

Regular Session, 2014

HOUSE BILL NO. 927

BY REPRESENTATIVE TIM BURNS

PROCUREMENT: Provides for the merger of the office of contractual review and the office of state purchasing

1 AN ACT

2 To amend and reenact R.S. 36:4(B)(1)(b) and Chapter 17 of Subtitle I of Title 39 of the
3 Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:1551 through 1758,
4 and to repeal Chapter 16 of Subtitle I of Title 39 of the Louisiana Revised Statutes
5 of 1950, to be comprised of R.S. 39:1481 through 1526, relative to state
6 procurement; to provide for the structure of the executive branch of state
7 government; to provide for the merger of the function and duties of the office of
8 contractual review and the office of state purchasing into the office of state
9 procurement; to provide terms, conditions, definitions, procedures and effects; to
10 provide for changes in designations by the Louisiana State Law Institute; and to
11 provide for related matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1.R.S. 36:4(B)(1)(b) is hereby amended and reenacted to read as follows:

14 §4. Structure of executive branch of state government

15 * * *

16 B. The office of the governor shall be in the executive branch of state
17 government.

18 (1) The following agencies and their powers, duties, functions, and
19 responsibilities are hereby transferred to the office of the governor:

20 * * *

1 §1553. Construction

2 A. Supplementary general principles of law applicable. To the extent not
3 inconsistent with the particular provisions of this Chapter, the principles of Louisiana
4 law shall supplement its provisions.

5 B. Obligation of good faith. Every contract or duty within this Chapter
6 imposes an obligation of good faith in its performance or enforcement. "Good faith"
7 means honesty in fact in the conduct or transaction concerned and the observance of
8 reasonable commercial standards of fair dealing.

9 §1554. Application of this Chapter

10 A. General application. This Chapter applies only to contracts solicited or
11 entered into after the effective date of this Chapter unless the parties agree to its
12 application to a contract entered into prior to the effective date.

13 B. Application to state procurement. Except as otherwise provided ~~in~~
14 ~~Subsections C and D~~ below, this Chapter shall apply to every expenditure of public
15 funds irrespective of their source, including federal assistance monies except as
16 otherwise specified in Subsection F below, by this state, acting through a
17 governmental body defined herein, under any contract for supplies, services, or
18 major repairs defined herein, except that this Chapter shall not apply to either grants
19 or contracts between the state and its political subdivisions or other governments,
20 except as provided in Part VII (Intergovernmental Relations). Notwithstanding any
21 other provision of this Chapter, the provisions of R.S. 38:2181 through R.S. 38:2316
22 shall govern the procurement of construction and the selection of architects,
23 engineers, and landscape architects by governmental bodies of this state, and R.S.
24 38:2181 through R.S. 38:2316 shall not apply to any procurement of supplies,
25 services, or major repairs by the state except that the provisions of R.S. 38:2301 shall
26 be applicable to major repairs.

27 C. Procurement by the governor. Notwithstanding any other provisions of
28 this Chapter, the governor shall procure all materials, supplies, equipment, and
29 contractual services required for the governor's mansion, the cafeteria operated in the

1 state capitol, and similar agencies. The procurement shall, insofar as practicable, be
2 in accordance with the provisions of this Chapter.

3 D. Exclusions. (1) This Chapter shall not be construed to change, affect,
4 increase, or relieve the requirements of:

5 (a) R.S. 42:261 through R.S. 42:264, regarding the retaining and
6 employment of lawyers.

7 ~~(b) R.S. 39:1481 through R.S. 39:1526, regarding the procurement of~~
8 ~~professional, personal, consulting, and social services.~~

9 ~~(c) Repealed by Acts 1983, No. 306, §3.~~

10 ~~(d)~~ (b) R.S. 23:3025, as regarding the purchase of products or services from
11 individuals who are blind.

12 (2) This Chapter shall not be applicable to the legislative and judicial
13 branches of state government or to any agency within the legislative branch of state
14 government.

15 (3) The office for citizens with developmental disabilities in the Department
16 of Health and Hospitals shall be exempt from the requirements of R.S. 39:1643 in
17 order to lease residential living options for mentally retarded or developmentally
18 disabled individuals without carrying out the competitive sealed bidding requirement
19 of this Chapter.

20 (4) This Chapter shall not be applicable to any hospital owned or operated
21 by the state through the Department of Health and Hospitals for the purchase of
22 supplies, materials, and equipment from a qualified group purchasing organization
23 if the Department of Health and Hospitals, with the concurrence of the division of
24 administration, has determined that the cost is less than the state procurement prices,
25 and that it is in the best interest of the state to purchase the supplies, materials, and
26 equipment from the qualified group purchasing organization.

27 (5) This Chapter shall not be applicable to the purchase of any medical
28 supplies or medical equipment from a qualified group purchasing organization if the
29 commissioner of administration has determined that it is in the best interest of the

1 state to purchase the medical supply or medical equipment from the qualified group
2 purchasing organization. An annual report on the number, type, and volume of such
3 procurements shall be made to the commissioner of administration, the speaker of
4 the House of Representatives, and the president of the Senate.

5 (6) The provisions of this Chapter shall not be applicable to the State Bond
6 Commission in the solicitation of bids for printing of financial documents. However,
7 the State Bond Commission shall obtain a minimum of three written or telefaxed
8 bids from separate vendors which meet the criteria required by the State Bond
9 Commission for printing of financial documents.

10 (7) The provisions of this Chapter shall not be applicable to interinstitutional
11 agreements between co-owners of intellectual property when one co-owner is a
12 Louisiana regionally accredited college, technical school, or university.

13 (8) Contracts awarded by an agency for the benefit of an industry, payment
14 of which comes from self-generated funds received from that industry, are exempt
15 from the requirements of this Chapter provided that any such contract is awarded
16 through a competitive process.

17 E.(1) Political subdivisions authorized to adopt this Chapter. The
18 procurement of supplies, services, major repairs, and construction by political
19 subdivisions of this state shall be in accordance with the provisions of Chapter 10 of
20 Title 38 of the Louisiana Revised Statutes of 1950, except that all political
21 subdivisions are authorized to adopt all or any part of this Chapter and its
22 accompanying regulations.

23 (2) Additionally, all political subdivisions which are not subject to this
24 Chapter may adopt the provisions of R.S. 39:1598.1 and its accompanying
25 regulations.

26 F. Compliance with federal requirements. Where a procurement involves
27 the expenditure of federal assistance or contract funds, the procurement officer shall
28 comply with such federal law and authorized regulations which are mandatorily
29 applicable and which are not reflected in this Chapter.

1 G. Applicable to Department of Public Safety and Corrections.

2 ~~(1) Repealed by Acts 1999, No. 1164, §5.~~

3 ~~(2)~~ Because the prison enterprise system operates under the constraints of an
4 income statement, the secretary of the Department of Public Safety and Corrections
5 shall have the authority, notwithstanding any other provisions of law, to purchase for
6 that system used agricultural and industrial equipment sold at public auction which
7 shall result in savings to the correctional system, according to the following terms
8 and conditions:

9 ~~(a)~~ (1) The used agricultural and industrial equipment shall be purchased by
10 the secretary within the price range set by the ~~director of state purchasing~~ chief
11 procurement officer in his statement of written approval for the purchase which must
12 be obtained by the secretary prior to purchase.

13 ~~(b)~~ (2) The secretary shall certify in writing to the ~~director of state purchasing~~
14 chief procurement officer all of the following:

15 ~~(i)~~ (a) The price for which the used equipment may be obtained.

16 ~~(ii)~~ (b) The plan for maintenance and repair of the equipment and the cost
17 thereof.

18 ~~(iii)~~ (c) The savings that will accrue to the state because of the purchase of
19 the used equipment.

20 ~~(iv)~~ (d) The fact that following the procedures set out in the Louisiana
21 Procurement Code will result in the loss of the opportunity to purchase the
22 equipment.

23 H. Exemption for inmate canteens and the employee commissary of the
24 Louisiana State Penitentiary. Whenever, for sound economic reasons and improved
25 administrative procedures, the secretary of the Department of Public Safety and
26 Corrections certifies in writing that it is not practical to comply with the provisions
27 of this Chapter, the Department of Public Safety and Corrections may procure the
28 various items for resale to inmates at the inmate canteens in state correctional
29 facilities and the various items for resale to employees of the department at the

1 employee commissary of the Louisiana State Penitentiary, without competitive
2 sealed bidding as required in R.S. 39:1594 and without complying with the
3 requirements of R.S. 39:1597. Any procurement pursuant to this Subsection is
4 exempt from the provisions of R.S. 39:1611. Any contract entered into pursuant to
5 this Subsection must have prior written approval of the commissioner of
6 administration, the Joint Legislative Committee on the Budget, and the attorney
7 general, who shall only approve the contract if they determine in writing that it is in
8 the best interest of the state to enter into the contract. All such information shall be
9 of public record.

10 I. Plasmapheresis programs. All plasmapheresis programs operated for and
11 participated in by inmates in correctional facilities under the jurisdiction of the
12 Department of Public Safety and Corrections, or its designees or assignees, such as
13 private contractors operating correctional facilities under contract with the
14 department, shall operate only pursuant to a contract entered into independent of any
15 other contracts for prison management or operation, and only pursuant to competitive
16 sealed bids on an individual basis at each penal institution and other facility in
17 accordance with this Chapter. Contracts presently in existence affecting all
18 plasmapheresis programs on site and off site shall be excluded and shall remain in
19 effect for the duration of the contract.

20 J. This Chapter shall not apply to the following procurements:

21 (1) This Chapter shall not apply to professional services for engineering
22 design contracts, construction contracts, or contracts for surveying pertaining to the
23 maintenance and construction of roads and bridges, flood control, integrated coastal
24 protection, aviation, public transportation, or public works entered into by the
25 Department of Transportation and Development as provided in Part XIII-A of
26 Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950.

27 (2) This Chapter shall not apply to consulting service contracts with
28 appraisers, foresters, economists, right-of-way agents, title abstractors, asbestos
29 abatement inspectors, negotiators, accountants, and cost consultants relating to

1 acquisition of rights-of-way for maintenance and construction projects entered into
2 by the Department of Transportation and Development.

3 (3) This Chapter shall not apply to grants or contracts or like business
4 agreements between the state and its political subdivisions or other governmental
5 entities, or between higher education boards and institutions under their jurisdiction.

6 (4) This Chapter shall not apply or affect licensed insurance agents appointed
7 as agents of record on policies insuring any of the state's insurable interests. Nor
8 shall it apply to or affect insurance consultants and actuaries when used in lieu of
9 agents of record, so long as fees paid do not exceed the commission that would have
10 been paid to said agents of record.

11 (5) This Chapter shall not apply to those services performed by architects,
12 engineers, or landscape architects as provided for in R.S. 38:2310-38:2316, nor shall
13 the provisions of this Chapter affect or otherwise limit the duties, functions, and
14 jurisdiction of the Louisiana Architect Selection Board, the Louisiana Engineer
15 Selection Board, or the Louisiana Landscape Architect Selection Board.

16 (6) This Chapter shall not apply to any contract or like business agreement
17 to purchase professional, personal, consulting, or contract services required or
18 utilized by the Louisiana Agricultural Finance Authority authorized under the
19 provisions of Chapter 3-B of Title 3 of the Louisiana Revised Statutes of 1950.

20 (7)(a) This Chapter shall not apply to those personal, professional, or social
21 services provided to the clients of the Department of Health and Hospitals, the
22 Department of Children and Family Services, the office of special education services
23 within the Department of Education, provided that the expense for these special
24 education services is five thousand dollars or less per child, corrections services
25 within the Department of Public Safety and Corrections, or the office of juvenile
26 justice, Department of Public Safety and Corrections, in the following circumstances:

27 (i) When these services are accessed directly by clients through utilization
28 of medical vendor cards, with the clients arranging services with providers and
29 providers then billing the agency for payment.

1 (ii) When clients of a particular program area are guaranteed freedom of
2 choice in selection of a provider of services.

3 (iii) When personal and professional services are arranged on a case-by-case
4 basis by a worker as the need arises.

5 (iv) When social services are arranged on a case-by-case basis from a social
6 service provider qualifying under R.S. 39:1494.1(A).

7 (v) When the using agency arranging social services on a case-by-case basis
8 makes no guarantee of specific sums of monthly or annual payment or referrals of
9 clientele.

10 (b) This Chapter shall not apply if personal, professional, or social services
11 are provided for the primary benefit of a single using agency provided for in R.S.
12 39:1482(F)(1), and said agency exhibits budgetary and programmatic control over
13 the provider of the services, and the deliverables of the services are intended solely
14 for the benefit of the using agency, the provisions of this Chapter shall apply.

15 (c) This Chapter shall not apply to the use of professional services of
16 physicians who provide consultative examinations regarding applicants for disability
17 benefits under the Social Security act by the disability determinations service of the
18 Department of Children and Family Services.

19 (d) This Chapter shall not apply to the taking of Medicaid applications by
20 certified Medicaid enrollment centers for prospective Medicaid clients pursuant to
21 an agreement with the Department of Health and Hospitals and in accordance with
22 federal regulations.

23 (8) This Chapter shall not apply to any contract or like business agreement
24 to hire professional, personal, consulting, or contract services required or utilized by
25 the State Market Commission under the provisions of Part I-D of Chapter 5 of Title
26 3 of the Louisiana Revised Statutes of 1950.

27 (9) This Chapter shall not apply to any contract for a court reporter or expert
28 witness utilized by a governmental body for the purpose of taking depositions, giving

1 expert testimony, or other related matters if such contract has a total amount of
2 compensation of less than five thousand dollars.

3 (10) This Chapter shall not apply to any contract for the procurement of
4 individualized agreements for persons with developmental disabilities by the
5 Department of Health and Hospitals.

6 (11)(a) This Chapter shall not apply to contracts of an institution of higher
7 education or other agency of higher education, hereinafter collectively referred to as
8 "higher education entity", to which the state chief procurement officer has delegated
9 authority to procure services with private grant funds or federal funds specifically
10 provided for such purpose.

11 (b) This Chapter shall not apply to procurements conducted by a higher
12 education entity operating under delegation of authority as provided herein shall be
13 made in accordance with all federal requirements necessary for the receipt and use
14 of such private grant or federal funds, particularly with regard to competitive bidding
15 requirements for procurement of research services. Further, in making such
16 procurements, such entity may also consider factors such as quality, reliability,
17 expected life span, and compatibility with existing equipment or research protocols,
18 as permitted under federal guidelines.

19 (12) This Chapter shall not apply to procurements conducted by a higher
20 education entity operating under a pilot procurement code in accordance with Act
21 418 of the 2011 Regular Session.

22 (13) Additionally, all political subdivisions which are not subject to this
23 Chapter may adopt the provisions of R.S. 39:1598.1 and its accompanying
24 regulations.

25 §1554.1. Federal block grants

26 The provisions of this Part shall be applicable to any goods and services
27 procured with funds pursuant to the federally enacted community services block
28 grant or community development block grant.

29 SUBPART B. DEFINITIONS

1 §1556. Definitions

2 As used in this Chapter, the words defined in this Section shall have the
3 meanings set forth below, unless the context in which they are used clearly requires
4 a different meaning or a different definition is prescribed for a particular Part or
5 provision:

6 (1) "Agency" as used in this Chapter and in Part V of Chapter 1 of this Title
7 shall have the same meaning ascribed to it as provided in R.S. 36:3(1).

8 (2) "Assembled" means the process of putting together all component parts
9 of an item of equipment by the manufacturer where the assembly plant is located
10 within the territorial borders of the state of Louisiana. "Assembled" shall not mean
11 the reassembly of parts packed for shipping purposes.

12 ~~(1)~~ (3) "Business" means any corporation, partnership, individual, sole
13 proprietorship, joint stock company, joint venture, or any other legal entity through
14 which business is conducted.

15 (4) "Central Purchasing Agency" means the office of state procurement.

16 ~~(2)~~ (5) "Change order" means a written order signed by the chief
17 procurement officer, directing the contractor to make changes which the changes
18 clause of the contract authorizes the chief procurement officer to order without the
19 consent of the contractor.

20 ~~(3)~~ (6) "Chief procurement officer" means the state director of purchasing the
21 person holding the position created in R.S. 39:1562 and the directors of purchasing
22 of the departments exempt from central purchasing the office of state procurement
23 by R.S. 39:1572.

24 (7) "Claims adjuster" means an individual engaged in the investigation,
25 evaluation, and negotiation of property, casualty, and worker's compensation
26 insurance claims.

27 (8) "Complex procurement" means that the procurement requires any
28 combination of supplies, services, consulting services or major repairs to fulfill a

1 specified scope of work. The scope of work is so complicated or intricate that
2 factors other than price must be evaluated in order to identify the best value.

3 (9) "Consulting service" means work, other than professional, personal, or
4 social service, rendered by either individuals or firms who possess specialized
5 knowledge, experience, and expertise to investigate assigned problems or projects
6 and to provide counsel, review, design, development, analysis, or advice in
7 formulating or implementing programs or services, or improvements in programs or
8 services, including but not limited to such areas as management, personnel, finance,
9 accounting, planning, data processing, and advertising contracts, except for printing
10 associated therewith.

11 ~~(4)~~ (10) "Contract" means all types of state agreements, regardless of what
12 they may be called, ~~for the purchase of supplies, services, or major repairs. It~~
13 ~~includes awards and notices of award; contracts of a fixed-price, cost,~~
14 ~~cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job~~
15 ~~or task orders; leases; letter contracts; and purchase orders. It also includes~~
16 ~~supplemental agreements with respect to any of the foregoing; including orders and~~
17 ~~documents purporting to represent grants, which are for the purchase or disposal of~~
18 ~~supplies, services, major repairs or any other item. "Contract" also includes contract~~
19 ~~modifications.~~

20 ~~(5)~~ (11) "Contract modification" means any written alteration in
21 specifications, delivery point, rate of delivery, period of performance, price, quantity,
22 or other provisions of any contract accomplished by mutual action of the parties to
23 the contract.

24 ~~(6)~~ (12) "Contractor" means any person having a contract with a
25 governmental body.

26 (13) "Cooperative purchasing" means procurement conducted by or on
27 behalf of more than one public procurement unit or by a public procurement unit
28 with an external procurement activity or by a private procurement unit.

1 (14) "Cost-reimbursement contract" means a contract under which a
2 contractor is reimbursed for costs which are allowable and allocable in accordance
3 with cost principles as provided for in regulations, and a fee, if any.

4 (15) "Court" means the Nineteenth Judicial District located in Baton Rouge
5 and, in the event of an appeal from such a court, the First Circuit Court of Appeal
6 located in Baton Rouge.

7 ~~(7)~~ (16) "Data" means recorded information, regardless of form or
8 characteristic.

9 ~~(8)~~ (17) "Debarment" means the disqualification of a person to receive
10 invitations for bids or requests for proposals, or the award of any contract by any
11 governmental body, for a specified period of time commensurate with the
12 seriousness of the offense or the failure or the inadequacy of performance.

13 ~~(9)~~ (18) "Designee" means a duly authorized representative of a person
14 holding a superior position.

15 (19) "Electronic" means electrical, digital, magnetic, optical, electromagnet,
16 or any other similar technology.

17 (20) "Employee" means an individual drawing a salary from a governmental
18 body, whether elected or not, and any nonsalaried individual performing personal
19 services for any governmental body.

20 (21) "Established catalog price" means the price included in a catalog, price
21 list, schedule, or other form that:

22 (a) Is regularly maintained by a manufacturer or contractor.

23 (b) Is either published or otherwise available for inspection by customers.

24 (c) States prices at which sales are currently or were last made to a
25 significant number of buyers constituting the general buying public for the supplies
26 or services involved.

27 (22) "External procurement activity" means any buying organization not
28 located in this state which, if located in this state, would qualify as a public

1 procurement unit. An agency of the United States government is an external
2 procurement activity.

3 ~~(10) "Governmental body" means any department, office, division,~~
4 ~~commission, council, board, bureau, committee, institution, agency, government~~
5 ~~corporation, or other establishment or official of the executive or judicial branches~~
6 ~~of state government.~~

7 (23) "Governmental body" means any department, commission, council,
8 board, bureau, committee, institution, agency, government corporation, or other
9 establishment or official of the executive branch of this state.

10 (24) "Governmental entity" means any governmental unit which is not
11 included in the definition of "governmental body" in R.S..

12 ~~(11)~~ (25) "Grant" means the furnishing by the state of assistance, whether
13 financial or otherwise, to any person to support a program authorized by law. It does
14 not include an award whose primary purpose is to procure an end product, whether
15 in the form of supplies, services, or major repairs; a contract resulting from such an
16 award is not a grant but a procurement contract.

