

## NOTICE OF INTENT

### Office of the Governor Division of Administration Office of State Procurement

Procurement  
(LAC 34:V.Chapters 1-17, 19, 21, and 23-31)

In accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., as authorized pursuant to R.S. 39:1561 and 39:1581, the Office of the Governor, Division of Administration, Office of State Procurement, proposes to amend Chapters 1-17, 19, 21, and 23-31, and adopt Chapters 24 and 26 of LAC 34:V, Procurement. The Rules are revised to align with Act 312 of the 2019 Regular Legislative Session, Act 273 of the 2020 Regular Legislative Session, further align together provisions for purchasing and professional service contracting more consistently, reduce redundancy and potential for disagreement with the *Louisiana Procurement Code*, and make other policy revisions and clarifications consistent with the goal of ensuring full, fair, and open competition within public procurement activities.

#### Title 34

### GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

#### Part V. Procurement

#### Chapter 1. General Provisions

##### §109. Definitions and Use

- A. - A.3. ...  
4. - 4.e. Repealed.

B - E.2. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014), LR 40:2548 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018), LR 47:

#### Chapter 3. Competitive Sealed Bidding

##### §301. Content of the Invitation to Bid (ITB)

A. Invitation to Bid

1. Purchases whose estimated cost exceeds the defined maximum value for small purchases established by executive order of the governor shall provide adequate public notice in accordance with R.S. 39:1594. Determination of adequate public notice shall take into consideration the nature and complexity of the solicitation. All advertisements, written invitations to bid, or other forms of solicitations allowed by law posted through a secure centralized electronic interactive environment pursuant to the Louisiana Uniform Electronic Transaction Act (R.S. 9:2601-2621) and applicable rules and regulations (i.e. LAC 4:XV.701 et seq.) shall contain general descriptions of the classes of commodities on which bids are solicited and shall state:

A.1.a - E.2. ...

F. Request for Proposals. In the event the state uses the request for proposals method of procurement pursuant to R.S. 39:1595, the procurement shall be made in accordance with Chapter 26 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1349 (July 2014), LR 40:2549 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:751 (April 2018), LR 47:

##### §303. Bidding Time

A. Bidding time is the period of time between the date of distribution of the invitation to bid and the date set for opening of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. For bids whose estimated cost exceeds the defined maximum value for *small purchases* established by executive order of the governor, a minimum of 10 days shall be provided unless the chief procurement officer or his designee deems that a shorter time is necessary for a particular procurement. However, in no case shall the bidding time be less than 10 days, except as provided in R.S. 39:1598 and Chapter 11 of these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1349 (July 2014), amended LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:751 (April 2018), LR 47:

##### §307. Bidder Submissions

A. - A.1. ...

2. bid filled out in pencil;
3. bids not received as specified in the invitation to bid,
4. bid not received at the address specified in the invitation to bid prior to bid opening.

B. - G. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018), LR 47:

##### §311. Pre-Bid Conferences

A. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation to bid and shall be advertised and/or electronically posted if the estimated cost exceeds the defined maximum value for small purchases established by executive order of the governor and attendance is mandatory. The conference should be held long enough after the invitation to bid has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the invitation to bid unless a change is made by written addenda as provided in §305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995),

repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018), LR 47:

### **§315. Pre-Opening Modification or Withdrawal of Bids**

A. ...

B. Withdrawal of Bids. A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of opening. If a bidder withdraws a bid prior to bid opening, the bid will be returned to the ownership and possession of the bidder in accordance with §319.D of this Part.

C. ...

D. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file, except in accordance with Subsection E of this Section.

E. The final disposition of unopened bids which are withdrawn in accordance with this Section shall be managed in accordance with §319. D of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018), LR 47:

### **§317. Late Bids**

A. ...

B. The final disposition of unopened bids which are late as described in this Section shall be managed in accordance with §319.D of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018), LR 467:

### **§319. Receipt, Opening and Recording of Bids**

A. - C. ...

D. The final disposition of an unopened withdrawn bid or an unopened late bid shall be managed according to the following steps.

1. For purposes of this Subsection only, *bid* shall be understood to also refer to a competitive sealed proposal, and *bidder* shall be understood to also refer to a person submitting a competitive sealed proposal.

2. The Office of State Procurement or the using agency shall not open an unopened bid in its possession for any reason unless so properly ordered by a court of competent jurisdiction.

3. The Office of State Procurement or the using agency shall document by scan, photograph, or similar means any and all visible surfaces of the bid envelope or packaging which appear to contain text. Resulting images shall be retained in the bid file.

4. The Office of State Procurement or the using agency shall notify, in writing, the bidder whose bid is withdrawn or late that such bid is not the property of the state because it has been withdrawn or determined to be late,

and that the bidder should retrieve, or arrange for third-party disposition of, its property within 30 days of written notice.

5. If the bidder fails to retrieve its bid within 60 days of written notice, the Office of State Procurement or the using agency shall dispose of the bid using secure means.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1992), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018), LR 47:

### **§327. Bid Evaluation and Award**

A. - B. ...

\* \* \*

*Responsible Bidder or Proposer*—as defined in §1501 of this Part.

a. The Office of State Procurement, or using agency, whichever is applicable, may request suitable evidence that a vendor is a responsible bidder or proposer in accordance with Chapter 15 of this Part.

