance with the Administrative Procedure Act and shall be specifically subject to oversight and approval by the House and Senate committees on transportation, highways, and public works.

Acts 2009, No. 368, §1, eff. Jan. 1, 2010.