17 (26) "Information technology", which includes telecommunications and shall
18 mean those commodities subject to the authority of the Office of Information
19 Technology.

20 ~~(12)~~ (27) "Installment-purchase contract" means a contract which is utilized
21 to procure supplies or equipment from a contractor where payment for the supplies
22 or equipment is made in a set of installment payments over a fixed period of time in
23 accordance with the provisions of the contract, and in which the contractor agrees to
24 deliver title of the property to the governmental body in accordance with the terms
25 and conditions of the contract.

26 (28) "Invitation for bids" means all documents, whether attached or
27 incorporated by reference, utilized for soliciting bids in accordance with the
28 procedures set forth in R.S. 39:1594.

1 (29) "Interagency contract" means any contract in which each of the parties
2 thereto is a "governmental body" as defined in R.S. 39:1484(11).

3 (30) "Local public procurement unit" means any parish, city, town,
4 governmental body, and any other subdivision of the state or public agency thereof,
5 public authority, public educational, health, or other institution, and to the extent
6 provided by law, any other entity which expends public funds for the acquisition or
7 leasing of supplies, services, major repairs, and construction, and any nonprofit
8 corporation operating a charitable hospital.

9 ~~(13)~~ (31) "Major repairs" means those repairs payable with funds
10 appropriated in the general appropriations act, except those funds transferred from
11 the operating budget of one governmental body to supplement and complete a project
12 under contract by the division of administration facility planning and control section.

13 ~~(14)~~ (32) "May" denotes the permissive.

14 (33) "Negotiation" means the formulation of a contractual relationship
15 through discussions as may be allowed under this Chapter.

16 (34) "Operating service" means routine operation of programs, existing
17 facilities, structures, buildings or real property that are not considered to be
18 professional, social, consulting, or personal services.

19 (35) "Performance-based energy efficiency contract" means a contract for
20 energy efficiency services and equipment in which the payment obligation for each
21 year of the contract is either:

22 (a) Set as a percentage of the annual energy cost savings attributable to the
23 services or equipment under the contract, or

24 (b) Guaranteed by the person under contract to be less than the annual energy
25 cost savings attributable to the services or equipment under the contract.

26 ~~(15)~~ (36) "Person" means any business, individual, union, committee, club,
27 or other organization or group of individuals.

28 (37) "Personal service" means work rendered by individuals which requires
29 use of creative or artistic skills, such as but not limited to graphic artists, sculptors,

1 musicians, photographers, and writers, or which requires use of highly technical or
2 unique individual skills or talents, such as but not limited to paramedicals, therapists,
3 handwriting analysts, foreign representatives, and expert witnesses for adjudications
4 or other court proceedings. A "foreign representative" shall mean a person in a
5 foreign country whose education and experience qualify such person to represent the
6 state in such foreign country.

7 ~~(16)~~ (38) "Practicable" means that which can be done or put into practice;
8 feasible.

9 (39) "Private procurement unit" means any independent institution of higher
10 education in this state.

11 ~~(17)~~ (40) "Procurement" means the buying, purchasing, renting, leasing, or
12 otherwise obtaining any supplies, services, or major repairs. It also includes all
13 functions that pertain to the obtaining of any public procurement, including
14 description of requirements, selection and solicitation of sources, preparation and
15 award of contract, and all phases of contract administration.

16 ~~(18)~~ (41) "Procurement officer" means any person authorized by a
17 governmental body, in accordance with procedures prescribed by regulations, to
18 enter into and administer contracts and make written determinations and findings
19 with respect thereto. The term also includes an authorized representative acting
20 within the limits of authority.

21 (42) "Professional service" means work rendered by an independent
22 contractor who has a professed knowledge of some department of learning or science
23 used by its practical application to the affairs of others or in the practice of an art
24 founded on it, which independent contractor shall include but not be limited to
25 lawyers, doctors, dentists, psychologists, certified advanced practice nurses,
26 veterinarians, architects, engineers, land surveyors, landscape architects, accountants,
27 actuaries, and claims adjusters. A profession is a vocation founded upon prolonged
28 and specialized intellectual training which enables a particular service to be
29 rendered. The word "professional" implies professed attainments in special

1 knowledge as distinguished from mere skill. For contracts with a total amount of
2 compensation of fifty thousand dollars or more, the definition of "professional
3 service" shall be limited to lawyers, doctors, dentists, psychologists, certified
4 advanced practice nurses, veterinarians, architects, engineers, land surveyors,
5 landscape architects, accountants, actuaries, claims adjusters, and any other
6 profession that may be added by regulations adopted by the office of state
7 procurement.

8 (43) "Public procurement unit" means either a local public procurement unit
9 or a state public procurement unit.

10 (44) "Purchase description" means specifications or any other document
11 describing the supplies, services, or major repairs to be procured.

12 ~~(19)~~ (45) "Purchase request" means that document whereby a using agency
13 requests that a contract be obtained for a specified need, and may include, but is not
14 limited to, the technical description of the requested item, delivery schedule,
15 transportation, criteria for evaluation of solicitees, suggested sources of supply, and
16 information supplied for the making of any written determination and finding
17 required by this Chapter.

18 ~~(20)~~ (46) "Purchasing agency" means any governmental body which is
19 authorized by this Chapter or its implementing regulations, or by way of delegation
20 from the ~~state director of purchasing~~ state chief procurement officer, to contract on
21 its own behalf rather than through the central contracting authority of the ~~central~~
22 ~~purchasing agency~~ office of state procurement.

23 ~~(21)~~ (47) "Qualified group purchasing organization" means a service
24 organization, whether for profit or not, with a membership of at least fifteen hospitals
25 within the United States, which contracts with suppliers for supplies and materials
26 used in hospitals and makes such contracts available to its members.

27 (48) "Request for proposals" means all documents, whether attached or
28 incorporated by reference, utilized for soliciting proposals in accordance with the
29 procedures set forth in this Chapter.

1 (49) "Resident business" means one authorized to do and doing business
2 under the laws of this state, which either:

3 (a) Maintains its principal place of business in the state; or

4 (b) Employs a minimum of two employees who are residents of the state.

5 (50) "Responsible bidder or offeror" means a person who has the capability
6 in all respects to perform the contract requirements and the integrity and reliability
7 which will assure good faith performance.

8 (51) "Responsive bidder" means a person who has submitted a bid under
9 R.S. 39:1594 which conforms in all substantive respects to the invitation for bids,
10 including the specifications set forth in the invitation.

11 (52) "Reverse auction" means a competitive online solicitation process on
12 the internet for materials, supplies, services, products, or equipment in which
13 vendors compete against each other online in real time and an open and interactive
14 environment.

15 ~~(22)~~ (53) "Sealed bidding" means the receipt of bids protected from
16 inspection prior to bid opening. Bids may be received in any manner specified in the
17 invitation for bids including receipt by mail, by direct delivery, or through any secure
18 electronic interactive environment permitted by rule or regulation.

19 ~~(23)~~ (54)(a) "Services" means the furnishing of labor, time, or and effort by
20 a contractor, ~~not involving the delivery of a specific end product other than reports~~
21 ~~which are merely incidental to the required performance.~~ whose primary purpose is
22 to perform an identifiable task rather than to furnish an end item of supply, some of
23 the areas of services include the following:

24 (i) Maintenance, overhaul, repair, servicing, rehabilitation, salvage,
25 modernization, or modification of supplies, systems, or equipment.

26 (ii) Routine recurring maintenance of real property.

27 (iii) Housekeeping and services.

28 (iv) Advisory and assistance services.

29 (v) Operation of government-owned equipment, real property, and systems

1 (vi) Information technology services

2 (vii) Research and development

3 (b) This term "Services" shall not include:

4 ~~(a)~~ (i) Employment agreements or collective bargaining agreements.

5 ~~(b)~~ (ii) Personal, professional, consultant, or social services as provided by
6 R.S. 39:1481 through R.S. 39:1526.

7 ~~(c)~~ (iii) Services performed by lawyers as provided by R.S. 42:261 through
8 R.S. 42:264.

9 ~~(d)~~ (iv) Services performed by an architect, engineer, or landscape architect
10 as provided by R.S. 38:2310 through R.S. 38:2314.

11 ~~(24)~~ (55) "Shall" denotes the imperative.

12 (56) "Signature" means a manual or electronic signature as defined by R.S.
13 9:2602(8).

14 ~~(22)~~ (57) "Social service" means work rendered by any person, firm,
15 corporation, organization, governmental body, or governmental entity in furtherance
16 of the general welfare of the citizens of Louisiana, including but not limited to the
17 objectives provided for in Subsection B of this Section.

18 (58) "Specification" means any description of the physical or functional
19 characteristics, or of the nature of a supply, service, or major repair. It may include
20 a description of any requirement for inspecting, testing, or preparing a supply,
21 service, or major repair for delivery.

22 ~~(25)~~ "State director of purchasing" means the person holding the position
23 created in R.S. 39:1562, as the head of the central purchasing office of Louisiana.

24 (5) "State chief procurement officer" means the person holding the position
25 created in R.S. 39:1562, as head of the central purchasing office of Louisiana.

26 (60) "State public procurement unit" means the central purchasing agency
27 and any other purchasing agency of this state.

28 (61) "Supplemental agreement" means any contract modification which is
29 accomplished by the mutual action of the parties.

1 ~~(26)~~ (62) "Supplies" means all property, including but not limited to
2 equipment, materials, insurance, and leases on real property excluding land or a
3 permanent interest in land.

4 ~~(27)~~ (63) "Suspension" means the disqualification of a person to receive
5 invitations for bids or requests for proposals, or the award of a contract by the state,
6 for a temporary period pending the completion of an investigation and any legal
7 proceedings that may ensue because a person is suspected upon probable cause of
8 engaging in criminal, fraudulent, or seriously improper conduct or failure or
9 inadequacy of performance which may lead to debarment.

10 ~~(28)~~ (64) "Using agency" means any governmental body of the state which
11 utilizes any supplies, services, or major repairs purchased under this Chapter.

12 ~~(29)~~ (65) "Written" or "in writing" means the product of any method of
13 forming characters on paper, other materials, or viewable screen, which can be read,
14 retrieved, and reproduced, including information that is electronically transmitted
15 and stored.

16 SUBPART C. RECORDS; PUBLIC ACCESS

17 §1557. Public access to procurement information

18 Procurement information shall be a public record to the extent provided in
19 Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950 and shall be
20 available to the public as provided in such statute.

21 §1557.1. Change orders; recordation

22 Each change order to a contract which adds an amount of ten percent or more
23 of the original contract amount and which additional amount is at least ten thousand
24 dollars or all change orders to a contract aggregating to an amount of twenty percent
25 or more of the original contract amount and which additional amount is at least ten
26 thousand dollars shall be recorded by the governmental body which entered into the
27 contract in the office of the recorder of mortgages in the parish where the work is to
28 be done or where the entity is domiciled not later than thirty days after the date of the
29 change order which requires that the recordation take place. In addition, the original

1 contract shall be recorded together with the amendments or other revisions if not
2 previously recorded. The provisions of this Section shall not apply to the office of
3 facility planning and control, and the office of state ~~purchasing~~ procurement.

4 §1558. Determinations

5 ~~Written determinations and findings required by this Chapter shall be retained~~
6 ~~in an official contract file in the central purchasing agency or purchasing agency or~~
7 ~~by the governmental body administering the contract. Every determination required~~
8 ~~by this Chapter shall be in writing and based upon written findings of the public~~
9 ~~official making the determination. These determinations and written findings shall~~
10 ~~be retained in an official contract file in the office of state procurement and that of~~
11 ~~the governmental body administering the contract.~~

12 PART II. PURCHASING ORGANIZATION

13 SUBPART A. DIVISION OF ADMINISTRATION

14 §1561. Authority and duties of the commissioner of administration

15 A. Except as otherwise provided in this Chapter, the commissioner of
16 administration, hereinafter referred to as "the commissioner," shall have the authority
17 and responsibility to promulgate regulations, consistent with this Chapter, governing
18 the procurement, management, and control of any and all supplies, services, and
19 major repairs required to be procured by the state. However, the commissioner shall
20 not require by rule or regulation any policy or management board of public higher
21 education or any institution under their jurisdiction to prepare or submit a monthly
22 report on items purchased from state contracts or on contract item usage to the
23 Division of Administration. The quarterly report listing purchases for under five
24 thousand dollars and the annual report for purchases above five thousand dollars on
25 all items purchased from state contracts shall be sufficient to meet the requirements
26 of this Chapter.

27 B. The commissioner or designee shall consider and decide matters of policy
28 within the provisions of this Chapter including those referred to him by the ~~state~~
29 ~~director of purchasing~~ state chief procurement officer. The commissioner or his

1 designee shall have the power to audit and review the implementation of the
2 procurement regulations and the requirements of this Chapter.

3 SUBPART B. CENTRAL PURCHASING AGENCY

4 §1562. Central purchasing agency; creation

5 There is hereby created, within the division of administration, the Central
6 Purchasing Agency, headed by the ~~State Director of Purchasing~~, hereinafter referred
7 to as "~~the director~~" state chief procurement officer.

8 §1563. Appointment and qualifications

9 The ~~director~~ state chief procurement officer shall be in the classified service
10 of the state and shall be appointed in accordance with the provisions of Article X,
11 Section 7 of the Louisiana Constitution of 1974. The ~~director~~ state chief
12 procurement officer shall have had a minimum of eight years experience in the large
13 scale procurement of supplies, services, or construction, involving specification
14 development, the preparation of bid proposals and bid evaluation and award,
15 including at least three years of supervisory experience. Preference shall be given
16 to such experience in governmental purchasing.

17 §1564. Authority of the state ~~director of purchasing~~ state chief procurement officer

18 A. Central procurement officer of the state. The ~~director~~ state chief
19 procurement officer shall serve as the central procurement officer of the state.

20 B. Power to adopt rules. Consistent with the provisions of this Chapter, the
21 ~~director~~ state chief procurement officer may adopt rules governing the internal
22 procedures of the central purchasing agency.

23 C. Duties. Except as otherwise specifically provided in this Chapter, the
24 ~~director~~ state chief procurement officer shall, within the limitations of regulations
25 promulgated by the commissioner:

26 (1) Procure or supervise the procurement of all supplies, services, and major
27 repairs needed by the state.

28 (2) Exercise supervision over all inventories of warehoused supplies
29 belonging to the state.

1 (3) Establish and maintain programs for the inspection, testing, and
2 acceptance of supplies, services, and major repairs.

3 §1565. Duties of the attorney general

4 The attorney general shall be the chief legal adviser to the director.

5 §1566. Appointment of assistants and other employees; delegation of authority by
6 the ~~state director of purchasing~~ state chief procurement officer

7 Subject to the provisions of the Article X, Section 7 of the Louisiana
8 Constitution of 1974, the ~~director~~ state chief procurement officer may employ and
9 supervise such assistants and other persons as may be necessary and may delegate
10 authority to such designees or to any governmental body as the ~~director~~ state chief
11 procurement officer may deem appropriate within the limitations of state law and the
12 state procurement regulations.

13 §1567. Reporting requirements

14 A. The ~~director~~ state chief procurement officer shall prepare any reports that
15 the commissioner of administration may deem necessary and shall deliver such
16 reports to such recipients as the commissioner may designate. As provided in R.S.
17 44:1 et seq., such reports shall be available to the public upon request. However,
18 nothing in this Section shall require any policy or management board of public
19 higher education or any institution under their jurisdiction to prepare or submit a
20 monthly report on items purchased from state contracts or on contract item usage to
21 the director. The quarterly report listing purchases for under five thousand dollars
22 and the annual report for purchases above five thousand dollars on all items
23 purchased from state contracts, shall be sufficient to meet the requirements of this
24 Section.

25 B. The state chief procurement officer shall prepare such reports as he finds
26 necessary for the proper conduct of his duties, to include an annual report of all
27 professional, personal, consulting, social services, and other contracts over which the
28 office of state procurement has power and authority under the provisions of this
29 Chapter or through administrative rules and regulations. The annual report shall be

1 compiled on a fiscal year basis and consist, at a minimum, of summary descriptive
2 and statistical data regarding the number and amounts of such contracts by type of
3 service. The annual report shall be submitted to the president of the Senate and
4 speaker of the House of Representatives not later than January first of the year
5 following the end of the fiscal year for which the report is prepared.

6 C. Reporting of suspected collusive negotiations

7 (1) When for any reason collusion is suspected among any proposers, a
8 written notice of the facts giving rise to such suspicion shall be transmitted to the
9 state chief procurement officer and the attorney general.

10 (2) All documents involved in any procurement in which collusion is
11 suspected shall be retained until the office of state procurement gives notice that they
12 may be destroyed. All retained documents shall be made available to the
13 commissioner of administration or his designee upon request.

14 §1567.1. Mandatory information requirement for contracts let without
15 competition under the authority of an executive order pursuant to executive orders
16 related to Hurricane Katrina or Rita.

17 A. The provisions of this Section shall apply to any contract for state
18 procurement of goods or services which is subject to the provisions of this Chapter,
19 which contract is let without competition pursuant to an executive order issued by
20 authority granted under the Louisiana Homeland Security and Emergency Assistance
21 and Disaster Act, which order grants exceptions to the requirements of state
22 procurement law. Such provisions shall apply to contracts which have been or will
23 be let without competition pursuant to executive orders related to Hurricane Katrina
24 or Rita which granted exceptions to the requirements of state procurement law.

25 B.(1) For any contract subject to the provisions of this Section, the
26 information cited in Subparagraphs (a) through (d) of this Paragraph shall be
27 submitted by the primary contractor to the office of state procurement. The
28 following information shall be submitted, in a format to be determined by such
29 agencies no later than forty-five days after the effective date of the contract:

1 (a) The name of the primary contractor.

2 (b) The amount of the contract.

3 (c) The name of each subcontractor.

4 (d) The amount of each subcontract.

5 (2) Any change in subcontractors, or in the amount of a subcontract which
6 exceeds twenty-five percent in the aggregate of the original subcontracted amount,
7 shall necessitate the submission of updated information as required in Paragraph (1)
8 of this Subsection.

9 (3) The primary contractor for each contract subject to the provisions of this
10 Section shall be notified of the requirements of this Section by the contracting state
11 agency. The notification shall be made prior to execution of the contract.

12 C. The office of state procurement shall maintain a listing or registry of all
13 information reported to it pursuant to the provisions of this Section.

14 D. Failure to submit all of the information required as provided in Subsection
15 B of this Section shall be grounds for debarment. It shall be unlawful for any person
16 to intentionally fail to submit such information, which failure is hereby deemed to
17 be a violation of the duty to provide the mandatory information. Whomever violates
18 such provisions of Subsection B of this Section shall be fined in an amount not to
19 exceed one-half of the contract amount and imprisoned for not more than six months,
20 or both.

21 E. The provisions of this Section shall not be subject to suspension pursuant
22 to the authority granted to the governor by R.S. 29:721 et seq., the Louisiana
23 Homeland Security and Emergency Assistance and Disaster Act.

24 §1567.2. Collection of data concerning public procurement

25 The using agencies shall cooperate with the office of state procurement in the
26 preparation of statistical data concerning the acquisition, usage, and disposition of
27 all professional, personal, consulting, and social services, and may employ trained
28 personnel, as necessary, to carry out this function. All using agencies shall furnish
29 such reports as the office of state procurement may require concerning usage and

1 needs, and the office of state procurement shall have authority to prescribe forms to
2 be used by the using agencies in the reporting of professional, personal, consulting,
3 and social services.

4 §1567.3. Use of other types of contracts

5 Subject to the limitations of R.S. 39:1611 and R.S. 39:1612, any type of
6 contract, including brand name and multiple award contracts, which will promote the
7 best interests of the state may be used, provided that the chief procurement officer
8 must make a written determination justifying the type of contract used. An annual
9 report on the number, type, and volume of such procurements shall be made to the
10 commissioner or cabinet department head within ninety days after the end of the
11 fiscal year.

12 §1567.4. The Road Home Program; reporting on certain contract payments,
13 subcontractors, and performance for professional, personal, consulting, and
14 social service contracts

15 Notwithstanding any other provision of law to the contrary, the division of
16 administration, office of community development, shall report monthly to the
17 Legislative Audit Advisory Council with respect to the contract between the office
18 of community development and ICF Emergency Management Services dated June
19 30, 2006, as amended. The report shall contain information relating to
20 subcontractors, inclusive of subcontractors of subcontractors, payments made to any
21 contractor or subcontractor, the value of the contract, contractor performance in the
22 achievement of goals and objectives of the contract, and any penalties which have
23 been assessed for insufficient performance. The information shall be compiled by
24 the office of community development and delivered to the Legislative Audit
25 Advisory Council on a monthly basis, on a date to be established by the chairman of
26 the council. The commissioner of administration shall consult with the chairman of
27 the Legislative Audit Advisory Council to develop the format in which the
28 information will be presented to the council.