C. - E. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1352 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018), LR 47:

### **§335. Publicizing Awards**

A. Written notice of award shall be sent to the successful bidder. Notice of award shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2554 (December 2014), LR 47:

### **§341. Blackout Period**

A. All competitive sealed bids conducted in accordance with R.S. 39:1594 and all competitive sealed proposals conducted in accordance with R.S. 39:1595 (for purposes of this Section together called *competitive sealed procurements*) shall:

1. provide for a defined blackout period relative to such procurement in which communication between the bidder or proposer and the state relative to the procurement itself is generally prohibited, with defined exceptions;

2. provide a summary of the application of the state of Louisiana's blackout period policy;

3. provide a reference to the full text of the state of Louisiana's blackout period policy; and

4. designate a contact person, and corresponding method of communication, to whom all communications by bidders or proposers should be addressed.

B. The blackout period is a period of time beginning with posting of the competitive sealed procurement and ending with the award or cancellation of the same. During a competitive sealed procurement, any proposer, bidder, or its agent or representative, is prohibited from communicating

with any state employee or contractor of the state involved in any step in the procurement process about the affected procurement other than the designated contact person. Communications properly sent to the designated contact person regarding questions, clarifications, or complaints regarding procedures or status related to the competitive sealed procurement are allowed. *Involvement* in the procurement process includes but may not be limited to project management, design, development, implementation, procurement management, development of specifications, or evaluation of a particular procurement.

C. Upon notification of receipt of a timely protest to an award, and a resulting stay of award, the blackout period shall be reinstated until such time as the stay has been lifted by the chief procurement officer. All communications regarding the protested award shall be addressed to the chief procurement officer. In the case of an appeal, all communications shall be addressed to the Commissioner of Administration.

D. Any state employee or contractor who discovers any inappropriate contact shall immediately report such inappropriate contact to the chief procurement officer, whether the discovery occurs during or after the award of the contract.

E. The head of any agency conducting any competitive sealed procurement subject to a blackout period shall provide notice to staff regarding the affected procurement and instructions. An agency may choose to implement a blanket blackout period program in which employees acknowledge their responsibility to comply for all competitive sealed procurements rather than by the agency providing individual notices.

F. In any instance in which a prospective vendor is also an incumbent vendor for any contract, the state and the incumbent vendor may contact each other regarding the existing contract, but the incumbent vendor and/or its representative(s) may not discuss the procurement subject to the blackout period unless pursuant to an exception in this Section.

G. Notwithstanding any conflicting provision of this Section, the blackout period shall not apply to:

1. the submission of a protest to a solicitation pursuant to R.S. 39:1671;
2. duly noticed site visits and/or conferences for bidders or proposers;
3. oral presentations during the evaluation process;
4. communications regarding a particular solicitation between any person and staff of the procuring agency, provided the communication is limited strictly to matters of procedure. Procedural matters include deadlines for decisions or submission of proposals and the proper means of communicating regarding the procurement, but shall not include any substantive matter related to the particular procurement or requirements of the competitive sealed procurement. Any employee who receives such an inquiry shall report it and the response, if any, to the designated contact who shall keep a record of the inquiry in the agency's files regarding the procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

## **Chapter 5. Reverse Auctions**

### **§501. Authorization**

A. The reverse auction process may be utilized in accordance with R.S. 39:1600(D), subject to the approval of the state chief procurement officer that the best interests of the state would be served.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

### **§503. Application**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1406 (June 2012), repromulgated LR 40:1354 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:51 (January 2016), LR 44:755 (April 2018), repealed LR 47:

### **§509. Withdrawal of Bids**

A. Withdrawal of bids will be handled in accordance with §315 and §321 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:25560 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018), LR 47:

## **Chapter 9. Sole Source Procurement**

### **§905. Conditions for Use of Sole Source Procurement**

A. - A.2.d. ...

e. - f. Repealed.

B. - B.3.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982) amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:756 (April 2018), LR 47:

### **§907. Record of Sole Source Procurement**

A. A record of sole source procurement shall be maintained that lists:

1. - 2. ...

3. a listing of the supplies, services, ~~or~~ major repairs, or professional, personal, consulting or social services procured under each contract; and

A.4. - B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

## **Chapter 11. Emergency Procurement**

### **§1101. Application**

A. The provisions of this Chapter apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

### **§1103. Definition of Emergency Conditions**

A. An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the chief procurement officer. The existence of such condition creates an immediate and serious need for supplies, services, major repairs, or professional, personal, consulting or social services that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. - 3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

### **§1105. Scope of Emergency Procurement**

A. Emergency procurement shall be limited to only those supplies, services, major repairs, or professional, personal, consulting or social services necessary to meet the emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 40:1357 (July 2014), LR 47:

### **§1107. Authority to Make Emergency Procurement**

A. Any state agency may make emergency procurements in accordance with R.S. 39:1598 and R.S. 39:1600(E), when an emergency condition arises and the need cannot be met through normal procurement methods. Prior to all such emergency procurements, the chief procurement officer or his designee shall approve the procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), LR 40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

### **§1111. Determination and Record of Emergency Procurement**

A. Determination. The procurement officer or the head of a purchasing agency shall make a written determination stating the basis for any emergency procurement or award of a contract, and for the selection of a particular contractor. Such determination shall be sent promptly to the chief procurement officer for approval or rejection.