1 §1567.5. Reports of procurement actions related to professional, personal,
2 consulting, and social service contracts

3 A. A written report shall be compiled annually, within one hundred twenty
4 days after the close of the fiscal year, of professional, personal, consulting, and social
5 service contracts entered into during that preceding fiscal year. The report shall
6 include all of the following:

7 (1) Name of each contract.

8 (2) The amount and type of each contract.

9 (3) Description of the services purchased by each contract.

10 (4) As attachments, copies of all determinations and findings required to be
11 made by provisions of this Part and implementing rules and regulations.

12 B.(1) A central file or listing of all architects, engineers, clerk of the works,
13 attorneys, including bond attorneys or counsel, and public relations persons or firms
14 employed or retained by each state agency, board, commission, or department,
15 including nonbudget units shall be compiled and updated annually, within one
16 hundred twenty days after the close of the fiscal year, of contracts made during that
17 preceding year. Each such list shall be kept separately by profession and shall
18 contain information relative to such employment or retention, including a detailed
19 description of the nature of services rendered to the agency, the extent and duration
20 of such services, the amount of the fee or other compensation paid in return for such
21 services, and any other information deemed pertinent by the commissioner of the
22 division of administration.

23 (2) Notwithstanding any other provisions of this Chapter to the contrary,
24 each state agency, board, commission, or department, including nonbudget units,
25 shall forward on an annual basis on forms to be supplied by the office of state
26 procurement, a report containing the data and information on all professional
27 services retained or employed which are required to be listed in a central listing as
28 provided in Subsection B of this Section.

29 C. The reports required by this Section shall be retained as public records.

1 §1568. Contract Administration

2 A. Upon entering into a professional, personal, consulting, or social service
3 contract, the using agency shall have full responsibility for the diligent
4 administration and monitoring of the contract. The chief procurement officer may
5 require the using agency to report at any time on the status of any such outstanding
6 contracts to which the using agency is a party.

7 B. After completion of performance under a professional, personal,
8 consulting, or social service contract, the using agency shall prepare a final report on
9 the contract which shall include an evaluation of contract performance and an
10 assessment of the utility of the final product. This report shall be delivered to the
11 chief procurement officer within sixty days after completion of performance and
12 shall be retained in the official contract file. Reports not submitted to the office of
13 state procurement within the sixty-day period shall be delinquent. The report shall
14 include at least the following:

15 (1) The name of the agency official or officials responsible for monitoring
16 the contract and for final agency acceptance of the contract deliverables.

17 (2) The contractor, contract amount, contract cost basis, and contract
18 timetable which shall reflect both the proposed and actual work initiation and
19 completion dates.

20 (3) Any contract modifications.

21 (4) A listing of the contract deliverables, inclusive of specific products and
22 services, and whether all such deliverables were satisfactorily and timely completed.

23 (5) An itemization of any problems encountered with respect to the
24 execution of the contract.

25 (6) An assessment of the utility of the contract deliverables.

26 C. Final evaluation reports required by this Section for contracts in amounts
27 of two hundred fifty thousand dollars or greater shall also be submitted to the
28 legislative auditor.

1 D. No contract shall be entered into by a using agency with any contractor
2 for which a delinquent final evaluation report remains outstanding for a contract with
3 such using agency.

4 E. A report of all multiyear contracts shall be provided to the Joint
5 Legislative Committee on the Budget no later than ninety days after the end of each
6 fiscal year.

7 SUBPART C. CENTRALIZATION OF PUBLIC PROCUREMENT

8 §1571. Centralization of procurement authority

9 Except as otherwise provided in this Subpart, all rights, powers, duties, and
10 authority relating to the procurement of supplies, services, and major repairs now
11 vested in or exercised by any state governmental body under the several statutes
12 relating thereto are hereby transferred to the central purchasing agency.

13 §1572. Exemptions

14 A. Exemption from central purchasing agency and procurement regulations
15 of commissioner. Procurement of the following items or by the following
16 governmental bodies shall not be required to conduct procurement through the
17 central purchasing agency, and shall not be required to follow the procurement
18 regulations of the commissioner, or the office of state procurement, but shall
19 nevertheless be subject to the requirements of this Chapter and such regulations as
20 may be promulgated by the head of such governmental body:

21 (1) The Department of Transportation and Development, for procurement
22 of materials, services, and supplies that will become a component part of any road,
23 highway, bridge, or appurtenance thereto, ~~and ; and~~

24 (2) Textbooks, scientific and laboratory equipment, teaching materials,
25 teaching devices, and teaching supplies procured by the Department of Education.

26 ~~(3), (4) Repealed by Acts 2008, No. 62, §3, eff. June 5, 2008.~~

27 B. Exemptions from central purchasing only. Exemptions do not apply to
28 professional, personal, consulting, social services, information technology or
29 vehicles unless otherwise provided for in R.S. 39:1554. Unless otherwise ordered

1 by regulation of the commissioner with approval of the governor, the following
 2 governmental bodies shall not be required to conduct procurement through the
 3 central purchasing agency, but shall nevertheless be subject to the requirements of
 4 this Chapter and the regulations promulgated by the commissioner:

5 (1) Louisiana State University System.

6 (2) Southern University System.

7 (3) ~~Board of Trustees of State Colleges and Universities System.~~ University
 8 of Louisiana Systems.

9 (4) Special schools and other institutions under the supervision of the State
 10 Board of Elementary and Secondary Education.

11 ~~(5) Department of Education for items other than those exempted in~~
 12 ~~Paragraph A(2) of this Section.~~

13 ~~(6) (5)~~ The office of the state bond commission in the Department of the
 14 Treasury for printing only.

15 ~~(7) (6)~~ Louisiana Community and Technical College System.

16 C. Use of central purchasing by exempt agencies. A governmental body
 17 exempted from centralized purchasing may use the central purchasing facilities
 18 whenever the best interests of such governmental body and the state may be served.

19 SUBPART D. STATE PROCUREMENT REGULATIONS

20 §1581. State procurement regulations

21 A. Regulations. Regulations promulgated by the commissioner in
 22 accordance with the Administrative Procedure Act shall govern all procurements by
 23 all governmental bodies except for:

24 (1) Regulations promulgated by the secretary of the Department of
 25 Transportation and Development governing procurement by that department, for
 26 procurement of materials and supplies that will become a component part of any
 27 road, highway, bridge, or appurtenance thereto.

28 (2) Regulations promulgated by the State Superintendent of Education
 29 governing the procurement of textbooks, scientific and laboratory equipment,

1 teaching materials, teaching devices, and teaching supplies by the Department of
2 Education.

3 B. Exempted departments. Secretaries of departments exempted under
4 Subsection A of this Section shall promulgate regulations for the purposes set forth
5 in accordance with the Administrative Procedure Act. Such regulations shall not be
6 inconsistent with the provisions of this Chapter.

7 C. Power to promulgate regulations shall not be delegated. The
8 commissioner or secretary shall not delegate his power to promulgate regulations.

9 D. Regulations shall not change existing contract rights. No regulation shall
10 change any commitment, right, or obligation of the state or of a contractor under a
11 contract in existence on the effective date of such regulation.

12 E. Incorporation of required clauses into contracts by operation of law only
13 with consent of both parties. No clause which is required by regulation to be
14 included shall be considered to be incorporated by operation of law in any state
15 contract without the consent of both parties to the contract to such incorporation;
16 provided, however, that the parties to the contract may give such consent to
17 incorporation by reference at any time after the contract has been entered into and
18 without the necessity of consideration passing to either party.

19 SUBPART E. COORDINATION, TRAINING, AND EDUCATION

20 §1586. Relationship with using agencies

21 The commissioner and the ~~director~~ state chief procurement officer shall
22 maintain a close and cooperative relationship with the using agencies. The ~~director~~
23 state chief procurement officer shall afford each using agency reasonable opportunity
24 to participate in and make recommendations with respect to matters affecting such
25 using agency. Any using agency may at any time make recommendations to the
26 commissioner or the ~~director~~ state chief procurement officer, and the commissioner
27 or ~~director~~ state chief procurement officer may at any time make recommendations
28 to any using agency.

29 §1587. Procurement advisory council; other advisory groups

1 A. Procurement advisory council. The commissioner may establish a
 2 Procurement Advisory Council. If created, such council, upon adequate public
 3 notice, shall meet at least once a year for the discussion of problems and
 4 recommendations for improvement in the procurement process. When requested by
 5 the commissioner, the procurement advisory council may conduct studies, research,
 6 and analyses and make such reports and recommendations with respect to such
 7 subjects or matters within the jurisdiction of the commissioner. The procurement
 8 advisory council shall consist of such qualified persons as the commissioner may
 9 deem desirable.

10 B. Other advisory groups. The ~~director~~ state chief procurement officer may
 11 appoint advisory groups to assist with respect to specifications and procurement in
 12 specific areas and with respect to any other matters within the authority of the
 13 ~~director~~ state chief procurement officer.

14 C. Drug procurement advisory council. The commissioner shall establish
 15 a Drug Procurement Advisory Council which shall be composed of persons from the
 16 division of administration and from using agencies of drugs procured by the division
 17 and persons qualified in the fields of medicine and pharmacy. The council shall
 18 advise the commissioner with respect to the procurement of drugs for any using
 19 agency by generic contract, as further provided in R.S. 39:1594.1.

PART III. SOURCE SELECTION AND CONTRACT FORMATION

~~SUBPART A. DEFINITIONS~~

~~§1591. Definitions of terms used in this Part~~

23 (1) ~~"Cost-reimbursement contract" means a contract under which a~~
 24 ~~contractor is reimbursed for costs which are allowable and allocable in accordance~~
 25 ~~with cost principles as provided for in regulations, and a fee, if any.~~

26 (2) ~~"Established catalog price" means the price included in a catalog, price~~
 27 ~~list, schedule, or other form that:~~

28 (a) ~~Is regularly maintained by a manufacturer or contractor.~~

1 ~~(b) Is either published or otherwise available for inspection by customers,~~
2 ~~and~~

3 ~~(c) States prices at which sales are currently or were last made to a~~
4 ~~significant number of buyers constituting the general buying public for the supplies~~
5 ~~or services involved.~~

6 ~~(3) "Invitation for bids" means all documents, whether attached or~~
7 ~~incorporated by reference, utilized for soliciting bids in accordance with the~~
8 ~~procedures set forth in R.S. 39:1594.~~

9 ~~(4) "Purchase description" means specifications or any other document~~
10 ~~describing the supplies, services, or major repairs to be procured.~~

11 ~~(5) "Request for proposals" means all documents, whether attached or~~
12 ~~incorporated by reference, utilized for soliciting proposals in accordance with the~~
13 ~~procedures set forth in R.S. 39:1595, R.S. 39:1596, R.S. 39:1597, or R.S. 39:1598.~~

14 ~~(6) "Resident business" means one authorized to do and doing business~~
15 ~~under the laws of this state, which either:~~

16 ~~(a) Maintains its principal place of business in the state; or~~

17 ~~(b) Employs a minimum of two employees who are residents of the state.~~

18 ~~(7) "Responsible bidder or offeror" means a person who has the capability~~
19 ~~in all respects to perform the contract requirements and the integrity and reliability~~
20 ~~which will assure good faith performance.~~

21 ~~(8) "Responsive bidder" means a person who has submitted a bid under R.S.~~
22 ~~39:1594 which conforms in all substantive respects to the invitation for bids,~~
23 ~~including the specifications set forth in the invitation.~~

24 ~~(9) "Assembled" means the process of putting together all component parts~~
25 ~~of an item of equipment by the manufacturer where the assembly plant is located~~
26 ~~within the territorial borders of the state of Louisiana. "Assembled" shall not mean~~
27 ~~the reassembly of parts packed for shipping purposes.~~

28 SUBPART B: A. METHODS OF SOURCE SELECTION

29 §1593. Methods of source selection

1 A. ~~Unless otherwise authorized by law, all state contracts shall be awarded~~
2 ~~by competitive sealed bidding, pursuant to R.S. 39:1594, except as provided in R.S.~~
3 ~~39:1593.1 and R.S. 39:1595 through 1598 a method as provided for in this Subpart.~~

4 B. ~~Notwithstanding any other provisions of this Section to the contrary and~~
5 ~~in accordance with rules and regulations promulgated by the commissioner in~~
6 ~~accordance with the Administrative Procedure Act, the directors of state purchasing~~
7 ~~or directors of purchasing at a college or university, with the approval of the~~
8 ~~commissioner, may procure by solicitation requiring written response from at least~~
9 ~~three bona fide bidders under the provisions of this Subsection, when it is determined~~
10 ~~that market conditions are unstable and the competitive bid process is not conducive~~
11 ~~for best pricing for products, supplies and other materials. The provisions of this~~
12 ~~Subsection shall be applicable only if the value of the contract is fifty thousand~~
13 ~~dollars or less and only after sufficient documentation is provided to the~~
14 ~~commissioner by the director to substantiate the unstable market.~~

15 C.(1) ~~Notwithstanding any other provision of this Section to the contrary,~~
16 ~~with the approval of the commissioner and the written determination by the director~~
17 ~~of state purchasing that the best interests of the state would be served, a competitive~~
18 ~~request for proposals process as provided in this Subsection may be used in the~~
19 ~~following circumstances:~~

20 (a) ~~For the procurement of supplies, services, or major repairs, including but~~
21 ~~not limited to the procurement of high technology acquisitions or of complex~~
22 ~~services:~~

23 (b) ~~Through a contract with a group purchasing organization, for the~~
24 ~~procurement of medical and laboratory supplies and medical equipment required for~~
25 ~~the purpose of diagnosis or direct treatment of a patient by a health care provider in~~
26 ~~a hospital or clinical setting, provided the commissioner determines the total cost to~~
27 ~~be less than the state procurement prices and in the best interest of the state:~~

28 (2)(a)(i) ~~For a contract to be let under the provisions of this Subsection, the~~
29 ~~agency shall give adequate public notice of the request for proposals by advertising~~

1 in the official journal of the state at least thirty days before the last day that proposals
2 will be accepted. In addition, the agency shall mail written notice to persons, firms,
3 or corporations who are known to be in a position to furnish the required services at
4 least thirty days before the last day that proposals will be accepted.

5 (ii) ~~All requests for proposals shall be advertised through a centralized~~
6 ~~electronic interactive environment administered by the division of administration as~~
7 ~~provided in this Section. The advertisement or written notice required by this~~
8 ~~Section shall contain the name and address of the using agency and shall establish~~
9 ~~the specific date, time, and place by which the request for proposals must be~~
10 ~~received.~~

11 (b) ~~The request for proposals shall clearly state the technological or other~~
12 ~~outcome desired from the procurement of the technological or complex systems~~
13 ~~and/or services, if applicable, and shall indicate the relative importance of price and~~
14 ~~other evaluation factors, the criteria to be used in evaluating the proposals, and the~~
15 ~~time frames within which the work must be completed.~~

16 (c) ~~Written or oral discussions shall be conducted with all responsible~~
17 ~~offerers who submit proposals determined in writing to be reasonably susceptible of~~
18 ~~being selected for award. Discussions shall not disclose any information derived~~
19 ~~from proposals submitted by competing offers. Discussions need not be conducted:~~

20 (i) ~~If prices are fixed by law or regulation, except that consideration shall be~~
21 ~~given to competitive terms and conditions.~~

22 (ii) ~~If time of delivery or performance will not permit discussions.~~

23 (iii) ~~If it can be clearly demonstrated and documented from the existence of~~
24 ~~adequate competition or accurate prior cost experience with the particular service~~
25 ~~that acceptance of an initial offer without discussion would result in fair and~~
26 ~~reasonable prices and the request for proposals notifies all offerers of the possibility~~
27 ~~that award may be made on the basis of the initial offers.~~

28 (d)(i) ~~Award shall be made to the responsible offerer whose proposal is~~
29 ~~determined in writing by the agency to be the most advantageous to the state, taking~~

1 into consideration review of price and the evaluation factors set forth in the request
2 for proposals.

3 ~~(ii) A request for proposals or other solicitation may be cancelled or all~~
4 ~~proposals may be rejected only if it is determined, based on reasons provided in~~
5 ~~writing, that such action is taken in the best interest of the state.~~

6 ~~(e) Each contract entered into pursuant to this Subsection shall contain as a~~
7 ~~minimum:~~

8 ~~(i) Description of the work to be performed and/or objectives to be met,~~
9 ~~when applicable.~~

10 ~~(ii) Amount and time of payments to be made.~~

11 ~~(iii) Description of reports or other deliverables to be received, when~~
12 ~~applicable.~~

13 ~~(iv) Date of reports or other deliverables to be received, when applicable.~~

14 ~~(v) Responsibility for payment of taxes, when applicable.~~

15 ~~(vi) Circumstances under which the contract can be terminated either with~~
16 ~~or without cause.~~

17 ~~(vii) Remedies for default.~~

18 ~~(viii) A statement giving the legislative auditor the authority to audit records~~
19 ~~of the individual(s) or firm(s).~~

20 ~~(f)(i) Upon entering into a contract, the using agency shall have full~~
21 ~~responsibility for the diligent administration and monitoring of the contract. The~~
22 ~~director of state purchasing may require the using agency to report at any time on the~~
23 ~~status of any such outstanding contracts to which the using agency is a party. After~~
24 ~~completion of performance under a contract, the using agency shall evaluate contract~~
25 ~~performance and the utility of the final product. This evaluation shall be delivered~~
26 ~~to the director of state purchasing within one hundred twenty days after completion~~
27 ~~of performance and shall be retained in the official contract file.~~

28 ~~(ii)(aa) No contract shall be valid, nor shall the state be bound by the~~
29 ~~contract, until it has first been executed by the head of the using agency, or his~~

1 ~~designee, which is a party to the contract and the contractor and has been approved~~
2 ~~in writing by the director of state purchasing.~~

3 ~~(bb) In cases where the head of the using agency wants to delegate authority~~
4 ~~to one or more of his subordinates to sign contracts on behalf of the agency, this~~
5 ~~delegation shall be made in accordance with regulations of the commissioner and~~
6 ~~shall be subject to the approval of the director of state purchasing.~~

7 ~~§1593.1. Group purchasing~~

8 ~~A. The Louisiana State University Health Sciences Center may contract with~~
9 ~~a group purchasing organization through a competitive request for proposals process~~
10 ~~for medical and laboratory supplies and medical equipment required for the purpose~~
11 ~~of diagnosis or direct treatment of a patient by a health care provider in a hospital or~~
12 ~~clinic setting.~~

13 ~~B. Prior to the award of such contract, the proposed contract shall be~~
14 ~~approved by the commissioner of administration provided he determines the total~~
15 ~~cost to be less than the state procurement prices and that the contract is in the best~~
16 ~~interest of the state.~~

17 ~~C. No later than sixty days after a purchasing agency submits a proposed~~
18 ~~contract to the commissioner for approval, the commissioner shall notify the~~
19 ~~purchasing agency in writing as to whether the proposed contract has been approved~~
20 ~~or rejected. If the commissioner does not timely notify the purchasing agency of his~~
21 ~~decision, the request for approval on the proposed contract shall be deemed to have~~
22 ~~been approved. The commissioner shall not unreasonably withhold his approval.~~

23 ~~§1594. §1593.1. Competitive sealed bidding~~

24 ~~A. Conditions for use. Contracts exceeding the amount provided by R.S.~~
25 ~~39:1596 shall be awarded by competitive sealed bidding.~~

26 ~~B. Invitation for bids. Competitive sealed bidding shall be initiated by the~~
27 ~~issuance of an invitation for bids containing a description of the supplies, services,~~
28 ~~or major repairs to be procured and all contractual terms and conditions applicable~~
29 ~~to the procurement.~~

1 C. Public notice.

2 (1) Adequate public notice of the invitation for bids shall be given at least
3 ten days prior to the date set forth therein for the opening of bids on all matters
4 except those made for housing of state agencies, their personnel, operations,
5 equipment, or activities pursuant to R.S. 39:1643, for which such notice shall be
6 given at least twenty days prior to the opening of bids. Notice shall be in writing and
7 to persons in a position to furnish the supplies, services, or major repairs required,
8 as shown by its records, and by advertising if the amount of the purchase is
9 twenty-five thousand dollars or more.

10 (2) The advertisements or written notices shall contain general descriptions
11 of the supplies, services, or major repairs for which bids are wanted and shall state:

12 (a) The names and locations of the departments or institutions for which the
13 purchases are to be made.

14 (b) Where and how specifications and quotation forms may be obtained, and

15 (c) The date and time not later than which bids must be received and will be
16 opened.

17 (3) Each advertisement shall be published in the official journal of the state.
18 In the case of any purchase to meet the needs of a single budget unit the
19 advertisement shall be published also in a newspaper of general circulation printed
20 in the parish in which the budget unit is situated or, if there is no newspaper printed
21 in the parish, in a newspaper printed in the nearest parish, that has a general
22 circulation in the parish in which the budget unit is situated.

23 (4) Evidence of agency, corporate, or partnership authority shall be required
24 for submission of a bid to the division of administration or the ~~state of Louisiana~~
25 purchasing agencies of the state. The authority of the signature of the person
26 submitting the bid shall be deemed sufficient and acceptable if any of the following
27 conditions is met:

28 (a) The signature on the bid is that of any corporate officer listed on the most
29 current annual report on file with the secretary of state, or the signature on the bid

1 is that of any member of a partnership or partnership in commendam listed in the
2 most current partnership records on file with the secretary of state.

3 (b) The signature on the bid is that of an authorized representative of the
4 corporation, partnership, or other legal entity and the ~~bid is accompanied by bidder~~
5 submits or provides upon request a corporate resolution, certification as to the
6 corporate principal, or other documents indicating authority which are acceptable to
7 the public entity.

8 (c) The corporation, partnership, or other legal entity has filed in the
9 appropriate records of the secretary of state in which the public entity is located, an
10 affidavit, resolution, or other acknowledged or authentic document indicating the
11 names of all parties authorized to submit bids for public contracts. Such document
12 on file with the secretary of state shall remain in effect and shall be binding upon the
13 principal until specifically rescinded and canceled from the records of the respective
14 offices.

15 (5) All bids shall be advertised by a using agency through a centralized
16 electronic interactive environment administered by the division of administration as
17 provided in this Section. The advertisement or written notice required by this
18 Section shall contain the name and address of the using agency and shall establish
19 the specific date, time, and place by which the bids must be received.

20 D. Bid opening. Bids shall be opened publicly in the presence of one or
21 more witnesses at the time and place designated in the invitation for bids. Each bid,
22 together with the name of the bidder, shall be recorded and open to public inspection.

23 E. Bid evaluation.

24 (1) Bids shall be evaluated based on the requirements set forth in the
25 invitation for bids, which may include criteria to determine acceptability such as
26 inspection, testing, quality, workmanship, delivery, and suitability for a particular
27 purpose, and criteria affecting price such as life cycle or total ownership costs. The
28 invitation for bids shall set forth the evaluation criteria to be used. No criteria may
29 be used in bid evaluation that are not set forth in the invitation for bids.

1 (2) For bids made for housing of state agencies, their personnel, operations,
2 equipment, or activities pursuant to R.S. 39:1643, the criteria for evaluation shall be
3 included in the invitation for bids and shall include, at a minimum, the following:

4 (a) Location of the proposed space.

5 (b) Condition of the proposed space.

6 (c) Suitability of the proposed space for the advertiser's needs.

7 (d) Timeliness of availability of the proposed space.

8 F. Correction or withdrawal of bids. Patent errors in bids or errors in bids
9 supported by clear and convincing evidence may be corrected, or bids may be
10 withdrawn, if such correction or withdrawal does not prejudice other bidders, and
11 such actions may be taken only to the extent permitted under regulations.

12 G. Award. The contract shall be awarded with reasonable promptness by
13 written notice to the lowest responsive and responsible bidder whose bid meets the
14 requirements and criteria set forth in the invitation for bids. Award shall be made
15 by unconditional acceptance of a bid without alteration or correction except as
16 authorized in this ~~Part~~ Chapter.

17 H. Resident business preference. In state contracts awarded by competitive
18 sealed bidding, resident businesses shall be preferred to nonresident businesses
19 where there is a tie bid and where there will be no sacrifice or loss in quality.

20 I. Exemption.

21 (1) Purchases of goods manufactured by or services performed by ~~severely~~
22 ~~handicapped~~ individuals with severe disabilities in state-operated and state-supported
23 sheltered workshops as defined in R.S. 39:1595.4 shall be exempt from the
24 provisions of this Section. This exemption shall also apply to goods and services
25 procured by purchase order directly from a central nonprofit agency contracting
26 under R.S. 39:1595.4 to assist qualified sheltered workshops; any purchase order
27 shall be issued directly to the central nonprofit agency for all goods and services
28 within the exemption provided under this Subsection.

1 (2) Purchases of raw materials and supplies used in the manufacturing
2 process by the Department of Public Safety and Corrections, division of prison
3 enterprises, with the approval of the ~~director of state purchasing~~ state chief
4 procurement officer, shall be exempt from the provisions of this Section and shall
5 be procured through the use of written bids.

6 §1593.2. Competitive Sealed Proposals

7 A. Notwithstanding any other provision of this Section to the contrary, with
8 the approval of the commissioner and the written determination by the state chief
9 procurement officer that the best interests of the state would be served, a competitive
10 request for proposals process as provided in this Subsection may be used in the
11 following circumstances:

12 (1) For the procurement of supplies, services, or major repairs, including but
13 not limited to the procurement of high technology acquisitions or of complex
14 services.

15 (2) Through a contract with a group purchasing organization, for the
16 procurement of medical and laboratory supplies and medical equipment required for
17 the purpose of diagnosis or direct treatment of a patient by a health care provider in
18 a hospital or clinical setting, provided the commissioner determines the total cost to
19 be less than the state procurement prices and in the best interest of the state.

20 (3) The approval and written documentation requirements of this Paragraph
21 shall not apply to a request for proposal for professional, personal, consulting or
22 social services.

23 (4) For a contract to be let under the provisions of this Subsection, the agency
24 shall give adequate public notice of the request for proposals by advertising in the
25 official journal of the state at least thirty days before the last day that proposals will
26 be accepted. In addition, the agency shall mail written notice to persons, firms, or
27 corporations who are known to be in a position to furnish the required services at
28 least thirty days before the last day that proposals will be accepted.

1 B.(1) For consulting service contracts with a total maximum compensation
2 of fifty thousand dollars or more, except for such contracts entered into by the
3 Department of Transportation and Development, adequate public notice of the
4 request for proposals shall be given by advertising in the official journal of the state
5 and in one or more newspapers of general circulation in the state at least once. The
6 advertisement shall appear at least thirty days before the last day that proposals will
7 be accepted. When available, advertisements shall be placed in those national trade
8 journals which serve the particular type of contractor desired. In addition, written
9 notice shall be provided to persons, firms, or corporations who are known to be in
10 a position to furnish such services, at least thirty days before the last day that
11 proposals will be accepted.

12 (2) For social service contracts not qualifying under R.S. 39:1494.1(A),
13 adequate public notice of the request for proposals shall be given by advertising in
14 the official journal of the state, in the official journal of the parish in which the
15 services are to be performed and such other newspapers, bulletins, or other media as
16 are appropriate in the circumstances. Such advertisements shall appear at least once
17 in the official journal of the state and once in the official journal of the parish. If the
18 services are to be performed in or made available to residents of a multi parish area,
19 advertising in the official journal of the state and in one or more newspapers of
20 general circulation in the state at least once shall be sufficient to meet this
21 requirement. In all cases, the advertisement shall appear at least fourteen days before
22 the last day that the proposals will be accepted. In addition, written notice shall be
23 provided to persons, firms, or corporations who are known to be in a position to
24 furnish such services, at least fourteen days before the last day that proposals will be
25 accepted. This last requirement is subject to reasonable limitation at the discretion
26 of the using agency.

27 (3) For consulting service contracts entered into by the Department of
28 Transportation and Development with a total maximum compensation of fifty
29 thousand dollars or more, adequate public notice of the request for proposals shall

1 be given by advertising in the official journal of the state at least once. The first
2 advertisement shall appear at least fifteen days before the last day that proposals will
3 be accepted. In addition, written notice shall be provided to persons, firms, or
4 corporations who are known to be in a position to furnish such services, at least
5 fifteen days prior to the last day that proposals will be accepted.

6 (4) All requests for proposals shall be advertised through a centralized
7 electronic interactive environment administered by the division of administration as
8 provided in this Section. The advertisement or written notice required by this
9 Section shall contain the name and address of the using agency and shall establish
10 the specific date, time, and place by which the request for proposals must be
11 received.

12 C. (1) The request for proposals for consulting, social and some professional
13 services shall indicate the relative importance of price and other evaluation factors,
14 shall clearly define the tasks to be performed under the contract, the criteria to be
15 used in evaluating the proposals and the time frames within which the work must be
16 completed.

17 (2) For all others, it shall clearly state the technological or other outcome
18 desired from the procurement of the technological or complex systems and/or
19 services, if applicable, and shall indicate the relative importance of price and other
20 evaluation factors, the criteria to be used in evaluating the proposals, and the time
21 frames within which the work must be completed.

22 D. Written or oral discussions shall be conducted with all responsible
23 proposers who submit proposals determined in writing to be reasonably susceptible
24 of being selected for award. Discussions shall not disclose any information derived
25 from proposals submitted by competing offers. Discussions need not be conducted:

26 (1) If prices are fixed by law or regulation, except that consideration shall
27 be given to competitive terms and conditions.

28 (2) If time of delivery or performance will not permit discussions.

1 (3) If it can be clearly demonstrated and documented from the existence of
2 adequate competition or accurate prior cost experience with the particular service
3 that acceptance of an initial offer without discussion would result in fair and
4 reasonable prices and the request for proposals notifies all offerers of the possibility
5 that award may be made on the basis of the initial offers.

6 E.(1) Award shall be made to the responsible proposer whose proposal is
7 determined in writing by the agency to be the most advantageous to the state, taking
8 into consideration review of price and the evaluation factors set forth in the request
9 for proposals.

10 (2) A request for proposals or other solicitation may be cancelled or all
11 proposals may be rejected only if it is determined, based on reasons provided in
12 writing, that such action is taken in the best interest of the state.

13 F.(1) Each contract entered into pursuant to this Subsection shall contain as
14 a minimum:

15 (a) Description of the work to be performed and/or objectives to be met,
16 when applicable.

17 (b) Amount and time of payments to be made.

18 (c) Description of reports or other deliverables to be received, when
19 applicable.

20 (d) Date of reports or other deliverables to be received, when applicable.

21 (e) Responsibility for payment of taxes, when applicable.

22 (f) Circumstances under which the contract can be terminated either with or
23 without cause.

24 (g) Remedies for default.

25 (h) A statement giving the legislative auditor the authority to audit records
26 of the individual(s) or firm(s).

27 (i) Performance measurements.

28 (j) Monitoring plan

1 (2)(a) Upon entering into a contract, the using agency shall have full
2 responsibility for the diligent administration and monitoring of the contract. The
3 state chief procurement officer may require the using agency to report at any time
4 on the status of any such outstanding contracts to which the using agency is a party.
5 After completion of performance under a contract, the using agency shall evaluate
6 contract performance and the utility of the final product. This evaluation shall be
7 delivered to the state chief procurement officer or designee or the directors of
8 purchasing at a college or university within one hundred twenty days after
9 completion of performance and shall be retained in the official contract file.

10 (b)(i) No contract shall be valid, nor shall the state be bound by the contract,
11 until it has first been executed by the head of the using agency, or his designee,
12 which is a party to the contract and the contractor and has been approved in writing
13 by the state chief procurement officer or designee or the directors of purchasing at
14 a college or university.

15 (ii) In cases where the head of the using agency wants to delegate authority
16 to one or more of his subordinates to sign contracts on behalf of the agency, this
17 delegation shall be made in accordance with regulations of the commissioner and
18 shall be subject to the approval of the state chief procurement officer.

19 G. Requests for proposals shall not be required for "interagency contracts"
20 as defined in R.S. 39:1490(C).

21 H. Notwithstanding the provisions of this Chapter, all relevant federal
22 statutes and regulations shall be followed by the using agency in procuring services.
23 The burden of complying with these federal statutes and regulations shall rest with
24 the using agency and shall be documented in the contract record submitted to the
25 office of contractual review.

26 §1593.3. Validity of professional, personal, consulting, and social service contracts

27 A. No contract shall be valid, not shall the state be bound by the contract,
28 until it has first been executed by the head of the using agency, or his designee,

1 which is a party to the contract and contractor, and has been approved in writing by
2 the office of state procurement.

3 B. In cases where the head of the using agency wants to delegate authority
4 to one or more of his subordinates to sign contracts on behalf of the agency, this
5 delegation must be made in accordance with regulations of the office of contractual
6 review and shall be subject to the approval of the office of contractual review.

7 §1593.4. Small purchases

8 Procurements not exceeding the amounts established by executive order of
9 the governor may be made in accordance with small purchase procedures prescribed
10 by such executive order, except that procurement requirements shall not be
11 artificially divided so as to constitute a small purchase under this Section.

12 §1593.5. Sole source procurements

13 A contract may be awarded for a required supply, service, or major repair
14 without competition when, under regulations, the state chief procurement officer or
15 his designee above the level of procurement officer determines in writing that there
16 is only one source for the required supply, service, or major repair item.

17 §1593.6. Emergency procurements

18 A. Conditions for use. The chief procurement officer or his designee above
19 the level of procurement officer may make or authorize others to make emergency
20 procurements when there exists an imminent threat to the public health, welfare,
21 safety, or public property under emergency conditions as defined in accordance with
22 regulations.

23 B. Written quotations. Every effort shall be made to obtain quotations from
24 three or more vendors when supplies, services, or major repairs are to be purchased
25 on an emergency basis, except for standard equipment parts for which prices are
26 established. Immediate purchasing shall be discouraged as much as is practicable.
27 When supplies, services, or major repairs are urgently required and time does not
28 permit the obtaining of written quotations, the procurement officer may obtain
29 quotations by telephoning or otherwise, but such quotations shall be made on the

1 relative purchase requisitions. So far as practicable, quotations shall be secured from
2 institutions of the state as provided by law.

3 C. Determination required. The state chief procurement officer shall make
4 a written determination of the basis of the emergency that includes the facts and
5 circumstances leading to the conclusion that such procurement was necessary as well
6 as a written determination detailing the steps taken prior to selecting a particular
7 contractor and the basis for the final selection. The written determination shall be
8 included in the contract file either prior to contracting or as soon thereafter as
9 practicable.

10 §1593.7. Procurement of used equipment

11 A. Any agency covered by this Chapter may procure any equipment which
12 is used or which has been previously purchased by an individual or corporation
13 where the agency proposing to make such procurement can present satisfactory
14 information to the procurement officer to illustrate that the procurement of said
15 equipment is cost effective to the state.

16 B.(1) The used equipment shall be purchased by the head of the agency,
17 college, or university, within the price range set by the state chief procurement
18 officer, or the directors of purchasing at colleges and universities, in a statement of
19 written approval for the purchase which must be obtained by the head of the agency,
20 college, or university, prior to the purchase.

21 (2) The head of the agency, college, or university, shall certify in writing to
22 the state chief procurement officer, or the directors of purchasing at colleges and
23 universities, all of the following:

24 (a) The price for which the used equipment may be obtained.

25 (b) The plan for maintenance and repair of the equipment and the cost
26 thereof.

27 (c) The savings that will accrue to the state because of the purchase of the
28 used equipment.

1 (d) The fact that following the procedures set out in the Louisiana
2 Procurement Code will result in the loss of the opportunity to purchase the
3 equipment.

4 §1593.8. Reverse auction

5 A. Notwithstanding any other provision of law to the contrary, with the
6 approval of the state chief procurement officer and the determination of the head of
7 the using agency that the best interests of the state would be served and that
8 electronic online bidding is more advantageous than other procurement methods
9 provided in this Chapter, a reverse auction may be utilized for the acquisition of
10 materials, supplies, services, products, or equipment.

11 B. Prior to the implementation of this Section, the state chief procurement
12 officer shall develop policies, procedures, and promulgate regulations, in accordance
13 with the Administrative Procedure Act. Such policies and procedures may require
14 that:

15 (1) Vendors shall register before the opening date and time, and as part of
16 the registration, require that the vendors agree to any terms and conditions and other
17 requirements of the solicitation.

18 (2) Vendors shall be prequalified prior to placing bids and allow only bidders
19 who are prequalified to submit bids.

20 (3) The solicitation shall designate an opening date and time and the closing
21 date and time. The closing date and time may be fixed or remain open depending on
22 the nature of the item being bid.

23 (4) At the opening date and time, the using agency shall begin accepting
24 online bids and continue accepting bids until the bid is officially closed. Registered
25 bidders shall be allowed to lower the price of their bid below the lowest bid posted
26 on the Internet until the closing date and time.

27 (5) Bidders' identities shall not be revealed during the bidding process; only
28 the successively lower prices, ranks, scores, and related bid details shall be revealed.

29 (6) All bids shall be posted electronically and updated on a real-time basis.

1 (7) The using agency shall retain the right to cancel the solicitation if it
2 determines that it is in the agency's or the state's best interest.

3 (8) The using agency shall retain its existing authority to determine the
4 criteria that shall be used as a basis for making awards.

5 C. Adequate public notice for the purchase of materials, supplies, services,
6 or equipment using a reverse auction shall be given as follows:

7 (1) The advertisement or notice shall be published one time in the official
8 journal of the state at least twenty days before the opening date of the reverse
9 auction.

10 (2) In the case of any purchase to meet the needs of a single budget unit, the
11 advertisement shall be published also in a newspaper of general circulation printed
12 in the parish in which the budget unit is situated, or, if there is not a newspaper
13 printed in the parish, in a newspaper printed in the nearest parish that has a general
14 circulation in the parish in which the budget unit is situated.

15 §1593.9. Other Procurement Methods

16 A. Unstable Market Conditions. Notwithstanding any other provisions of this
17 Section to the contrary and in accordance with rules and regulations promulgated by
18 the commissioner in accordance with the Administrative Procedure Act, the state
19 chief procurement officer or directors of purchasing at a college or university, with
20 the approval of the commissioner, may procure by solicitation requiring written
21 response from at least three bona fide bidders under the provisions of this
22 Subsection, when it is determined that market conditions are unstable and the
23 competitive bid process is not conducive for best pricing for products, supplies and
24 other materials. The provisions of this Subsection shall be applicable only if the
25 value of the contract is fifty thousand dollars or less and only after sufficient
26 documentation is provided to the commissioner by the director to substantiate the
27 unstable market.

28 B. Group Purchasing.

1 (1) The Louisiana State University Health Sciences Center may contract with
2 a group purchasing organization through a competitive request for proposals process
3 for medical and laboratory supplies and medical equipment required for the purpose
4 of diagnosis or direct treatment of a patient by a health care provider in a hospital or
5 clinic setting.

6 (2) Prior to the award of such contract, the proposed contract shall be
7 approved by the commissioner of administration provided the Louisiana State
8 University Health Sciences Center makes a written determination that prices from
9 the group purchasing organization are fair market prices and that the contract is in
10 the best interest of the state.

11 (3) No later than sixty days after a purchasing agency submits a proposed
12 contract to the commissioner for approval, the commissioner shall notify the
13 purchasing agency in writing as to whether the proposed contract has been approved
14 or rejected. If the commissioner does not timely notify the purchasing agency of his
15 decision, the request for approval on the proposed contract shall be deemed to have
16 been approved. The commissioner shall not unreasonably withhold his approval.

17 §1593.10.Negotiation

18 The head of the using agency or the agency procurement officer shall
19 negotiate with the highest qualified persons for all contracts for professional,
20 personal, or those consulting services for less than fifty thousand dollars, or those
21 social services qualifying under R.S. 39:1494.1(A) at compensation which the head
22 of the using agency determines in writing to be fair and reasonable to the state. In
23 making this determination, the head of the using agency shall take into account, in
24 the following order of importance, the professional or technical competence of
25 offerers, the technical merits of offers, and the compensation for which the services
26 are to be rendered, including fee. Negotiation of consulting services for fifty
27 thousand dollars or more or social services not qualifying under R.S. 39:1494.1(A)
28 shall be conducted in accordance with Part II, Subpart B hereof.

29 §1594.1. Contracts for drugs

1 Multisource generic drug contracts shall be used for the procurement of drugs
2 approved by the Federal Drug Administration and listed in the Federal Drug
3 Administration Prescription Drug Products with Therapeutic Equivalence
4 Evaluations Compendium and Supplements for all using agencies. Such contracts
5 shall be competitively bid at the lowest available price. However, a brand name
6 contract may be used if there is only one source of supply for a particular drug or if
7 the using agency certifies to the chief procurement officer that a justifiable medical
8 reason exists for the use of a particular brand name drug. The chief procurement
9 officer shall seek the advice of the Drug Procurement Advisory Council on all such
10 requests other than declared emergencies.