B. - B.1.b. ...

c. a listing of the supplies, services, or major repairs, or professional, personal, consulting or social services procured under each contract; and

d. ...

2. The record for the previous fiscal year shall be provided by the Office of State Procurement at the beginning of the legislative session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), LR 44:756 (April 2018), LR 47:

## **Chapter 13. Cancellation of Solicitations; Rejection of Bids or Proposals**

### **§1301. Scope**

A. The provisions of this Chapter shall govern the cancellation of solicitations issued by the state and rejections of bids or proposals in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

### **§1307. Reasons for Cancellation**

A. ...

B. When a solicitation is canceled prior to opening, a notice of cancellation shall be sent to all businesses solicited. When a solicitation or item is canceled after bids are opened, a notice of cancellation should be sent to all bidders if the amount canceled exceeds the defined maximum value for *small purchases* established by executive order of the Governor.

C. - D. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

### **§1309. Rejection of Individual Bids or Proposals**

A. ...

1. *Proposals* (as used in this Section)—competitive solicitations solicited in accordance with R.S. 39:1595 and Chapter 26 of these regulations.

B. - C.3. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018), LR 47:

### **§1313. Appeals of a Cancellation**

A. In accordance with R.S. 39:1605, R.S. 39:1630 and R.S. 39:1691, the pre-award cancellation of a solicitation by the chief procurement officer or his designee shall be final and conclusive unless the person adversely affected by the cancellation has timely appealed to the Nineteenth Judicial District Court, in accordance with R.S. 39:1691(D), within 14 days of the cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

## **Chapter 15. Responsibility and Prequalification**

### **§1501. Definitions**

*Responsible Bidder* or *Proposer*—a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. See also R.S. 39:1606 of the Louisiana procurement code. For the purpose of these regulations, *capability* as used in this definition means capability at the time of award of the contract, unless otherwise specified in the solicitation.

*Solicitation*—an invitation to bid, or any other document, such as a request for quotations or a requests for proposals issued by the state for the purpose of soliciting offers or proposals to perform a state contract.

\* \* \*

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018), LR 47:

## **Chapter 17. Types of Contracts**

### **§1705. Cost-Plus-a-Percentage-of-Cost Contracts**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), repromulgated LR 21:566 (June 1995), repromulgated LR 40:1360 (July 2014), LR 47:

### **§1709. Use of Brand Name, LaMAS (Louisiana Multiple Award Schedule), and Multi-State Contracts**

A. ...

B. Where Louisiana price schedules ("LaPS") exist for same or similar item(s) and the estimated cost of the procurement exceeds the defined maximum value for *small purchases* established by executive order of the Governor, all eligible users of these contracts will utilize the following procedures.

1. - 3.d. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 33:2650 (December 2007), repromulgated LR 40:1360 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018), LR 47:

## **Chapter 19. Multi-Year Contracts**

### **§1901. Determination}**

A. For purposes of this Chapter, *multi-year contract* shall be defined as a contract whose term exceeds 12 months.

B. Multi-year contracts may be entered into for supplies, services, major repairs, or professional, personal, consulting and social services in accordance with R.S. 39:1615 or as otherwise provided by law.

C. Prior to the utilization of a multiyear contract for supplies, services, or major repairs, it shall be determined in writing:

1. that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

2. that such a contract will serve the best interests of the state by encouraging effective competition or otherwise prompting economies in state procurement.

D. All contracts shall contain a termination for non-appropriation clause in accordance with R.S. 39:1615(C), (E) and (I), unless specifically exempted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

### **§1903. Conditions for Purchasing and Contracting Use of Multi-Year Contracts**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018), repealed LR 47:

### **§1905. Multi-Year Contract Procedure**

A. Solicitation. The solicitation shall state:

1. the estimated amount of supplies, services or major repairs required for the proposed contract period;

2. ...

3. that the multi-year contract will be canceled if funds are not appropriated, un-appropriated, or otherwise not made available to support continuation of performance in any fiscal period succeeding the first;

4. if an installment purchase, that the provisions of R.S. 39:1616 shall apply.

5. ...

B. Repealed.

C. - C.2. ...

3. Nothing in this Section shall be construed to limit the authority otherwise existing for an agency to terminate a contract for convenience, or for cause, or for any other lawful reason allowable in the contract, or as required in law or regulation.

D. Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018), LR 47:

## **Chapter 21. Miscellaneous Contract Provisions for Supplies, Services, and Major Repairs**

### **§2101. Contract Provisions**

A. - C.6. ...

7. when a contract requires an original signature as provided by R.S. 9:2601-2621 and LAC 4:I.Chapter 7, Implementation of Electronic Signatures in Global and National Commerce Act—P.I., 106-229, an electronic signature is considered an original signature.