11 §1594.2. Right to reject bids from Communist countries

12 In awarding contracts for supplies, any public entity is authorized to reject
13 the lowest bid if received from a bidder domiciled in a Communist country, or if the
14 supplies are manufactured in a Communist country, including but not limited to the
15 Soviet Union, China, North Korea, and Vietnam, and to award the contract to the
16 next lowest bidder, provided this Section shall not apply to any country having
17 established trade relations agreements or approvals from the government of the
18 United States.

19 §1594.3. Limitations on consultants competing for contracts

20 A. Any person contracting with an agency for the purposes of developing
21 bidding documents, requests for proposals, or any other type of solicitation related
22 to a specific procurement shall be prohibited from bidding, proposing, or otherwise
23 competing for award of that procurement. Such persons shall further be prohibited
24 from participating as subcontractors related to the award of that procurement.

25 B. For the purposes of this Section, the following activities shall not be
26 considered "developing bidding documents, requests for proposals, or any other type
27 of solicitation":

28 (1) Architectural and engineering programming.

29 (2) Master planning.

- 1 (3) Budgeting.
- 2 (4) Feasibility analysis.
- 3 (5) Constructability review.
- 4 (6) Furnishing specification data or other product information.
- 5 (7) Any other services that do not establish selection qualifications or
- 6 evaluation criteria for the procurement of an architect or engineer.

7 SUBPART B. METHODS OF SOURCE SELECTION FOR PROFESSIONAL,
 8 PERSONAL, CONSULTING, AND SOCIAL SERVICES CONTRACTS

9 §1595. Professional service contracts

10 Contracts for professional services may be awarded without the necessity of
 11 competitive bidding or competitive negotiation.

12 §1595.1. Contractual attorney's fees; affidavit

13 Each attorney hired on a contractual basis for professional services shall
 14 submit his fee by sworn affidavit. The affidavit shall contain a detailed statement of
 15 the number of hours actually worked, giving the dates and time of day, and a
 16 description of the work performed. No contract fee shall be paid unless submitted
 17 by affidavit as provided herein.

18 §1595.2. Social service contracts

19 A. Social Services include:

20 (1) Rehabilitation and health supports include services rendered by a
 21 contractor with special knowledge or service available to assist individuals in
 22 attaining or maintaining a favorable condition of physical and mental health. These
 23 services include but are not limited to:

- 24 (a) Health-related counseling.
- 25 (b) Alcohol or drug abuse training and treatment.
- 26 (c) Training to support emergency medical services.
- 27 (d) Services to support family planning.
- 28 (e) Counseling, delinquency prevention.
- 29 (f) Genetic disease evaluation and counseling.

- 1 (g) Community-based medical support services.
- 2 (h) Evaluation and training for persons with physical or intellectual
3 disabilities.
- 4 (i) Other services in support of same.
- 5 (2) Habilitation and socialization include services rendered by a contractor
6 with special knowledge to assist specified client groups to enhance their self-
7 sufficiency or alleviate their dependency or isolation from the community. These
8 services include but are not limited to:
- 9 (a) Day care.
- 10 (b) Work and training.
- 11 (c) Early intervention for persons with intellectual disabilities,
12 developmental delays, or physical disabilities.
- 13 (d) Transportation for service access.
- 14 (e) Homemaker, home management, and housing improvement services.
- 15 (f) In-home and out-of-home respite care.
- 16 (g) Socialization services for low income and other special needs groups.
- 17 (h) Nursing home ombudsman.
- 18 (i) Nutritional, employment, case management, senior center activities, or
19 other services to aid independent living by the elderly.
- 20 (j) Training and community planning services for same.
- 21 (3) Protection for adults and children include services rendered by a
22 contractor to provide therapeutic intervention for adults or children who are in
23 danger or threatened with danger of physical or mental injury, neglect, maltreatment,
24 extortion, or exploitation, including victims of family violence. These services
25 include but are not limited to:
- 26 (a) Community planning for neglect/abuse.
- 27 (b) Adoption.
- 28 (c) Substitute care.
- 29 (d) Education and training.

- 1 (e) Crisis intervention type services.
- 2 (f) Emergency shelter for victims of rape/family violence or services in
3 support of same.
- 4 (g) Training and evaluation services for same.
- 5 (4) Improvement of living conditions and health include services rendered
6 by an authorized contractor with special knowledge or services available to assist
7 individuals to attain or maintain favorable conditions in which to live. These
8 services include but are not limited to:
- 9 (a) Distribution of foodstuffs either purchased or that are made available
10 from government-owned commodities.
- 11 (b) Determining the needs of the poor, and development of programs to
12 distribute the available resources.
- 13 (c) Determining the needs of the poor and identifying programs to alleviate
14 these poverty conditions.
- 15 (d) Providing services to respond to the educational/employment needs of
16 eligible individuals in the communities needing these services. The primary purpose
17 of this services is to provide the participating individuals with the skills necessary
18 for them to advance socially, academically, and occupationally.
- 19 (e) Providing training and evaluation of services for any of the above
20 services.
- 21 (5) Evaluation, testing, and remedial educational services for nonpublic
22 school students with physical or learning disabilities include services rendered by a
23 contractor with special knowledge or services available to provide special
24 educational and related services for exceptional students or students with disabilities
25 voluntarily enrolled in approved nonpublic schools of Louisiana who are not
26 otherwise provided with such services through either their local school program or
27 through other services afforded to them by local school boards or other public
28 agencies. These services include but are not limited to:

1 (a) Identification, assessment, appraisal, and evaluation of exceptional
2 children and children with disabilities.

3 (b) Development of individualized educational programs.

4 (c) The providing of instructional and supportive services to such eligible
5 students in accordance with the provisions of R.S. 17:1941, et seq. and P.L. 94-142
6 and their regulations.

7 B. Contracts for social services may be awarded without the necessity of
8 competitive bidding or competitive negotiation only if the state chief procurement
9 officer determines that any one of the following conditions is present. The using
10 agency shall document the condition present and such documentation shall be part
11 of the contract record submitted to the office of state procurement.

12 (1) The services are available only from a single source (sole source). Sole
13 source procurement shall be determined by the state chief procurement officer. A
14 contract shall also be considered as sole source if a request for proposals is issued in
15 accordance with R.S. 39:1503 and only one or no proposals are received.

16 (2) The state legislature has made an appropriation for that particular
17 contractor or contractors via the appropriation bill or other statutes.

18 (3) A quasi-public and/or nonprofit corporation, such as a parish voluntary
19 council on aging, an area agency on aging, an affiliate of The Arc or equivalent
20 organization serving persons with intellectual or developmental disabilities, an
21 organization serving children, youth, and/or families, or an organization promoting
22 independence from public assistance has been established in coordination with the
23 state to provide the particular service involved in the contract.

24 (4) Local matching funds of greater than ten percent of the contract amount
25 are required to be contributed by the contractor. Such matching funds may be in the
26 form of cash, certified expenditures or in-kind contributions, where applicable to the
27 funding source.

1 (5) The nature of the services being provided necessitates that a continuity
2 of contractors be maintained as in but not limited to therapeutic and crisis support
3 to clients and employment and training programs.

4 (6) All emergency exists which will not permit the delay in procurement
5 necessitated by the request for proposal procedure given in R.S. 39:1503. Such
6 emergency shall be determined by the state chief procurement officer.

7 (7) The total contract amount is less than two hundred fifty thousand dollars
8 per twelve-month period. Service requirements shall not be artificially divided so
9 as to exempt contracts from the request for proposal process.

10 (8) The contract is with another governmental entity or governmental body.

11 (9) Funds are specifically designated by the federal government for a
12 particular private or public contractor or political subdivision.

13 (10) The contract is with a social service contractor who supplies services
14 under a contract in existence as of November 30, 1985, as long as such contractor
15 continues to supply substantially the same services and the using agency certifies:

16 (a) The services are satisfactory.

17 (b) They intend to continue contracting with that contractor.

18 C. If none of the conditions given in R.S. 39:1494.1(A) are determined by
19 the state chief procurement officer to be present in a contract for social service, then
20 that contract shall be awarded through a request for proposal process in accordance
21 with R.S. 39:1503 under rules and regulations issued by the office of state
22 procurement.

23 D. This chapter shall apply to interagency contracts as defined in R.S.
24 39:1490(c) and to contracts or grants between the state and its political subdivision
25 to procure social services.

26 §1595.3. Personal service contracts

27 Contracts for personal services may be awarded without the necessity of
28 competitive bidding or competitive negotiation.

29 §1595.4. Consulting service contracts

1 A. Contracts for consulting services which have a total maximum amount
2 of compensation less than fifty thousand dollars for a 12 month period may be
3 awarded without the necessity of competitive bidding or competitive negotiation.

4 B. Contracts for consulting services which have a total maximum amount of
5 compensation of fifty thousand dollars or more for a 12 month period shall be
6 awarded through a request for proposal process under rules and regulations issued
7 by the office of state procurement. Service requirements shall not be artificially
8 divided so as to exempt contracts from the request for proposal process.

9 C.(1) All contracts for consulting services which have a total maximum
10 amount of compensation of one hundred forty thousand dollars or more may be
11 entered into with the assistance of a procurement support team as provided herein,
12 and in accordance with guidelines promulgated and published by the office of state
13 procurement.

14 (2) For each such consulting contract the office of contractual review may
15 establish a procurement support team which shall include one or more
16 representatives from each of the following:

17 (a) The office of state procurement.

18 (b) The using agency initiating the contract.

19 (c) The office of the attorney general.

20 (d) The legislative fiscal office.

21 (3) Participation of the procurement support team must include, at a
22 minimum, assistance in development or review of the request for proposals,
23 evaluation of responses received to the request for proposals, and formulation of
24 recommendations to be submitted to the director of the office of state procurement
25 concerning the final contract.

26 §1595.5. Performance-based energy efficiency contracts

27 A. Any state agency as defined in R.S. 39:2 may enter into a performance-
28 based energy efficiency contract for services and equipment as provided in this
29 Section. The commissioner of administration shall adopt and promulgate rules and

1 regulations necessary to implement the provisions of this Section, which rules shall
2 be consistent with the Energy Management Act of 2001. Any such rules and
3 regulations shall be adopted and promulgated only after the review and approval of
4 the Joint Legislative Committee on the Budget. The commissioner of administration
5 shall submit the proposed rules and regulations to the Joint Legislative Committee
6 on the Budget thirty days prior to the review and approval of such rules and
7 regulations by the committee.

8 B. The contract shall be considered a consulting services contract under the
9 provisions of this Chapter. Performance-based energy efficiency contracts shall be
10 awarded through a request for proposal process under the provisions of this Chapter
11 and specifically the provisions of Subsection E of this Section.

12 C.(1) Notwithstanding the requirements of R.S. 39:1514(A), any
13 performance-based energy efficiency contract entered into shall be for a period equal
14 to the lesser of twenty years or the average life of the equipment installed by the
15 performance contractor and shall contain a guarantee of energy savings. The
16 guarantee of energy savings shall, at a minimum, ensure a total annual savings
17 sufficient to fully fund any financing arrangement entered into to fund the contract.
18 In addition, any performance-based energy efficiency contract shall contain the
19 following clause: "The continuation of this contract is contingent upon the
20 appropriation of funds by the legislature to fulfill the requirements of the contract.
21 If the legislature fails to appropriate sufficient monies to provide for the continuation
22 of the contract, the contract shall terminate on the last day of the fiscal year for
23 which funds have been appropriated. Such termination shall be without penalty or
24 expense to the agency, board, or commission except for payments which have been
25 earned prior to the termination date."

26 (2) Any contract entered into pursuant to this Section shall include the total
27 units of energy saved, the method, device or financial arrangement to establish a firm
28 amount for the savings, the cost per unit of energy, and, if applicable, the basis for

1 any adjustment in the stated cost for the term of the contract, and for each energy
2 saving measure included in the contract, provide the following:

3 (a) Detailed scope of work.

4 (b) Price to be paid by the state agency as the initial cost.

5 (c) Annual energy cost savings.

6 (d) Annual maintenance savings including any maintenance and operational
7 savings associated with installation; including but not limited to, services, parts,
8 materials, labor, and equipment.

9 (e) Annual new maintenance cost including operating expenses added as a
10 result of new equipment installed or services performed by the contractor.

11 (f) Total annual savings by adding annual energy cost savings to annual
12 maintenance savings minus any annual new maintenance costs.

13 (3) No payment shall be made by a state agency pursuant to a contract
14 entered into in accordance with this Section, until there is compliance with Paragraph
15 (2). However, Paragraph (2) and this Paragraph shall not invalidate nor require the
16 reissuance of a request for proposal for which notice was given pursuant to this
17 Chapter prior to June 17, 2004.

18 D. When calculating "annual energy cost savings attributable to the services
19 or equipment" installed pursuant to a performance-based energy efficiency contract
20 as defined in R.S. 39:1484(14), maintenance savings shall be included.
21 "Maintenance savings" means operating expenses eliminated and future capital
22 replacement expenditures avoided as a result of new equipment installed or services
23 performed by the performance contractor.

24 E.(1) Prior to award of any performance-based energy efficiency contract,
25 the response to the requests for proposals shall be evaluated as follows:

26 (a) A state agency that seeks to enter into a contract pursuant to this Section
27 shall conduct an initial evaluation of proposals submitted to it. Such evaluation shall
28 be consistent with the provisions of this Chapter, except that a state agency shall not
29 make a final selection from among submitted proposals.

1 (b) A state agency shall forward the results of its evaluation of each such
2 proposal to the commissioner of administration. The commissioner of administration
3 may select an independent third-party evaluation consultant to review and evaluate
4 the submitted proposals. The consultant shall submit the result of his evaluation to
5 the Energy Efficiency Procurement Support Team and to the commissioner of
6 administration. The Energy Efficiency Procurement Support Team shall review the
7 evaluation of the independent third-party evaluation consultant. Upon completion
8 of such review, the Energy Efficiency Procurement Support Team shall submit its
9 recommendation to the commissioner of administration. The commissioner of
10 administration shall review the evaluation of the independent third-party evaluation
11 consultant and the recommendation of the Energy Efficiency Procurement Support
12 Team and shall notify the agency as to whether it may proceed with negotiation of
13 the contract in accordance with the provisions of this Chapter. The commissioner
14 of administration may require that the consultant selected pursuant to this Section
15 participate on behalf of the agency in the negotiation of the contract. Upon the
16 completion of the negotiation of the contract by the agency, the commissioner of
17 administration shall review the negotiated contract. If the commissioner of
18 administration approves the contract then the contract shall be submitted by the
19 commissioner of administration to the Joint Legislative Committee on the Budget for
20 review and approval.

21 (c) Notwithstanding any other provision of this Chapter, no proposer shall
22 be selected pursuant to this Section nor shall any contract be awarded pursuant to this
23 Section, except by the approval of both the commissioner of administration and the
24 Joint Legislative Committee on the Budget.

25 (d) An independent third-party evaluation consultant shall have no direct
26 conflict of interest as to the agency, the proposals which the consultant is to evaluate,
27 or to any proposer. Prior to the selection of such consultant, the legislative auditor
28 shall certify that the consultant has no direct conflict of interest as to the agency, the
29 proposals which the consultant is to evaluate, or to any proposer.

1 ~~(e) The provisions of Subparagraphs (a) through (d) of this Paragraph shall~~
2 ~~not be applicable when the requests for proposals or the proposed contract was~~
3 ~~received by the division of administration prior to January 1, 2004.~~

4 (2) The legislative auditor shall conduct performance audits of performance-
5 based energy efficiency contracts. The legislative auditor shall establish a written
6 schedule for execution of such performance audits, and the schedule shall be posted
7 on the website of the legislative auditor no later than February first of each year.
8 Such schedule shall provide for periodic audits during the term of such contracts and
9 for an audit upon the completion of any such contract. The legislative auditor shall
10 coordinate with the commissioner of administration to develop a description of
11 information to be included as part of each performance audit. The results of any
12 such performance audits shall be published no later than thirty days prior to the
13 commencement of each Regular Session of the Legislature. Audits shall be
14 conducted on each performance-based energy efficiency contract in effect on and
15 after January 1, 2010.

16 (3)(a)(i) In order to fund the cost of the evaluation, review, approval,
17 oversight, and performance audits as provided in this Section, the request for
18 proposal for the award of a performance-based energy efficiency contract shall
19 require the proposer to pay a sum not to exceed two and one-half percent of the total
20 value of the performance-based energy efficiency contract at the time that a contract
21 is executed by that proposer.

22 (ii) Notwithstanding the provisions of Item (i) of this Subparagraph, where
23 a request for proposal or a proposed contract is exempt from the application of
24 Subparagraphs (a) through (d) of Paragraph (1) of this Subsection, the proposer shall
25 be required to pay a sum not to exceed one percent of the total value of the
26 performance-based energy efficiency contract at the time that a contract is executed
27 by that proposer.

1 (b) The determination of the sum to be paid shall be made by the
2 commissioner of administration according to the rules and regulations adopted
3 pursuant to this Section.

4 (c) The "Energy Performance Contract Fund", hereinafter referred to as the
5 "fund", is hereby created in the state treasury. After compliance with the provisions
6 of Article VII, Section 9(B) of the Constitution of Louisiana relative to the allocation
7 of monies to the Bond Security and Redemption Fund, the treasury shall deposit into
8 the fund an amount equal to the amount collected pursuant to Subparagraphs (a) and
9 (b) of this Paragraph. The monies in the fund shall be used only to fund the
10 requirements of this Section and the rules promulgated pursuant thereto. Monies in
11 the fund shall be invested in the same manner as monies in the state general fund and
12 any interest earned on the investment of monies in the fund shall be credited to the
13 fund. Unexpended and unencumbered monies in the fund at the end of the fiscal
14 year shall remain in the fund.

15 F. For the purposes of this Section, any appropriation to an agency shall not
16 be deemed an appropriation of funds by the legislature to fulfill the requirements of
17 a performance-based energy efficiency contract awarded on or after January 1, 2010,
18 unless and until such contract has been approved in accordance with the provisions
19 of this Section.

20 G. For the purposes of this Section, the Energy Efficiency Procurement
21 Support Team shall consist of an attorney chosen jointly by the speaker of the House
22 of Representatives and the president of the Senate from the legislative services staff
23 of the House of Representatives or the staff of the Senate and one or more
24 representatives chosen by each of the following: the division of administration,
25 facility planning and control; the using agency initiating the procurement action; and
26 the legislative fiscal office. At least four members, one from each office or agency
27 designated, must be present to constitute a quorum. The Energy Efficiency
28 Procurement Support Team shall evaluate the submitted proposal in accordance with
29 guidelines to be published by the division of administration.

1 §1595.6. Certification by using agency

2 A. Upon seeking approval to enter into a proposed professional, personal,
3 consulting, or social service contract valued in excess of five thousand dollars, an
4 individual or individuals specifically designated by the head of the using agency for
5 such purpose shall certify to the director of the office of contractual review that:

6 (1) Either no employee of that agency is both competent and available to
7 perform the services called for by the proposed contract or the services called for are
8 not the type readily susceptible of being performed by persons who are employed by
9 the state on a continuing basis.

10 (2) The services are not available as a product of a prior or existing
11 professional, personal, consulting, or social service contract.

12 (3) The requirement for consultant and social services contracts, when
13 applicable, have been publicized pursuant to R.S. 39:1503.

14 (4) The using agency has developed and fully intends to implement a written
15 plan providing for:

16 (a) The assignment of specific using agency personnel to a monitoring and
17 liaison function.

18 (b) The periodic review of interim reports or other indicia of performance
19 to date.

20 (c) The ultimate use of the final product of the services.

21 (5) The cost basis for the proposed contract.

22 (6) A description of the specific objectives or deliverables associated with
23 the proposed contract and the monitoring plan therefor.

24 (7) Methods to be used to measure and determine contract performance.

25 B. In addition to the certifications required in Subsection A herein, for any
26 proposed professional, personal, consulting, or social service contract that exceeds
27 fifty thousand dollars and has a term of more than six months, a cost-benefit analysis
28 shall be conducted which indicates that obtaining such services from the private
29 sector is more cost-effective than providing such services by the using agency itself

1 or by an agreement with another state agency, to include both a short-term and long-
2 term analysis. The office of contractual review shall promulgate, as necessary, rules
3 and regulations relative to the form and content of a cost-benefit analysis.