D. - D.10. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended LR 41:670 (April 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018), LR 47:

### **§2105. Goods Manufactured or Services Performed by Supported Employment Providers**

A. R.S. 39:1604.4 provides in part that a preference shall be given by all agencies in purchasing products and services from individuals with disabilities through supported employment providers.

B. Purchases of goods manufactured by or services performed by individuals with disabilities through supported employment providers as defined in R.S. 39:1604.4 shall be exempt from competitive sealed bidding in accordance with the provisions of R.S. 39:1594.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018), LR 47:

## **Chapter 23. Reporting of Suspected Collusive Bidding or Negotiations**

### **§2301. Anticompetitive Practices**

A. For the purposes of this Chapter, an anticompetitive practice is a practice among bidders or proposers which reduces or eliminates competition or restrains trade. An anticompetitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from business actions which have the effect of restraining trade, such as controlling the resale price of products. Indications of suspected anticompetitive practices include identical bids or proposals, rotated low bids or proposals, sharing of the business, tie-in sales, resale price maintenance, and group boycotts (see Identical Bidding, §2309).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018), LR 47:

### **§2305. Reporting Suspected Anticompetitive Practices**

A. The chief procurement officer, in consultation with the attorney general, shall develop procedures, including forms, for reporting suspected anticompetitive practices. A procurement officer who suspects that an anticompetitive practice has occurred or may be occurring shall report the suspected anticompetitive practice to the Attorney General's Office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement LR 47:

## **Chapter 24. Suspension, Debarment and Reinstatement**

### **§2401. Suspension, Debarment and Reinstatement [Formerly LAC 34:V.2539]**

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the state chief procurement officer shall have authority to suspend or debar an individual or business for cause from consideration for a contract, in accordance with the provisions of R.S. 39:1672.

1. The state shall also have the right to suspend or terminate a contract based on the absence of appropriated, funds for the acquisition of goods or services or for cause; or, when in the best interest of the state.

#### **B. Reinstatement**

1. If the commissioner finds that the state chief procurement officer was in error, then he may reinstate said individual or business. If the commissioner affirms the decision of the state chief procurement officer that decision is final and conclusive.

2. The state chief procurement officer, upon request of a debarred individual or business shall review the requesting debarred contractor's file on an annual basis, and may reinstate said contractor for future consideration if he believes the circumstances warrant reinstatement and it would be in the best interest of the state. A list of debarred individuals and businesses shall be kept by the Office of State Procurement and made available upon request to state agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:594 (November 1982), amended LR 10:458 (June 1984), LR 11:1071 (November 1985), repromulgated LR 40:2566 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), amended LR 44:766 (April 2018), repromulgated LR 47:

## **Chapter 25. Procurement of Professional, Personal, Consulting, Social Services, and Energy Efficiency Contracts**

### **Subchapter A. General Provisions**

#### **§2503. Definitions and Classes of Contractual Services**

A. - A.1. ...

2. *Professional Service*—for contracts with a total amount of compensation of \$50,000 or more, the definition of "professional service" shall be limited to lawyers, doctors, dentists, psychologists, certified advanced practice nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, claims adjusters, pharmacists, visiting professors, and any other profession that may be added by regulations adopted by the Office of State Procurement of the Division of Administration.

3. - 7. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985), LR 13:652 (November 1987), LR 17:264 (March 1991), LR 20:542 (May 1994), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 41:1669 (September 2015), LR 40:2556 (December 2014), amended LR 40:2544 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement,

LR 41:1669 (September 2015), amended LR 44:761 (April 2018), LR 47:

### **§2512. Modification of Contract**

A. All amendments to contracts for professional, personal, consulting and social services shall be submitted to the Office of State Procurement and shall become effective only upon approval by the director of the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987), repromulgated LR 40:2562 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:763 (April 2018), LR 47:

### **§2518. Submission of Contracts**

A. At least one copy of said contract and attachments shall be submitted to the Office of State Procurement. Copies of such contracts shall be forwarded to the Legislative Fiscal Office upon request. The Office of State Procurement will not accept for review and approval any contract that is not accompanied by the necessary attachments and copies as required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987), repromulgated LR 40:2562 (December 2014), amended LR 41:671 (April 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018), LR 47:

### **§2521. Contractual Review Process**

A. - D.2. ...

E. Legal and Content Review. There are a number of different types of contracts, and content requirements may vary. All contracts shall contain the following:

1. - 3. ...

4. beginning and termination dates for the contract. Contracts shall not include a clause permitting automatic renewal or extension of the original beyond a three-year period, unless authorized by the funding statute. Per R.S. 39:1622(C)(1) performance-based energy efficiency contracts shall have a term not to exceed 10 years;

5. - 10.b.ii. ...

F. Each contract submitted for approval which exceeds the value specified in R.S. 39:1623(A) shall be accompanied by a certification letter as described in R.S. 39:1623, signed by the using agency's representative.