4 §1595.7. Approval of contract; penalties

5 A. Before approving a proposed contract for professional, personal,
6 consulting, or social services, the director of the office of contractual review or an
7 assistant shall have determined that:

8 (1) All provisions of R.S. have been complied with.

9 (2) The using agency has statutory authority to enter into the proposed
10 contract.

11 (3) The contract will not establish an employer/employee relationship
12 between the state or the using agency and any prospective contractor.

13 (4) No current state employee will engage in the performance of the
14 proposed contract except as provided for in R.S..

15 (5) No using agency has previously performed or contracted for the
16 performance of tasks which would be substantially duplicated under the proposed
17 contract without appropriate written justification.

18 (6) There has been appropriated or otherwise lawfully made available and
19 ready for expenditure sufficient monies for payment of the services called for in the
20 contract, at least for the applicable fiscal year.

21 (7) The contracting using agency has specified the purpose, duration,
22 specific goals and objectives, measures of performance, and a plan for monitoring
23 the services to be provided under the contract.

24 (8) The using agency has a written plan for the monitoring of the contract
25 and such monitoring plan has been submitted in accordance with rules and
26 regulations adopted by the office of state procurement.

27 (9) The provisions of R.S. 12:25(E) have been complied with, if the contract
28 is with a business corporation, the provisions of R.S. 12:205(E) have been complied

1 with, if the contract is with a nonprofit corporation, or the provisions of R.S.
2 12:304(A)(11) have been complied with, if the contract is with a foreign corporation.

3 B. Any corporation which fails to make complete disclosure of ownership,
4 directors, and officers as required by law shall be required, as a penalty, to refund
5 any funds received by that corporation from the state for the contract.

6 §1595.8. Professional, personal, consulting, or social service contract
7 content

8 Each contract for professional, personal, consulting, or social services entered
9 into by a governmental body as defined in R.S. shall contain as a minimum:
10 description of the work to be performed and objectives to be met; amount and time
11 of payments to be made; description of reports or other deliverables to be received,
12 when applicable; date of reports or other deliverables to be received, when
13 applicable; responsibility for payment of taxes, when applicable; circumstances
14 under which the contract can be terminated either with or without cause; remedies
15 for default; and a statement giving the legislative auditor the authority to audit
16 records of the individual or firm.

17 §1595.9. Professional, personal, and consulting service contracts with state
18 employees

19 A. State agency personnel in the medical, nursing or allied health fields, state
20 employees who are qualified to serve as interpreters for the deaf, faculty members
21 of public institutions of higher education, and state employees selected to serve as
22 instructors in the paralegal studies course of the division of continuing education at
23 a state college or university may be employed by other state agencies through a
24 contract for professional, personal, consulting, or social services in accordance with
25 rules and regulations adopted by the office of state procurement. No such faculty
26 member, except those who are also employed by private firms, may contract for the
27 design or redesign of a state-owned facility in which the services of a professional
28 architect or engineer, or both, are required.

1 B. Additionally, each professional, personal, consulting, and social service
 2 agreement between a governmental body as defined in R.S. and a faculty member
 3 of any state college or state university shall be subject to the policies and procedures
 4 promulgated by each respective state college and university and the management
 5 boards having authority over the respective institution of higher education in which
 6 the faculty member is a member and the Board of Regents. Notwithstanding any
 7 other provision of law, each such agreement shall be subject to the written approval
 8 of the president of the college or university which employs the faculty member, and
 9 written notification of agreement and approval shall be given to the appropriate
 10 management board.

11 C. The list of occupations exempted in this Section from the provision of
 12 R.S. may be increased by rules adopted by the chief procurement officer.

13 D. Notwithstanding any other provisions of law to the contrary, the
 14 Louisiana School for the Deaf is hereby authorized to enter into professional,
 15 personal, consulting, and social services contracts with an employee of the school to
 16 provide sign language and interpreting services which are independent of the
 17 employee's assigned duties and regular work hours, and for which compensation may
 18 be paid.

19 E. Notwithstanding any other provisions of law to the contrary, the Louisiana
 20 Commission for the Deaf is hereby authorized to enter into professional, personal,
 21 consulting, and social services contracts with an employee of the commission to
 22 provide sign language and interpreting services which are independent of the
 23 employee's assigned duties and regular work hours, and for which compensation may
 24 be paid; however, such contract is authorized only if a person who is not an
 25 employee of the commission is unavailable for such services.

26 SUBPART C. PREFERENCES FOR PRODUCTS AND SERVICES

27 ~~§1595.~~ §1596. Preference for all types of products produced, manufactured,
 28 assembled, grown, or harvested in Louisiana; exceptions

1 A. As used in this Section, the following terms shall have the following
2 meanings ascribed to them:

3 (1) "Meat" and "meat product" means beef, veal, pork, mutton, poultry, and
4 other meats, and products made from those meats.

5 (2) "Other products" includes "other meat", "other meat products", "other
6 seafood", and "other seafood products" and means products which are produced,
7 manufactured, grown, processed, and harvested outside the state.

8 (3) "Seafood" means crawfish, catfish, other fish, shrimp, oysters, crabs,
9 underutilized species, and other seafood and freshwater food.

10 (4) "Processed" means the alteration of any raw product altered from its
11 original state to enhance its value or render it suitable for further refinement or
12 marketing.

13 B. Notwithstanding any other provision of this Section to the contrary, each
14 procurement officer, purchasing agent, or similar official who procures or purchases
15 agricultural or forestry products, including meat, seafood, produce, eggs, paper or
16 paper products under the provisions of this Chapter shall procure or purchase
17 Louisiana products provided all of the following conditions are met:

18 (1) The bidder certifies in the bid submitted that the product meets the
19 criteria of a Louisiana product.

20 (2) The product is equal to or better than equal in quality to other products.

21 (3) The cost of the Louisiana product shall not exceed the cost of other
22 products by more than ten percent, except as otherwise provided in this Chapter as
23 a specific exception.

24 C. In order to qualify as Louisiana products for the purpose of this Section,
25 the following products shall meet the following requirements:

26 (1) Produce shall be produced in Louisiana and produce products shall be
27 produced and processed in Louisiana.

28 (2) Eggs shall be laid in Louisiana and egg products shall be processed from
29 eggs laid in Louisiana.

1 (3) Meat and meat products shall be processed in Louisiana from animals
2 which are alive at the time they enter the processing plant.

3 (4)(a) Seafood shall be:

4 (i) Harvested in Louisiana seas or other Louisiana waters; or

5 (ii) Harvested by a person who holds a valid appropriate commercial fishing
6 license issued under R.S. 56:1 et seq.

7 (b) Products produced from such seafood shall be processed in Louisiana.

8 (5) Domesticated catfish shall be processed in Louisiana from animals which
9 were grown in Louisiana.

10 (6) Paper and paper products shall be manufactured or converted in
11 Louisiana. For the purposes of this Paragraph, "manufactured" shall mean the
12 process of making a product suitable for use from raw materials by hand or by
13 machinery, and "converted" shall mean the process of converting roll stock into a
14 sheeted and fully packaged product in a full-time converting operation. For paper
15 supplied in wrapped reams, each carton and each individual ream shall be clearly
16 labeled with the name of the manufacturer or converter and the location within
17 Louisiana where such paper is manufactured or converted. For paper and paper
18 products supplied in bulk or in other forms, the smallest unit of packaging shall be
19 clearly labeled with the name of the manufacturer or converter and the location
20 within Louisiana where such paper or paper product is manufactured or converted.

21 (7) All other agricultural or forestry products shall be produced,
22 manufactured, or processed in Louisiana.

23 D. Notwithstanding any other provision of this Section to the contrary, each
24 procurement officer, purchasing agent, or similar official who procures or purchases
25 products under the provisions of this Chapter shall procure or purchase meat and
26 meat products which are further processed in Louisiana under the grading and
27 certification service of the Louisiana Department of Agriculture and Forestry and
28 which are equal in quality to other meat and meat products, provided the cost of the

1 further processed meat and meat products does not exceed the cost of other meat or
2 meat products by more than seven percent.

3 E. Notwithstanding any other provision of this Section to the contrary, each
4 procurement officer, purchasing agent, or similar official who procures or purchases
5 products under the provisions of this Part shall procure or purchase domesticated or
6 wild catfish which are processed in Louisiana but grown outside of Louisiana and
7 which are equal in quality to domesticated or wild catfish which are processed
8 outside of Louisiana provided the cost of the domesticated or wild catfish which are
9 processed in Louisiana does not exceed the cost of the domesticated or wild catfish
10 which are processed outside of Louisiana by more than seven percent.

11 F. Notwithstanding any other provision of this Section to the contrary, each
12 procurement officer, purchasing agent, or similar official who procures or purchases
13 products under the provisions of this Part shall procure or purchase produce
14 processed in Louisiana but grown outside of Louisiana and which is equal in quality
15 to produce processed and grown outside of Louisiana, provided the cost of the
16 produce processed in Louisiana does not exceed the cost of the produce processed
17 outside of Louisiana by more than seven percent.

18 G. Notwithstanding any other provision of this Section to the contrary, each
19 procurement officer, purchasing agent, or similar official who procures or purchases
20 products under the provisions of this Chapter shall procure or purchase eggs or
21 crawfish which are further processed in Louisiana under the grading service of the
22 Louisiana Department of Agriculture and Forestry and which are equal in quality to
23 other eggs or crawfish, provided the cost of the further processed eggs or crawfish
24 does not exceed the cost of other eggs or crawfish by more than seven percent.

25 H. Except as otherwise provided in this Section, each procurement officer,
26 purchasing agent, or similar official who procures or purchases materials, supplies,
27 products, provisions, or equipment under the provisions of this Chapter may
28 purchase such materials, supplies, products, provisions, or equipment which are
29 produced, manufactured, or assembled in Louisiana, as defined in R.S. 38:2251(A),

1 and which are equal in quality to other materials, supplies, products, provisions, or
2 equipment, provided that all of the following conditions are met:

3 (1) The cost of such items does not exceed the cost of other items which are
4 manufactured, processed, produced, or assembled outside the state by more than ten
5 percent.

6 (2) The vendor of such Louisiana items agrees to sell the items at the same
7 price as the lowest bid offered on such items.

8 (3) In cases where more than one bidder offers Louisiana items which are
9 within ten percent of the lowest bid, the bidder offering the lowest bid on Louisiana
10 items is entitled to accept the price of the lowest bid made on such items.

11 I. Notwithstanding any other provision of this Section to the contrary, such
12 preferences shall only apply to bidders whose Louisiana business workforce is
13 comprised of a minimum of fifty percent Louisiana residents.

14 J. Notwithstanding any other provision of this Section to the contrary, such
15 preference shall not apply to Louisiana products whose source is a clay which is
16 mined or originates in Louisiana, and which is manufactured, processed or refined
17 in Louisiana for sale as an expanded clay aggregate form different than its original
18 state. No provision of this Subsection shall affect the preferences applicable to brick
19 manufacturers.

20 K. The provisions of this Section shall not apply to treated wood poles and
21 piling.

22 ~~§1595.1.~~ §1596.1. Preference in awarding contracts

23 A. In the awarding of contracts by any public entity, except contracts for the
24 construction, maintenance, or repair of highways and streets, and contracts financed
25 in whole or in part by contributions or loans from any agency of the United States
26 government, where both in-state and out-of-state vendors are bidding, in-state
27 vendors shall be given a preference in the same manner that any of the out-of-state
28 vendors would be given on a comparative bid in their own state. If one party to a
29 joint venture is qualified under this Section as a vendor domiciled in Louisiana, this

1 qualification shall extend to all parties to the joint venture. For the purpose of this
2 Section, a foreign corporation which was qualified to do business in the state of
3 Louisiana in the manner required by law more than six months prior to the
4 advertising of bids on a contract shall be considered to be a vendor domiciled in the
5 state of Louisiana for the purpose of awarding the contract.

6 B. For purposes of determination of the lowest responsible bidder, when
7 letting contracts where bids are received from in-state vendors and out-of-state
8 vendors, local sales and use taxes shall be excluded from the bid.

9 C. The provisions and requirements of this Section shall not be waived by
10 any public entity.

11 ~~§1595.2.~~ §1596.2. Preference in letting contracts for public work

12 A.(1) In the letting of contracts for public work by any public entity, except
13 contracts financed in whole or in part by contributions or loans from any agency of
14 the United States government:

15 (a) Preference shall be given to contractors domiciled in the state of
16 Louisiana over contractors domiciled in a state that provides for a preference in favor
17 of contractors domiciled in that state over contractors domiciled in the state of
18 Louisiana for the same type of work; and

19 (b) Contractors domiciled in the state of Louisiana are to be granted the same
20 preference over contractors domiciled in such state favoring contractors domiciled
21 therein with a preference over contractors domiciled in the state of Louisiana in the
22 same manner and on the same basis and to the same extent that such preference may
23 be granted in letting contracts for the same type of work by such other state to
24 contractors domiciled therein over contractors domiciled in the state of Louisiana.

25 (2) If one party to a joint venture is qualified under this Section as a
26 contractor domiciled in Louisiana, this qualification shall extend to all parties to the
27 joint venture.

28 (3) For the purpose of this Section, a foreign corporation that has qualified
29 to do business in the state of Louisiana in the manner required by law more than six

1 months prior to the advertising for bids on a contract for public work shall be
2 considered to be a contractor domiciled in the state of Louisiana for the purpose of
3 letting the contract for such public work.

4 B. The provisions and requirements of this Section shall not be waived by
5 any public entity.

6 ~~§1595.3.~~ §1596.3. Preference in awarding contracts for certain services

7 In the awarding of contracts by any public entity, for services to organize or
8 administer rodeos and livestock shows, where state-owned facilities will be used to
9 house or contain such activities, and where both in-state and out-of-state vendors are
10 bidding, in-state vendors shall be given preference, provided such services are equal
11 in quality and do not exceed in cost by more than ten percent those services available
12 from outside the state.

13 ~~§1595.4.~~ §1596.4 Preference for goods manufactured, or services performed, by
14 sheltered workshops; definitions; coordinating council

15 A. Every governmental body shall give a preference in its purchasing
16 practices to goods manufactured and services performed by ~~severely handicapped~~
17 individuals with severe disabilities in state-operated and state-supported sheltered
18 workshops.

19 B. The provisions of this Section shall not be construed to limit or otherwise
20 affect the provisions of R.S. 23:3024 and 3025 regarding the sheltered industries
21 program for individuals who are blind.

22 C. There is hereby created within the Department of Health and Hospitals
23 a council whose function shall be to coordinate and facilitate the carrying out of
24 provisions of this Section. The membership of this council shall be determined by
25 the secretary of the Department of Health and Hospitals. It shall have authority to
26 designate and contract with a central nonprofit agency to assist sheltered workshops
27 in submitting applications for the selection of suitable goods and services, to
28 facilitate the allocation of orders among qualified sheltered workshops, and
29 otherwise to assist the council in performing its functions.

1 D. The Department of Health and Hospitals may adopt, promulgate, and
2 enforce such rules and regulations as are necessary and appropriate to implement the
3 provisions of this Section. The regulations shall be promulgated in accordance with
4 the Administrative Procedure Act, R.S. 49:950 et seq.

5 E. For the purposes of this Section, the following terms are defined as
6 follows:

7 (1) "Direct labor" means all labor involved in the manufacture of goods or
8 the performance of services except for supervision, instruction, administration, and
9 shipping.

10 (2) "Goods manufactured and services performed by ~~severely handicapped~~
11 individuals with severe disabilities" means goods and services for which not less
12 than seventy-five percent of the man-hours of direct labor required for manufacture
13 or performance is provided by ~~severely handicapped~~ individuals with severe
14 disabilities.

15 (3) "Qualified nonprofit agency for the ~~severely handicapped~~ with severe
16 disabilities" means an agency that:

17 (a) Is incorporated under the Louisiana Nonprofit Corporation Law and
18 operated in the interests of ~~severely handicapped~~ individuals with severe disabilities,
19 and the income of which does not inure in whole or in part to the benefit of any
20 shareholder or other private individual, and

21 (b) Complies with any applicable occupational health and safety standards
22 provided by the statutes or regulations of this state or of the United States.

23 (4) "~~Severely handicapped individuals~~" "Individuals with severe disabilities"
24 means individuals with a physical, mental, or substance abuse disability which
25 constitutes a substantial obstacle to their employment and is of such a nature as to
26 prevent an individual from engaging in normal competitive employment.

27 (5) "Sheltered workshop" means a facility designed to provide gainful
28 employment for ~~severely handicapped~~ individuals with severe disabilities who
29 cannot be absorbed into the competitive labor market or to provide interim

1 employment for such individuals when employment opportunities for them in the
2 competitive labor market do not exist.

3 (6) "State-operated sheltered workshop" means a sheltered workshop staffed
4 by state agency personnel.

5 (7) "State-supported sheltered workshop" means a sheltered workshop
6 funded in whole or in part by the state and staffed by personnel from a qualified
7 nonprofit agency for ~~the severely handicapped~~ individuals with severe disabilities.

8 ~~§1595.5.~~ §1596.5. Preference for items purchased from Louisiana retailers

9 A. When purchasing items at retail, every procurement officer under the
10 provisions of this Chapter or other person acting as purchasing agent shall purchase
11 items from a retail dealer located in the state of Louisiana which items are equal in
12 quality to items purchased from a retail dealer located outside the state, provided the
13 cost of items purchased from a retail dealer located in this state does not exceed by
14 more than ten percent the cost of items purchased from a retail dealer located outside
15 the state.

16 B. A retail dealer shall qualify for the preference if the dealer can show that
17 he has paid Louisiana corporate income, corporate franchise, and inventory taxes or
18 any combination thereof during the previous twelve-month period.

19 C. Retailers domiciled in the state of Louisiana are to be granted the same
20 preference over retailers domiciled in the state favoring retailers domiciled therein
21 with a preference over retailers domiciled in the state of Louisiana in the same
22 manner and on the same basis and to the same extent that such preference may be
23 granted in purchasing items of the same type by such other state to retailers
24 domiciled therein over retailers domiciled in the state of Louisiana.

25 ~~§1595.6.~~ §1596.6 Preference for steel rolled in Louisiana

26 A. When purchasing steel, every person acting as purchasing agent for any
27 agency, board, commission, department, or other instrumentality of the state or of
28 a parish, municipality, or other unit of local government, including a levee board,
29 drainage district, school board, or special district, shall purchase steel rolled in this

1 state which is equal in quality to steel rolled outside the state, provided the cost of
2 steel rolled in this state does not exceed by more than ten percent the cost of steel
3 which is rolled outside the state.

4 B. The provisions of this Section shall not apply when sufficient quantities
5 of steel rolled in Louisiana are not available.

6 ~~§1595.7.~~ §1596.7. Preference for items manufactured in the United States;
7 definitions

8 A. This Section may be cited as the "Procurement of Domestic Products
9 Act".

10 B. As used in this Section, the following definitions shall apply:

11 (1) "Manufactured in the United States" means produced by a process in
12 which the manufacturing, final assembly, processing, packaging, testing, and any
13 other process that adds value, quality, or reliability to assembled articles, materials,
14 or supplies, occur in the United States.

15 (2) "United States" means the United States and any place subject to the
16 jurisdiction of the United States.

17 C. In the event a contract is not entered into for products purchased under the
18 provisions of R.S. 39:1595, each procurement officer, purchasing agent, or similar
19 official who procures or purchases materials, supplies, products, provisions, or
20 equipment under the provisions of this Chapter may purchase such materials,
21 supplies, products, provisions, or equipment which are manufactured in the United
22 States, and which are equal in quality to other materials, supplies, products,
23 provisions, or equipment, provided that all of the following conditions are met:

24 (1) The cost of such items does not exceed the cost of other items which are
25 manufactured outside the United States by more than five percent.

26 (2) The vendor of such items agrees to sell the items at the same price as the
27 lowest bid offered on such items.

28 (3) In cases where more than one bidder offers items manufactured in the
29 United States which are within five percent of the lowest bid, the bidder offering the

1 lowest bid on such items is entitled to accept the price of the lowest bid made on
2 such items.

3 (4) The vendor certifies that such items are manufactured in the United
4 States.

5 D. The office of state purchasing may promulgate rules and regulations for
6 the implementation of this Section in accordance with the Administrative Procedure
7 Act.