G. - G.5. ...

H. If a contract is subject to the provisions of R.S. 39:1621(B), it must have been awarded pursuant to the requirements of R.S. 39:1595(B), unless exempt in accordance with Chapter 9 or Chapter 11 of this Part. Failure to so comply shall result in the using agency having to reconduct the process. Prior to approval of a contract for consulting services pursuant to this Subsection, the Office of State Procurement shall verify that the requirements of §2605 of this Part have been met.

I. Information technology consulting service contracts whose value exceeds the maximum amount specified in R.S.

39:1621(C) shall be procured in accordance with Subchapter B of this Chapter.

J. If a contract is for services defined as social services in R.S. 39:1556(54) it must have been awarded pursuant to the requirements of R.S. 39:1595(B) unless exempt by R.S. 39:1619. Failure to so comply shall result in the using agency having to reconduct the process. Prior to approval of a contract for consulting services pursuant to this Subsection, the Office of State Procurement shall verify that the requirements of §2605 of this Part have been met.

K. A formal, dated board resolution, disclosure of ownership or annual report filed with the Louisiana Secretary of State's office identifying the signatory as an officer, or equivalent document signed by one or more owners of the contractor must be secured and attached to the contract indicating that the signatory is a ~~corporate~~ representative of the contractor and authorized to sign said contract.

L. ...

M. A performance evaluation for every personal, professional, consulting or social services contract shall be conducted by the using agency in accordance with R.S. 39:1569.1. This performance evaluation shall be retained by the using agency for all contracts approved under delegated authority. For all other contracts, this performance evaluation shall be submitted to the Office of State Procurement within 120 days after the termination of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:182 (April 1981), amended LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1069 (November 1985), LR 13:87 (February 1987), LR 13:653 (November 1987), LR 15:81 (February 1989), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 40:2562 (December 2014), amended LR 40:2545 (December 2014), LR 41:671 (April 2015), repromulgated LR 41:1669 (September 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018), LR 47:

### **§2527. Delegation of Signature Authority**

A. R.S. 39:1595(A)(10)(b)(i), (ii) and 39:1595.1 requires that the head of the using agency or his designee shall sign all contracts for personal, professional, consulting or social services. All delegations of signature authority by the head of the using agency must be in writing and must be approved by the Office of State Procurement.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:593 (November 1982), amended LR 10:457 (June 1984), LR 11:1070 (November 1985), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018), LR 47:

### **§2530. Confidentiality of Technical Data or Trade Secrets**

A. The using agency shall be responsible for protecting technical data, financial information, overhead rates, and trade secrets which may come into their possession from individuals and businesses doing business with the state. Any such information received by the Office of State

Procurement shall be returned to the using agency upon completion of said review or retained using secure means if return to the using agency is not practicable or permissible.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:457 (June 1984), LR 11:1070 (November 1985), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018), LR 47:

### **§2533. Multi-Year Contracts**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 17:266 (March 1991), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:766 (April 2018), repealed LR 47:

### **§2536. Determination of Responsibility**

A. In order to qualify as responsible, a proposer must meet and, upon request by the agency or the chief procurement officer, present evidence of compliance with the standards identified in §1505.A of this Part, as they relate to the particular procurement under consideration.

B. No contract for consulting services meeting the value specified in R.S. 39:1621(B), regardless of time period, or for social services exceeding the value indicated in R.S. 39:1619(B)(7), regardless of time period or other exemption applicable pursuant to R.S. 39:1619(B), shall be awarded to any person or firm unless the head of the using agency has first determined that such person or firm is responsible.

C. In any case where a contract for consulting services meets the value threshold specified in R.S. 39:1621(B), regardless of time period, or where a contract for social services exceeds the value threshold specified in R.S. 39:1619(B)(7), regardless of time period or other exemption applicable pursuant to R.S. 39:1619(B), the head of the using agency shall prepare, sign, and place in the contract file a statement of the facts on which a determination of responsibility was based. Any supporting documents or reports and any information to support determinations of responsibility of the proposer or potential subcontractors should be kept on file with the agency, subject to inspection upon the request by the director of state procurement or his designee.

D. Before making a determination of responsibility, the head of the using agency shall have sufficient current information to satisfy himself that the prospective contractor meets the standards identified in §1505.A of this Part. Information from the sources identified in §1505.A.2 and 3 of this Part shall be utilized before making a determination of responsibility.

E. To the extent that a prospective contractor cannot meet the standards identified in §1505.A of this Part except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system or prospective major subcontractors

are determined by the Office of State Procurement or the head of the using agency to satisfy that standard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:496 (December 1978), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 13:654 (November 1987), repromulgated LR 40:2565 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:766 (April 2018), LR 47:

### **§2539. Suspension, Debarment and Reinstatement**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:594 (November 1982), amended LR 10:458 (June 1984), LR 11:1071 (November 1985), repromulgated LR 40:2566 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), amended LR 44:766 (April 2018), repealed LR 47:

### **Subchapter B. Review of Certain Contracts for Information Technology Consulting Services**

#### **§2542. Source Selection Methods**

[Formerly LAC 34:V.142]

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:179 (April 1981), amended LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1071 (November 1985), LR 13:655 (November 1987), repromulgated LR 40:2566 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), amended LR 44:766 (April 2018), repealed, LR 47:

#### **§2545. Request for Proposals**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:495 (December 1978), amended LR 7:180 (April 1981), LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1072 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2567 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1283 (July 2015), repromulgated LR 41:1670 (September 2015), amended LR 44:767 (April 2018), repealed, LR 47:

#### **§2549. Procurement Support Team**

A. Unless a procurement support team (PST) is formed in accordance with R.S. 39:200(I), a procurement support team shall be formed in accordance with the procedures defined herein for every contract for the procurement of information technology consulting services in an amount exceeding the maximum value specified in R.S. 39:1621(C). At the discretion of the director of the Office of State Procurement, all other consulting services anticipated to exceed the maximum value specified in R.S. 39:1621(C) may require PST review of the RFP, the selection process, and subsequent contract. The formation of a procurement support team shall be accomplished by the Office of State Procurement and shall include one or more representatives



from each of the following: the Office of State Procurement, the Attorney General's Office; the using agency initiating the procurement action; and the Legislative Fiscal Office. The procurement support team shall submit a recommendation to the director of the Office of State Procurement concerning the final contract. Where a procurement support team is formed in accordance with R.S. 39:200(I), the requirements of this Section may be met by including a representative from the Attorney General's Office.

B. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2568 (December 2014), amended LR 40:2545 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:767 (April 2018), LR 47:

#### **§2551. Procurement Support Team Involvement**

A. ...

B. All data processing consulting service contracts shall be subject to the statutory and regulatory requirements for consulting service contracts in general. The recommendation of a procurement support team member is not to be construed as approval by the agency which that team member represents, in those cases where formal agency approval of the final agreements is required.

C. - D.5. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:767 (April 2018), LR 47:

#### **§2554. Emergency and Sole Source Procurements**

A. Notwithstanding the guidelines established in Chapters 9 and 11 of this Part, procurements of information technology consulting services in an amount exceeding the maximum value specified in R.S. 39:1621(C) under emergency or sole source conditions shall involve a procurement support team designated by the Office of State Procurement and under the direction of a team leader designated by the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:461 (June 1984), amended LR 11:1074 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018), LR 47:

#### **§2557. Procurement Support Team; Procurement Schedule**

A. Each using agency contemplating a contract for information technology consulting services with an estimated value exceeding the maximum value specified in R.S. 39:1621(C) shall notify the Office of State Procurement prior to the drafting of the request for proposals. The Office of State Procurement shall then contact the appropriate agencies and obtain from those agencies the names of the individuals designated to participate on the particular

procurement support team (PST). The Office of State Procurement shall then designate a team leader, insure that at least two members of the procurement support team have received formal training in computer contract negotiations, and forward to the team leader the names of the other team members, along with any information received from the using agency.

B. - F. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:461 (June 1984), amended LR 11:1074 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018), LR 47:

#### **§2587. Revised Statutes**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:183 (April 1981), LR 8:596 (November 1982), LR 10:461 (June 1984), LR 11:1074 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2570 (December 2014), amended LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:768 (April 2018), repealed LR 47:

#### **Chapter 26. Contracts Let Via a Request for Proposals Process**

##### **§2601. Application and Competitive Sealed Proposals**

A. This Chapter shall be applicable to consulting services contracts governed by R.S. 39:1621(B), social services contracts which are not exempted by R.S. 39:1619(B), and any other competitive sealed proposals governed by R.S. 39:1595.

B. Competitive Sealed Proposals

1. For purposes of this Chapter, *competitive sealed proposals* means proposals protected from inspection prior to the deadline for submission. Proposals may be received in any manner specified in the request for proposals including receipt by mail, by direct delivery, or through any secure electronic interactive environment permitted by rule or regulation.

2. Any competitive sealed proposal which is withdrawn by the proposer prior to the deadline for submission of proposals, or which has been determined to be late relative to the deadline for submission of proposals, shall not be opened and shall instead be subject to the provisions of §319.D of this Part.

3. Except as provided in Paragraph 2 of this Subsection, Competitive sealed proposals shall be secured until the proposal submission deadline.

4. Competitive sealed proposals shall not be inspected prior to the proposal submission deadline unless the chief procurement officer determines that doing so is necessary for the sole purpose of identifying the name of the proposer and/or the solicitation to which the proposal is addressed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:

**§2603. Content in Requests for Proposals**  
**[Formerly LAC 34:V.2545(A)(1)]**

- A. All request for proposals (RFP) solicitations should:
1. specifically define the task and desired results of project;
  2. identify agency liaison personnel and resources available to the contractor;
  3. state approximately when the contractor can begin the work, plus an estimate of the time necessary to accomplish the work, if applicable;
  4. specify applicable procedures concerning billing, documentation requirements, progress reports, and final reports, if applicable;
  5. specify that a minimum of two copies of the proposal be submitted;
  6. inform the potential contractors of the criteria and the selection methodology and the weight which will be applied to each significant evaluation criteria to be used in evaluating the proposals' responsiveness to the RFP;
  7. inform the potential contractors that the state reserves the right to use the best and final offer (BAFO) process as a part of the competitive negotiation process to clarify the scope of work and/ or to obtain the most cost effective pricing available from the proposer along with the proposers most favorable terms in response to the solicitation. When used, inform the potential contractors of the evaluation criteria and associated weights, if different from the initial scoring criteria and weights;
  8. require potential contractors to include the following information in their proposals:
    - a. a description of the firm's qualifications, including a specific list of personnel to be used in the services and their qualifications (at least list the number and the qualifications of each position). However, a résumé should be required on each of the key personnel. Additionally, the contractor should be required to stipulate that these personnel will not be substituted or removed from the contract without prior approval of the using agency;
    - b. a list of the agencies with names and contact persons, for whom similar work has been done;
    - c. if applicable, the length of time needed for the services, broken down by phases, if phasing is necessary;
    - d. the proposed methodology for accomplishing the services with a precise statement of what the state will receive as an end product of the services (this is sometimes referred to as the technical section of the proposal);
    - e. for consulting services, an itemized cost statement showing various classes of man-hours at appropriate rate, delineated by phases, if phasing is used, and an itemized listing of all other expenses or fees that are expected to be paid by the state and a complete breakdown of consultant overhead rate, if applicable;
    - f. for social services, a detailed budget or other cost breakdown as may be required by the using agency and/or the federal government.

B. All request for proposals (RFP) solicitations shall:

1. provide for a blackout period in accordance with §341 of this Part;
2. require, and provide prominent notice, that a proposal must attain a minimum technical score equal to 50 percent or more of available technical points to be eligible to proceed to evaluation of cost or other point categories. No proposal which has failed to attain or exceed such a minimum technical score may be evaluated for cost, certified

small entrepreneurship initiative participation, or any other category, nor may any prior calculation for cost or certified small entrepreneurship initiative participation be included in any final comparative tabulation if the proposer's technical score falls below 50 percent of available technical points subsequently. The State Chief Procurement Officer, or his designee, may waive the requirement to include this provision in writing if doing so is determined to be in the best interests of the state.

3. require, and provide prominent notice, if the RFP allocates points for Hudson or Veteran initiative points, that any awarded proposer which includes a good faith subcontracting plan for certified small entrepreneurship (e.g. Hudson, Veteran, or Service-Connected Disabled Veteran) initiative participation shall be subject to audit by the Louisiana Department of Economic Development or the Office of State Procurement to determine whether the contractor has complied in good faith with its subcontracting plan. The contractor must be able to provide supporting documentation to demonstrate that the good faith subcontracting plan was followed. If it is determined at any time by the using agency or the Office of State Procurement that the contractor did not in fact perform in good faith its subcontracting plan relative to certified small entrepreneurship initiative participation, the contract award or contract may be terminated by the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:495 (December 1978), amended LR 7:180 (April 1981), LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1072 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2567 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1283 (July 2015), repromulgated LR 41:1670 (September 2015), amended LR 44:767 (April 2018), LR 47:

**§2605. Procedures**

**[Formerly LAC 34:V.2545.A.2]**

A. The final selection of a contractor shall be made in accordance with the selection criteria established in the RFP. However, no contract may be enforced against the state until approval of the contract has been granted by the Office of State Procurement. When a final selection has been made, but prior to notice of award, the contract file containing the request for proposals, along with a selection memorandum justifying the final selection, shall be sent to the Office of State Procurement for final concurrence. The selection memorandum shall include, but not be limited to:

1. a list of criteria used along with the weight assigned each criteria;
2. scores of each proposal considered in each of the categories listed above along with overall scores of each proposal considered;
3. a narrative justifying selection.

B. After final negotiation and execution, the contract shall be sent to the Office of State Procurement for final review and approval.

C. Right to Protest. Any person who is aggrieved in connection with the request for proposal or award may protest and appeal pursuant to the provisions of R.S. 39:1671, 1681, 1683, 1691, and 1692.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:495 (December 1978), amended LR 7:180 (April 1981), LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1072 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2567 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1283 (July 2015), repromulgated LR 41:1670 (September 2015), amended LR 44:767 (April 2018), LR 47:

**Chapter 27. Intergovernmental Regulations**  
**§2703. Cooperative Purchasing Shall Not Adversely Affect Employees**  
**[Formerly LAC 34:I.2503]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), LR 40:2573 (December 2014), repealed, LR 47:

**Chapter 29. Education**  
**§2901. Department of Education Procurement**  
**[Formerly LAC 34:I.2901]**

Repealed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1572(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 14:429 (July 1988), repromulgated LR 40:1365 (July 2014), repealed LR 47:

**Chapter 31. Protests and Appeals, Bidder Responsibility, Suspension and Debarment of Bidders, and Contract Controversies for Boards and Institutions of Higher Education**

**§3101. Application**  
**[Formerly LAC 34:V.3103]**

A. This Chapter shall only apply to boards of higher education and institutions under their jurisdiction in accordance with R.S. 39:1671, 1672, and 1673 of Title 39 of the *Louisiana Revised Statutes*, unless the institution is operating under a pilot procurement code in accordance with R.S. 17:3139.5(5)(c)(i), or R.S. 17:3393(A)(2)(d), which has adopted rules or procedures that supersede these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 9:210 (April 1983), amended LR 23:67 (January 1997), repromulgated LR 40:1366 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1671 (September 2015), amended LR 44:769 (April 2018), repromulgated LR 47:

**§3103. Definitions**  
**[Formerly LAC 34:V.3101]**

*Aggrieved Person*—a person who files a written protest in connection with the solicitation or award or the issuance of a written notice of intent to award a contract under the Louisiana Procurement Code and has or may have a

pecuniary or other property interest in the award of the contract.