8 ~~§1596. Small purchases~~

9 ~~Procurements not exceeding the amounts established by executive order of~~
10 ~~the governor may be made in accordance with small purchase procedures prescribed~~
11 ~~by such executive order, except that procurement requirements shall not be~~
12 ~~artificially divided so as to constitute a small purchase under this Section.~~

13 ~~§1597. Sole source procurements~~

14 ~~A contract may be awarded for a required supply, service, or major repair~~
15 ~~without competition when, under regulations, the chief procurement officer or his~~
16 ~~designee above the level of procurement officer determines in writing that there is~~
17 ~~only one source for the required supply, service, or major repair item.~~

18 ~~§1598. Emergency procurements~~

19 ~~A. Conditions for use. The chief procurement officer or his designee above~~
20 ~~the level of procurement officer may make or authorize others to make emergency~~
21 ~~procurements when there exists an imminent threat to the public health, welfare,~~
22 ~~safety, or public property under emergency conditions as defined in accordance with~~
23 ~~regulations.~~

24 ~~B. Written quotations. Every effort shall be made to obtain quotations from~~
25 ~~three or more vendors when supplies, services, or major repairs are to be purchased~~
26 ~~on an emergency basis, except for standard equipment parts for which prices are~~
27 ~~established. Immediate purchasing shall be discouraged as much as is practicable.~~
28 ~~When supplies, services, or major repairs are urgently required and time does not~~
29 ~~permit the obtaining of written quotations, the procurement officer may obtain~~

1 ~~quotations by telephoning or otherwise, but such quotations shall be made on the~~
2 ~~relative purchase requisitions. So far as practicable, quotations shall be secured from~~
3 ~~institutions of the state as provided by law.~~

4 ~~C. Determination required. The Chief Procurement Officer shall make a~~
5 ~~written determination of the basis of the emergency that includes the facts and~~
6 ~~circumstances leading to the conclusion that such procurement was necessary as well~~
7 ~~as a written determination detailing the steps taken prior to selecting a particular~~
8 ~~contractor and the basis for the final selection.~~

9 ~~The written determination shall be included in the contract file either prior~~
10 ~~to contracting or as soon thereafter as practicable.~~

11 ~~SUBPART B-1. CERTAIN AUCTION METHODS~~

12 ~~§1598.1. Reverse auction~~

13 ~~A.(1) Notwithstanding the provisions of Subpart B of this Part, with the~~
14 ~~approval of the state director of purchasing and the determination of the head of the~~
15 ~~using agency that the best interests of the state would be served and that electronic~~
16 ~~online bidding is more advantageous than other procurement methods provided in~~
17 ~~this Chapter, a reverse auction may be utilized for the acquisition of materials,~~
18 ~~supplies, services, products, or equipment.~~

19 ~~(2) For purposes of this Subpart, "reverse auction" means a competitive~~
20 ~~online solicitation process on the Internet for materials, supplies, services, products,~~
21 ~~or equipment in which vendors compete against each other online in real time in an~~
22 ~~open and interactive environment.~~

23 ~~B. Prior to the implementation of this Subpart, the state director of~~
24 ~~purchasing shall develop policies, procedures, and promulgate regulations, in~~
25 ~~accordance with the Administrative Procedure Act. Such policies and procedures~~
26 ~~may require that:~~

27 ~~(1) Vendors shall register before the opening date and time, and as part of~~
28 ~~the registration, require that the vendors agree to any terms and conditions and other~~
29 ~~requirements of the solicitation.~~

1 ~~(2) Vendors shall be prequalified prior to placing bids and allow only bidders~~
2 ~~who are prequalified to submit bids.~~

3 ~~(3) The solicitation shall designate an opening date and time and the closing~~
4 ~~date and time. The closing date and time may be fixed or remain open depending on~~
5 ~~the nature of the item being bid.~~

6 ~~(4) At the opening date and time, the using agency shall begin accepting~~
7 ~~online bids and continue accepting bids until the bid is officially closed. Registered~~
8 ~~bidders shall be allowed to lower the price of their bid below the lowest bid posted~~
9 ~~on the Internet until the closing date and time.~~

10 ~~(5) Bidders' identities shall not be revealed during the bidding process; only~~
11 ~~the successively lower prices, ranks, scores, and related bid details shall be revealed.~~

12 ~~(6) All bids shall be posted electronically and updated on a real-time basis.~~

13 ~~(7) The using agency shall retain the right to cancel the solicitation if it~~
14 ~~determines that it is in the agency's or the state's best interest.~~

15 ~~(8) The using agency shall retain its existing authority to determine the~~
16 ~~criteria that shall be used as a basis for making awards.~~

17 ~~C. Adequate public notice for the purchase of materials, supplies, services,~~
18 ~~or equipment using a reverse auction shall be given as follows:~~

19 ~~(1) The advertisement or notice shall be published one time in the official~~
20 ~~journal of the state at least twenty days before the opening date of the reverse~~
21 ~~auction.~~

22 ~~(2) In the case of any purchase to meet the needs of a single budget unit, the~~
23 ~~advertisement shall be published also in a newspaper of general circulation printed~~
24 ~~in the parish in which the budget unit is situated, or, if there is not a newspaper~~
25 ~~printed in the parish, in a newspaper printed in the nearest parish that has a general~~
26 ~~circulation in the parish in which the budget unit is situated.~~

27 SUBPART ~~C.~~ D. CANCELLATION OF INVITATIONS
28 FOR BIDS OR REQUESTS FOR PROPOSALS

29 §1599. Cancellation of invitations for bids or requests for proposals

1 An invitation for bids, a request for proposals, or other solicitation may be
2 cancelled, or all bids or proposals may be rejected, only if it is determined in writing
3 by the chief procurement officer or his designee that such action is taken in the best
4 interests of the state.

5 SUBPART ~~D.~~ E. QUALIFICATIONS AND DUTIES

6 §1601. Responsibility of bidders and ~~offerors~~ proposers

7 A. A reasonable inquiry to determine the responsibility of a bidder or ~~offeror~~
8 proposer may be conducted. The unreasonable failure of a bidder or ~~offeror~~ proposer
9 promptly to supply information in connection with such an inquiry may be grounds
10 for a determination of nonresponsibility with respect to such bidder or offeror.

11 B. Whenever the ~~Chief Procurement Officer, Commissioner~~ state chief
12 procurement officer, commissioner of administration, or head of a governmental
13 body with such authority proposes to disqualify the lowest bidder on bids of \$5,000
14 or more such individual shall:

15 1) (1) Give written notice of the proposed disqualification to such bidder and
16 include in the written notice all reasons for the proposed disqualification; and

17 2) (2) Give such bidder who is proposed to be disqualified, a reasonable
18 opportunity to be heard at an informal hearing at which such bidder is afforded the
19 opportunity to refute the reasons for the disqualification.

20 C. Except as otherwise provided by law, information furnished by a proposer
21 pursuant to this Section may not be disclosed outside of the user agency or the state
22 central purchasing agency without prior written notice to the proposer.

23 §1602. Prequalification of suppliers

24 Prospective suppliers may be prequalified for particular types of supplies and
25 services.

26 §1603. Cost or pricing data

27 A. Contractor certification. A contractor shall submit cost or pricing data
28 and shall certify that, to the best of its knowledge and belief, the cost or pricing data

1 submitted was accurate, complete, and current as of a mutually determined specified
2 date prior to the date of:

3 (1) Pricing of any contract awarded by other than competitive sealed
4 bidding, as provided in R.S. 39:1594, or small purchase procedures, as provided in
5 R.S. 39:1596, where the total contract price is expected to exceed an amount
6 established by regulations; or

7 (2) Pricing of any change order or contract modification which is expected
8 to exceed an amount established by regulations.

9 B. Price adjustment. Any contract, change order, or contract modification
10 under which a certificate is required shall contain a provision that the price to the
11 state, including profit or fee, shall be adjusted to exclude any significant sums by
12 which the procurement officer finds that such price was increased because the
13 contractor-furnished cost or pricing data was inaccurate, incomplete, or not current
14 as of the date agreed upon between the parties.

15 C. Cost or pricing data not required. The requirements of this Section need
16 not be applied to contracts:

17 (1) Where the contract price is based on adequate price competition;

18 (2) Where the contract price is based on established catalog or market prices
19 of commercial items sold in substantial quantities to the general public;

20 (3) Where contract prices are set by law or regulation; or

21 (4) In exceptional cases where it is determined in writing in accordance with
22 regulations that the requirements of this Section may be waived, and the reasons for
23 such waiver are stated in writing.

24 ~~SUBPART E:~~ F. TYPES OF CONTRACTS

25 §1611. Cost-plus-a-percentage-of-cost contracts

26 The cost-plus-a-percentage-of-cost system of contracting shall not be used
27 except in case of a disaster or emergency declared by the governor.

28 §1612. Cost-reimbursement contracts

1 A. Determination required prior to use. No cost-reimbursement prime
2 contract may be made unless it is determined in writing in accordance with
3 regulations that such contract is likely to be less costly to the state than any other
4 type of contract or that it is impracticable to obtain supplies, services, or major
5 repairs of the kind or quality required except under such a contract.

6 B. Reimbursement of costs. All cost-reimbursement contracts shall contain
7 a provision that only costs recognized as allowable in accordance with cost principles
8 set forth in regulations will be reimbursable.

9 C. Prior notice requirement concerning use of cost-reimbursement type
10 subcontract. Each contractor under a cost-reimbursement type contract shall give
11 notice, as provided for in the contract, before entering into either of the following:

12 (1) A cost-reimbursement type subcontract.

13 (2) Any other type of subcontract involving more than ten thousand dollars
14 or ten percent of the estimated cost of the prime contract.

15 ~~§1613. Use of other types of contracts~~

16 ~~Subject to the limitations of R.S. 39:1611 and R.S. 39:1612, any type of~~
17 ~~contract, including brand name and multiple award contracts, which will promote the~~
18 ~~best interests of the state may be used, provided that the chief procurement officer~~
19 ~~must make a written determination justifying the type of contract used. An annual~~
20 ~~report on the number, type, and volume of such procurements shall be made to the~~
21 ~~commissioner or cabinet department head within ninety days after the end of the~~
22 ~~fiscal year.~~

23 §1613. Reimbursement of costs for professional, personal, consulting, and
24 social service contracts

25 A. All cost-reimbursement type contracts shall contain a provision that only
26 costs recognized as allowable in accordance with cost principles set forth in rules and
27 regulations, issued pursuant to Part IV hereof will be reimbursable.

1 B. Payments may be made to the contractor for professional, personal,
2 consulting, and social service contracts in advance of services being performed if the
3 following conditions are met:

4 (1) The using agency has submitted, in writing, to the office of state
5 procurement, a certification that an advance is necessary in order to provide the
6 services at the lowest total cost and that there is no other cost effective source of
7 such advance funding. The certification shall include a narrative setting out the facts
8 which necessitate the advance funding.

9 (2) The advance is approved by the chief procurement officer.

10 (3) Except as may be otherwise provided by law, the amount of such advance
11 shall be limited to a sum not to exceed twenty percent of the total contract amount,
12 excluding travel advances which shall be governed by applicable regulations.

13 (4) The contractor is a nonprofit corporation.

14 C. If local matching funds are available to fund the advance, no state monies
15 shall be advanced through the contract.

16 D. If federal funds are used for the advance, federal regulations and statutes
17 shall govern the use and amounts of advance payments made.

18 E. Interagency contracts as defined in R.S. 39: are exempt from the
19 provisions of Subsections B and C of this Section.

20 F. The provisions of this Section shall not be construed to authorize
21 payments in advance of services to be performed pursuant to a professional service
22 contract.

23 G. State funds may be expended to fund the advance only in the same fiscal
24 year in which the funds are appropriated.

25 §1614. Approval of accounting system

26 Except with respect to firm fixed-price contracts, no contract type shall be
27 used unless it has been determined in writing by the chief procurement officer or his
28 designee that:

1 (1) The proposed contractor's accounting system will permit timely
2 development of all necessary cost data in the form required by the specific contract
3 type contemplated; and

4 (2) The contractor's accounting system is adequate to allocate costs in
5 accordance with generally accepted accounting principles.

6 §1615. Multiyear contracts

7 A. Specified Period. Unless otherwise provided by law, a contract for
8 supplies or services may be entered into for periods of not more than five years, if
9 funds for the first fiscal year of the contemplated contract are available at the time
10 of contracting. Payment and performance obligations for succeeding fiscal years
11 shall be subject to the availability and appropriation of funds therefor. No contract
12 shall be entered into for more than one year unless the length of the contract was
13 clearly stated in the specifications. Any lease or similar agreement affecting the
14 allocation of space in the state capitol shall have the prior approval of the Legislative
15 Budgetary Control Council if it extends for more than one year. A report of all
16 multiyear contracts shall be provided to the Joint Legislative Committee on the
17 Budget no later than ninety days after the end of each fiscal year.

18 B. Determination prior to use. Prior to the utilization of a multiyear contract,
19 it shall be determined in writing:

20 (1) That estimated requirements cover the period of the contract and are
21 reasonably firm and continuing; and

22 (2) That such a contract will serve the best interests of the state by
23 encouraging effective competition or otherwise prompting economies in state
24 procurement.

25 A written resume of the supportive underlying facts for the foregoing
26 determinations shall be included in the determination, and the resume shall state the
27 estimated savings to be obtained by entering into a multiyear contract.

28 C. Termination due to unavailability of funds in succeeding years. When
29 funds are not appropriated to support continuation of performance in a subsequent

1 year of a multiyear contract, the contract for such subsequent year shall be
2 terminated. When a contract is terminated under these conditions, no additional
3 funds shall be paid to the contractor as a result of such action.

4 D. Educational institutions excepted. (1) An educational institution may
5 enter into a multiyear nonexclusive contract, not to exceed ten years, with a vendor
6 who has made a gift to the institution of equipment utilized for promoting products
7 and university activities at a cost to the vendor in excess of fifty thousand dollars.
8 Further, for this exception to be applicable, the contract shall cover products for
9 resale within the institution.

10 (2) The state superintendent of education may enter into a multiyear contract,
11 not to exceed ten years, with any public or private agency to act as the depository in
12 the state for school books.

13 E. With respect to all multiyear contracts, there shall be no provisions for a
14 penalty to the state for the cancellation or early payment of the contract.

15 F. The Department of Environmental Quality may enter into a multiyear
16 contract, not to exceed seven years, for the operation of privately operated vehicle
17 emission inspection facilities pursuant to R.S. 30:2054(B)(8). The secretary shall
18 seek and consider proposals for an enhanced inspection maintenance program to be
19 implemented no sooner than January 1, 1995, from contractors proposing to
20 implement currently evolving, cost-effective technologies, presenting minimal public
21 inconvenience, designed to bring Louisiana into compliance with federal ambient air
22 quality standards and meeting EPA required program standards.

23 G.(1) Unless otherwise provided in the statutes making appropriations
24 therefor, a contract for professional, personal, consulting, or social services may be
25 entered into for periods of not more than five years, except that:

26 (a) Contracts for management of food services at public universities and
27 colleges, contracts of retirement systems for investment management services and
28 investment advisory services, contracts for electronic disbursement services for child

1 support payments, contracts for prisoner dialysis, and contracts for central banking
2 services for the state may be entered into for periods of up to five years.

3 (b) Contracts for electronic benefits issuance system services as required
4 under R.S. 46:450.1 may be entered into for periods of up to ten years. The contracts
5 shall be for an initial contract period of six years with the state having two options
6 for two-year extensions up to a maximum of ten years.

7 (c) Contracts for national norm-referenced testing or other testing services
8 which are to be used as part of the school and district accountability system as
9 provided in R.S. 17:10.1 et seq. may be entered into for a period of up to twelve
10 years. Modifications to existing contracts may be made in order to ensure the
11 acquisition and usage of the most current tests offered by the contractor.

12 (d)(i) Contracts or amendments to existing contracts issued to institutions of
13 higher education under the authority of grants or joint agreements between the Board
14 of Regents and federal agencies for research, educational, or infrastructure
15 development activities, and contracts or amendments to existing contracts issued by
16 such institutions under the authority of grants or joint agreements issued by federal
17 agencies or private grants, may be entered into for a period corresponding to the
18 performance period of the grant or agreement.

19 (ii) Contracts or amendments to existing contracts issued to institutions of
20 higher education under the authority of the Board of Regents to award grants for
21 educational and research purposes with funds available from the Louisiana Quality
22 Education Support Fund, the Louisiana Fund, and the Health Excellence Fund may
23 be entered into for periods of not more than six years. However, such contracts may
24 be extended beyond the six-year limit up to an additional two years provided no
25 additional costs are incurred.

26 (e) Contracts for the administration of the Medicaid early periodic screening
27 diagnosis and treatment program (EPSDT), primary care case management (PCCM),
28 and home and community-based services waivers may be entered into by the
29 Department of Health and Hospitals for periods of up to five years.

1 (2) Any such contract may be cancelled by the governmental body, provided
2 the governmental body gives thirty days notice of such cancellation. If funds for the
3 first fiscal year of the contemplated contract are available at the time of contracting,
4 payment and performance obligations for succeeding fiscal years shall be subject to
5 the availability of funds therefor.

6 H. Prior to the utilization of a multi-year contract, it shall be determined in
7 writing by the commissioner of administration that:

8 (1) Estimated requirements cover the period of the contract and are
9 reasonably firm and continuing; and

10 (2) Such a contract will serve the best interests of the state by encouraging
11 effective competition or otherwise promoting economies in state procurement.

12 I. When funds are not appropriated or otherwise made available to support
13 continuation of performance in a subsequent year of a multi-year contract, the
14 contract for such subsequent year shall be cancelled and the contractor shall be
15 reimbursed in accordance with the terms of the contract for the reasonable value of
16 any nonrecurring costs incurred but not amortized in the price of the services
17 delivered under the contract. The cost of cancellation may be paid from (1)
18 appropriations currently available for performance of the contract; (2) appropriations
19 currently available for procurement of similar services and not otherwise obligated,
20 or (3) appropriations made specifically for the payment of such cancellation costs.

21 §1616. Installment-purchase contract

22 The central purchasing agency may, on behalf of any governmental body,
23 enter into contracts for the installment purchase of supplies or equipment, including
24 but not limited to data processing equipment and telecommunications equipment,
25 procured under the ~~Louisiana Procurement Code~~ this Chapter and any other
26 applicable laws on the procurement of supplies or equipment, in accordance with the
27 following provisions:

28 (1) All installment-purchase contracts shall be entered into utilizing the
29 requisite procedures applicable to the particular supply or equipment being procured.

1 (2) The term of such contract shall not exceed the economic life to the item
2 or items being procured, which shall be established by the central purchasing agency
3 and shall be set forth in the invitation to bid or request for proposal, but in no case
4 shall the term of the contract exceed five years.

5 (3) Each contract shall contain an annual appropriation dependency clause
6 which shall provide that the continuation of the contract is contingent upon the
7 continuation of an appropriation of funds by the legislature to fulfill the requirements
8 of the contract. If the legislature fails to appropriate sufficient monies to provide for
9 the continuation of the contract or if a veto or reduction of appropriation of funds
10 necessitates the discontinuance of the contract, the contract shall terminate on the last
11 day of the fiscal year for which funds were appropriated, in accordance with R.S.
12 39:1615(C).

13 (4) Such contracts shall also conform to any other requirements which may
14 be established by the central purchasing agency through rules and regulations,
15 promulgated in accordance with law.

16 ~~SUBPART F:~~ G. INSPECTION OF PLANT AND AUDIT OF RECORDS

17 §1621. Right to inspect plant

18 The state may, at reasonable times, inspect the part of the plant or place of
19 business of a contractor or any subcontractor which is related to the performance of
20 any contract awarded or to be awarded by the state.

21 §1622. Right to audit records

22 A. Audit of persons submitting cost or pricing data. The state may, at
23 reasonable times and places, audit the books and records of any person who has
24 submitted cost or pricing data pursuant to R.S. 39:1603 to the extent that such books
25 and records relate to such cost or pricing data.

26 B. Contract audit. The state shall be entitled to audit the books and records
27 of a contractor or any subcontractor under any negotiated contract or subcontract
28 other than a firm fixed-price contract to the extent that such books and records relate
29 to the performance of such contract or subcontract. Such books and records shall be

1 maintained by the contractor for a period of five years from the date of final payment
2 under the prime contract and by the subcontractor for a period of five years from the
3 date of final payment under the subcontract.

4 SUBPART ~~G.~~ H. DETERMINATIONS AND REPORTS

5 §1625. Finality of determinations

6 The determinations required by R.S. 39:1595(A),¹ R.S. 39:1595(E),¹ R.S.
7 39:1597, R.S. 39:1598(C), R.S. 39:1599, R.S. 39:1601, R.S. 39:1603(C), R.S.
8 39:1612(A), R.S. 39:1613, and R.S. 39:1614 are final and conclusive unless they are
9 clearly erroneous, arbitrary, capricious, or contrary to law.