*Candidate for Suspension or Debarment*—a candidate for suspension or debarment is a person, who in the opinion of the chief procurement officer has committed an action giving cause for suspension or debarment pursuant to R.S. 39:1672.C.

*Commissioner*—the commissioner of the Division of Administration.

*Contractor*—a person who has been awarded a contract.

*Hearing Officer*—the chief procurement officer or his designee who shall exercise such authority as is granted for the conduct of protests in accordance with the provisions of the Louisiana Procurement Code [title 39:1551 et seq., section 1671(B)].

*Interested Person*—any person who has submitted a bid in response to an invitation to bid, a request for proposals, or other solicitation issued under the Louisiana procurement code who has or may have a pecuniary or other property interest which may be affected by a determination made in a protest hearing.

*Party*—as used herein, unless the content clearly indicates otherwise, is either a contractor or a candidate for suspension or debarment or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), repromulgated LR 40:1365 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018), repromulgated LR 47:

**Family Impact Statement**

The proposed Rules are not anticipated to have an impact on family formation, functioning, stability, or autonomy, as described in R.S. 49:972.

**Poverty Impact Statement**

The proposed Rules are not anticipated to have an impact on poverty, as described in R.S. 49:973.

**Small Business Statement**

The proposed Rules are not anticipated to have an adverse effect or economic impact on small businesses in accordance with the Regulatory Flexibility Act. The Office of State Procurement has used methods consistent with R.S. 49:965.6 to avoid adverse impacts to small businesses.

**Provider Impact Statement**

The proposed Rules are not anticipated to have an impact on providers of services funded by the state as described in HCR 170 of the 2014 Regular Legislative Session.

**Public Comments**

Interested persons may submit written comments about the proposed Rules to the Office of State Procurement, Attn.: Jonathan Walker, P.O. Box 94095, Baton Rouge, LA 70804-9095. Mr. Walker is responsible for responding to inquiries regarding this proposed Rules. The deadline for receipt of written comments is Wednesday, March 3, 2021 at 4:30pm.

**Public Hearing**

A public hearing on the proposed Rules will be held on Friday, February 26, 2021, beginning at 10 AM, in the Thomas Jefferson Room C (01-136C) on the first floor of the Claiborne Building, which is located at 1201 North Third Street, Baton Rouge, LA. All interested persons will be afforded an opportunity to submit data, views, or arguments, orally or in writing, at the hearing. Individuals with disabilities who require special services or accommodations

should contact Jonathan Walker at least seven working days in advance of the hearing. For assistance, please call 225-342-1038 or email jonathan.walker@la.gov.

Paula Tregre  
Director

**FISCAL AND ECONOMIC IMPACT STATEMENT  
FOR ADMINISTRATIVE RULES  
RULE TITLE: Procurement**

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes are anticipated to result in no substantial costs or savings to state or local governmental units. The proposed rule changes reflect legislative revisions to pertinent statutes, update or remove outdated or outmoded requirements, reduce duplication or discordance relative to statutes, correct administrative errors, and provide for greater efficiency within the state's procurement activities. The net fiscal and economic effect of these proposed rule changes is projected to be negligible.

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The proposed rule changes are not anticipated to impact revenue collections of state or local governmental units.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

The proposed rule changes are not anticipated to create costs for directly affected persons or nongovernmental groups. It is possible that procedural efficiencies as addressed in Paragraph IV below may result in minor economic benefits to participants in the procurement processes governed by these rules. For example, if a vendor were able to avoid bid disqualification by being able to more clearly discern the regulatory requirements applicable to that procurement, such action could have a significant and positive impact on that vendor's receipts and income, because it could make the difference in whether or not that vendor wins the bid to provide goods and services. In the aggregate, however, it is impossible to reliably estimate the net benefit for a typical or average vendor.

This action should make it easier for vendors to compete compliantly and efficiently. Requirements applicable to bidders and proposers will be more readily apparent to any interested party on the front end, so that participants, regulatory entities, other stakeholders, and the public can have confidence in the transparency, fairness, and propriety of the procurement process and resulting contracts.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on employment as a result of the proposed rule changes. The proposed rule changes are to improve clarity and efficiency for state procurement processes. Such efficiencies, if realized, would tend to increase competition by removing ambiguity, unnecessary effort, and other inadvertent barriers to entry potentially acting as a disincentive to vendor participation. The extent of such efficiencies is relatively minor in the scope of the underlying procurement activities, so the effect on competition is presumed to be positive but small.

Paula B. Tregre  
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2101#019

Alan M Boxberger  
Staff Director  
Legislative Fiscal Office