10 ~~§1626. Reporting of suspected collusive bidding or negotiations~~

11 ~~A. Notification to the attorney general. When for any reason collusion is~~
12 ~~suspected among any bidders or offerors, a written notice of the relevant facts shall~~
13 ~~be transmitted to the attorney general.~~

14 ~~B. Retention of all documents. All documents involved in any procurement~~
15 ~~in which collusion is suspected shall be retained for a minimum of six years or until~~
16 ~~the attorney general gives written notice that they may be destroyed, whichever~~
17 ~~period is longer. All retained documents shall be made available to the attorney~~
18 ~~general or a designee upon request and proper receipt therefor.~~

19 ~~§1627. §1626.~~ Record of certain procurement actions

20 The chief procurement officer shall retain all contracts made under R.S.
21 39:1597 or R.S. 39:1598 for a minimum of six years.

22 SUBPART ~~H.~~ I. INSURANCE

23 §1631. Direct purchase of insurance

24 Notwithstanding the provisions of R.S. 22:1171 or any other law to the
25 contrary, the state may purchase insurance policies covering any property or
26 insurable interests or activities of the state directly from insurers or underwriters,
27 without the necessity for signature or countersignature of such policies as provided
28 by R.S. 22:1171, and in lieu thereof such policy shall be signed by an official or
29 designated representative of the company issuing the policy. The insurers or

1 underwriters making such direct sales to the state shall reduce the policy premiums
2 by the amount of the commissions, which would have been paid, as required by R.S.
3 22:1171, but for the provisions of this Section. However, if any such insurance
4 policy is purchased in accordance with the provisions of R.S. 22:1171, the agent may
5 credit any portion of the commission to the state, through the division of
6 administration. The state shall be advised of the amount of any such rebate at the
7 time the agent furnishes a bid for such policy to the state, and the amount of such
8 rebate shall be taken into consideration in determining the cost of such policy.

9 §1632. Splitting of commissions prohibited

10 It shall be unlawful for an agent to split, pass on, or share with any person,
11 group, organization, or other agent, except the state of Louisiana, all or any portion
12 of the commission derived from the sale of insurance to the state; except that on
13 policies involving properties or exposure in more than one geographic area of the
14 state, said commission may be split, shared, or passed on if authorized in writing by
15 the commissioner of administration. In any such instance where the sharing of a
16 commission on state insurance is authorized, it shall be only with a bona fide
17 insurance agent. Whoever violates the provisions of this Section shall, upon
18 conviction, be fined not less than one thousand dollars nor more than five thousand
19 dollars and shall be imprisoned for not more than two years.

20 §1633. Authorization constitutes public record

21 Such written authorization as required by R.S. 39:1632 above shall constitute
22 a public record as defined in Chapter 1 of Title 44 of the Louisiana Revised Statutes
23 of 1950.

24 ~~SUBPART F. J.~~ ACQUISITION OF HOUSING SPACE

25 §1641. Budget for acquisition of housing space and leases by budget units

26 A. Contracts and agreements by and in name of state agencies. All contracts
27 and agreements for the lease or rental of space for the housing of state agencies, their
28 personnel, operations, equipment, or activities shall be made in the name of and by
29 the authorized representative or representative body of the state agency but shall be

1 made and entered into only with the approval of the commissioner of administration.

2 The cost of such housing shall be provided for in and defrayed from the budgets of
3 the using agencies.

4 B. Contracts and agreements by and in name of the state, executed by the
5 commissioner.

6 (1) When a contract or agreement for the lease or rental of space for the
7 housing of state agencies, their personnel, operation, equipment, or activities, shall
8 pertain to more than one building or facility or shall pertain to a building or facility
9 which is to house more than one state agency, their personnel, operation, equipment,
10 or activities, such contract or agreement may be made in the name of the state and
11 executed by the commissioner of administration, rather than in the name of and by
12 an authorized representative or a representative body of the state agency or agencies
13 to be housed in such building or buildings or facility or facilities.

14 (2) The commissioner of administration shall allocate space to one or more
15 state agencies in the building or buildings or facility or facilities to which such
16 contract or agreement pertains and shall allocate the cost of such housing to or
17 among such using agency or agencies, which cost shall be provided for in and
18 defrayed from the budgets of the using agency or agencies. The commissioner shall
19 determine the amount of the allocations of the costs of such housing to the various
20 agencies using such building or buildings and facility or facilities in such manner so
21 that the aggregate of the amount so allocated equals the total cost of such housing.

22 C. Definition of "agency." The definition of "agency" stated in R.S. 39:2(1)
23 shall be the sole definition of the term "state agency" employed in connection with
24 the acquisition of housing space in this and following Sections, and the fact that an
25 agency is supported by fees or taxes collected by, or dedicated to, the agency or
26 which otherwise receives its operating funds through means other than direct
27 appropriations, shall not be a test as to whether this Section shall be applicable to an
28 agency of the state.

1 D. Applicability. The provisions of this Subpart shall be applicable to all
2 agencies meeting the definition of R.S. 39:2(1) established by the laws of Louisiana.

3 ~~E. Repealed by Acts 1988, No. 919, §3.~~

4 ~~F. Repealed by Acts 1997, No. 600, §1.~~

5 §1642. Uniform space standards; inventory and evaluation of budget unit space
6 utilization

7 A. Uniform space standards. The division of administration shall prepare
8 and utilize a uniform set of standards for determining space needs for state agencies.
9 These standards shall also provide for a uniform method of measuring square footage
10 or other measurements used as the basis for lease payments or other charges.

11 B. Inventory of state space. The division of administration shall conduct and
12 maintain a complete inventory of state space, both owned and leased.

13 C. Evaluation of space utilization. The division of administration shall
14 evaluate the utilization of all leased space on a continuing basis to determine the
15 feasibility of locating state agencies in buildings to be purchased and/or constructed
16 by the state.

17 §1643. Advertisement and award of lease bids

18 A. Every lease for the use of five thousand square feet or more of space in
19 a privately owned building entered into by a state agency as lessee shall be awarded
20 pursuant to R.S. 39:1594 in accordance with the conditions for use set forth in that
21 Section and only after evaluation of the bids in accordance with the specific criteria
22 contained in the invitation for bids as authorized by R.S. 39:1594(E)(2). No such
23 lease shall extend beyond a period of ten years.

24 B. The ten-year limitation shall not be applicable to the management boards
25 created under Article VIII, Sections 6 and 7 of the 1974 Louisiana Constitution.

26 §1644. Amendment of leases

27 A.(1) An existing lease for office or warehouse space may be renegotiated
28 with the present lessor, but only after the division of administration has entered into
29 a competitive negotiation process involving discussions with at least three, unless

1 there are less than three, offerors who submit written proposals. Such proposals shall
2 be solicited by advertising as in R.S. 39:1594(C).

3 (2) If it is determined by the commissioner of administration or his designee,
4 after the evaluation of these proposals and discussions with the current lessor, that
5 to renew the present lease would be in the best interest of the state, the renewal of an
6 existing lease may be renegotiated or the commissioner may enter into a lease with
7 one of these ~~offerors~~ proposers if determined to be in the state's best interest. In
8 making such a determination the commissioner, or his designee, shall take into
9 consideration, over the duration of the lease, rental rates, the amount of funds
10 necessary to relocate, any geographical considerations particular to that state
11 program, the amount of disruption to state business that may be incurred in moving
12 to a new location, and any other relevant factors presented.

13 B. Any lease for office or warehouse space for under five thousand square
14 feet may be amended up to but not to exceed a maximum of four thousand nine
15 hundred ninety-nine square feet.

16 C. Existing leases for office or warehouse space between a single state
17 agency, a single lessor and affecting a single building or buildings immediately
18 adjacent to each other which leases have different termination dates, may be
19 renegotiated by the division of administration to perfect a single lease for the whole
20 of the office or warehouse space utilized under the existing leases. The renegotiated
21 lease shall not extend beyond the termination date of the latest existing lease, nor
22 shall the price per square foot paid under the new lease result in a total payment in
23 excess of the total of the combined payments under the preexisting leases.

24 D. In the event alterations or modifications of space currently under lease are
25 required to meet changed operating requirements, a lease may be amended. Such
26 lease amendment may, with approval of the division of administration, provide an
27 adjustment in monthly lease payments not to exceed twenty-five percent of the
28 original annual lease price per square foot, sufficient to reimburse the lessor for
29 paying for the leasehold improvements; provided, however, that any adjustment in

1 monthly lease payments shall also require the approval of the Joint Legislative
2 Committee on the Budget and the continuance of an adjustment in excess of the
3 current lease shall be further contingent on the appropriation of funds therefor in the
4 following fiscal year.

5 E. A lease may be amended, with approval of the division of administration,
6 to provide an adjustment in monthly lease payments not to exceed ten percent of the
7 original annual lease price per square foot and not to exceed ten thousand dollars per
8 year.

9 ~~SUBPART J. ACQUISITION OF USED EQUIPMENT~~

10 ~~§1645. Procurement of used equipment~~

11 ~~A. Any agency covered by this Chapter may procure any equipment which~~
12 ~~is used or which has been previously purchased by an individual or corporation~~
13 ~~where the agency proposing to make such procurement can present satisfactory~~
14 ~~information to the procurement officer to illustrate that the procurement of said~~
15 ~~equipment is cost effective to the state.~~

16 ~~B.(1) The used equipment shall be purchased by the head of the agency,~~
17 ~~college, or university, within the price range set by the director of state purchasing,~~
18 ~~or the directors of purchasing at colleges and universities, in a statement of written~~
19 ~~approval for the purchase which must be obtained by the head of the agency, college,~~
20 ~~or university, prior to the purchase.~~

21 ~~(2) The head of the agency, college, or university, shall certify in writing to~~
22 ~~the director of state purchasing, or the directors of purchasing at colleges and~~
23 ~~universities, all of the following:~~

24 ~~(a) The price for which the used equipment may be obtained.~~

25 ~~(b) The plan for maintenance and repair of the equipment and the cost~~
26 ~~thereof.~~

27 ~~(c) The savings that will accrue to the state because of the purchase of the~~
28 ~~used equipment.~~

1 ~~(d) The fact that following the procedures set out in the Louisiana~~
2 ~~Procurement Code will result in the loss of the opportunity to purchase the~~
3 ~~equipment.~~

4 SUBPART K. ACQUISITION OF MOTOR VEHICLES

5 §1646. Acquisition of motor vehicles; minimum requirements for fuel efficiency;
6 exceptions

7 A. Any purchase or lease of a motor vehicle by an agency which is covered
8 by this Chapter shall be made in accordance with the provisions of this Subpart.
9 Such vehicles shall have, at the time of acquisition, a fuel efficiency rating of no less
10 than eighteen miles per gallon for city driving and no less than twenty-eight miles
11 per gallon for highway driving, or a combined city/highway average of twenty-four
12 miles per gallon.

13 B. For purposes of this Subpart, "motor vehicle" shall include the following
14 vehicles as they are specified or defined in administrative rule or regulation
15 prescribed by the commissioner of administration pursuant to Part XIII of Chapter
16 1 of Title 39 of the Louisiana Revised Statutes of 1950: alternative fuel vehicle,
17 sedan, and station wagon.

18 C. For purposes of this Subpart, "motor vehicle" shall not include the
19 following:

20 (1) A vehicle to be used by law enforcement personnel, certified first
21 responders and emergency personnel when required for the performance of their
22 duties, or a vehicle used in the conduct of military activities.

23 (2) A vehicle to be used by any state employee when written authorization
24 for such purchase has been provided by the department head to the commissioner of
25 administration and approved by him, or a vehicle to be used by an employee of a
26 political subdivision of the state when the governing authority of the political
27 subdivision authorizes such purchase.

28 PART IV. SPECIFICATIONS

29 ~~SUBPART A. SPECIFICATIONS~~

1 §1651. Duties of the commissioner of administration

2 ~~A.~~ The commissioner shall promulgate regulations governing the preparation,
3 maintenance, and content of specifications for supplies, services, and major repairs
4 required by the state.

5 ~~B. As used in this Part, the term "specification" means any description of the~~
6 ~~physical or functional characteristics, or of the nature of a supply, service, or major~~
7 ~~repair. It may include a description of any requirement for inspecting, testing, or~~
8 ~~preparing a supply, service, or major repair for delivery.~~

9 §1651.1. Shrimp specifications

10 Notwithstanding any other provision of law to the contrary, regulations
11 promulgated by the commissioner of administration or other purchasing entity,
12 governing the purchase or use of shrimp shall require that the bid specify the count
13 size of such shrimp and not specify size as "jumbo", "extra large", "medium",
14 "small" or any other similar term or nomenclature used in the shrimping industry.

15 §1652. Duties of the chief procurement officer

16 The chief procurement officer shall prepare, issue, revise, and monitor the use
17 of specifications for required supplies, services, and major repairs.

18 §1653. Exempted items

19 Specifications for supplies, services, or major repairs exempted pursuant to
20 R.S. 39:1572 may be prepared by a purchasing agency in accordance with the
21 provisions of this Part and regulations promulgated hereunder by the head of the
22 governmental body granted authority to promulgate regulations by R.S. 39:1581.

23 §1654. Relationship with using agencies

24 The ~~director~~ state chief procurement officer shall obtain advice and assistance
25 from personnel of using agencies in the determination of needs and development of
26 specifications and may delegate in writing to a using agency the authority to prepare
27 and utilize its own specifications, subject to regulations.

28 §1655. Maximum practicable competition

1 A. All specifications shall seek to promote overall economy for the purposes
2 intended and encourage competition in satisfying the needs of the state, and shall not
3 be unduly restrictive. A specification may be drafted which describes a product
4 which is proprietary to one company only where:

5 (1) No other kind of specification is reasonably available for the state to
6 describe its requirements; or

7 (2) There is a requirement for specifying a particular design or make of
8 product due to factors of compatibility, standardization, or maintainability; or

9 (3) Such specification includes language which specifically permits an
10 equivalent product to be supplied. Such specification shall include a description of
11 the essential characteristics of the product.

12 (4) Such specification is determined to be in the best interest of the state as
13 provided for by R.S. 39:1613.

14 B. Except in Paragraph (2) of this Section, whenever such proprietary
15 specifications are used, the specifications shall clearly state that they are used only
16 to denote the quality standard of supplies, services, or major repairs desired and that
17 they do not restrict bidders to the specific brand, make, manufacturer, or
18 specification named; that they are used only to set forth and convey to prospective
19 bidders the general style, type, character, and quality of supplies, services, or major
20 repairs desired; and that equivalent supplies, services, or major repairs will be
21 acceptable.

22 §1656. Escalation clause

23 Bid specifications may contemplate a fixed escalation or deescalation in
24 accordance with a recognized price index. Such index may include, but are not
25 limited to, the United States Bureau of Labor Statistics, Consumer Price Index and
26 Wholesale Price Index. Bids based on specifications which are subject to a
27 recognized escalation index shall be legal and valid.

28 §1657. Specifications prepared by architects and engineers

1 The requirements of this Part regarding the purposes and nonrestrictiveness
2 of specifications shall apply to all specifications, including but not limited to those
3 proposed by architects, engineers, designers, and draftsmen for public contracts.

4 ~~§1658. Mandatory information requirement for contracts let without competition~~
5 ~~under the authority of an executive order~~

6 ~~A. The provisions of this Section shall apply to any contract for state~~
7 ~~procurement of goods or services which is subject to the provisions of Chapter 17 of~~
8 ~~this Title, hereinafter referred to as "state procurement law", which contract is let~~
9 ~~without competition pursuant to an executive order issued by authority granted under~~
10 ~~the Louisiana Homeland Security and Emergency Assistance and Disaster Act,~~
11 ~~which order grants exceptions to the requirements of state procurement law. Such~~
12 ~~provisions shall apply to contracts which have been or will be let without~~
13 ~~competition pursuant to executive orders related to Hurricane Katrina or Rita which~~
14 ~~granted exceptions to the requirements of state procurement law.~~

15 ~~B.(1) For any contract subject to the provisions of this Section, the~~
16 ~~information cited in Subparagraphs (a) through (d) of this Paragraph shall be~~
17 ~~submitted by the primary contractor to the office of state purchasing. The following~~
18 ~~information shall be submitted, in a format to be determined by such agencies, no~~
19 ~~later than forty-five days after the effective date of the contract, or forty-five days~~
20 ~~after June 29, 2006, whichever is later:~~

21 ~~(a) The name of the primary contractor.~~

22 ~~(b) The amount of the contract.~~

23 ~~(c) The name of each subcontractor.~~

24 ~~(d) The amount of each subcontract.~~

25 ~~(2) Any change in subcontractors, or in the amount of a subcontract which~~
26 ~~exceeds twenty-five percent in the aggregate of the original subcontracted amount,~~
27 ~~shall necessitate the submission of updated information as required in Paragraph (1)~~
28 ~~of this Subsection.~~

1 ~~(3) The primary contractor for each contract subject to the provisions of this~~
2 ~~Section shall be notified of the requirements of this Section by the contracting state~~
3 ~~agency. Such notification shall be made no later than ten days after June 29, 2006,~~
4 ~~for contracts which are currently in effect. Otherwise, the notification shall be made~~
5 ~~prior to execution of the contract.~~

6 ~~C. The office of state purchasing shall maintain a listing or registry of all~~
7 ~~information reported to it pursuant to the provisions of this Section.~~

8 ~~D. Failure to submit all of the information required as provided in Subsection~~
9 ~~B of this Section shall be grounds for debarment. It shall be unlawful for any person~~
10 ~~to intentionally fail to submit such information, which failure is hereby deemed to~~
11 ~~be a violation of the duty to provide the mandatory information. Whomever violates~~
12 ~~such provisions of Subsection B of this Section shall be fined in an amount not to~~
13 ~~exceed one-half of the contract amount and imprisoned for not more than six months,~~
14 ~~or both.~~

15 ~~E. The provisions of this Section shall not be subject to suspension pursuant~~
16 ~~to the authority granted to the governor by R.S. 29:721 et seq., the Louisiana~~
17 ~~Homeland Security and Emergency Assistance and Disaster Act.~~

18 §1659. Purchase of prostheses, orthoses, prosthetic services, and orthotic services
19 by a state agency from an accredited facility

20 Notwithstanding any other provision of law to the contrary, regulations
21 promulgated by the commissioner of administration or other purchasing entity
22 governing the purchase of prostheses, orthoses, prosthetic services, or orthotic
23 services shall require that such services shall be purchased only from an accredited
24 facility as provided in R.S. 40:1300.281; however, nothing in this Section shall
25 prohibit a licensed occupational therapist or a licensed physical therapist from
26 practicing within his scope of practice. In addition, the provisions of this Section
27 shall not apply to a licensed optometrist, ophthalmologist, podiatrist, or orthopedist.

28 PART V. MODIFICATION AND TERMINATION OF CONTRACTS
29 FOR SUPPLIES, SERVICES, AND MAJOR REPAIRS

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 §1661. Contract clauses; administration

2 A. Contract clauses. Regulations may permit or require the inclusion of
3 clauses providing for equitable adjustments in prices, time for performance, or other
4 contract provisions, as appropriate, ~~covering~~ including but not limited to the
5 following subjects:

6 (1) The unilateral right of the state to order in writing changes in the work
7 within the general scope of the contract in any one or more of the following:

8 (a) Drawings, designs, or specifications, if the supplies to be furnished are
9 to be specially manufactured for the state in accordance therewith;

10 (b) Method of shipment or packing; or

11 (c) Place of delivery.

12 (2) The unilateral right of the state to order in writing temporary stopping of
13 the work or delaying of performance; and

14 (3) Variations between estimated quantities of work in a contract and actual
15 quantities.

16 B. Additional contract clauses. Regulations may permit or require the
17 inclusion in state contracts of clauses providing for appropriate ~~remedies and~~
18 ~~covering~~ remedies, including but not limited to the following subjects:

19 (1) Liquidated damages as appropriate.

20 (2) Specified excuses for delay or nonperformance.

21 (3) Termination of the contract for default, and

22 (4) Termination of the contract in whole or in part for the convenience of the
23 state.

24 (5) Manufacturers' design drawings shall be supplied in duplicate for all state
25 buildings, to the appropriate state agency at the conclusion of contract.

26 (6) Security for contract performance.

27 (7) Insurance requirements including, but not limited to, general liability,
28 automobile coverage, workers compensation, and errors and omissions.

29 (8) Beginning and ending date of the contract

1 (9) Maximum compensation to be paid by the contractor.

2 C. In the event any contractor fails to fulfill or comply with the terms of any
3 contract, the chief procurement officer may award the contract to the next lowest
4 responsible bidder subject to acceptance by that bidder and charge the difference in
5 cost to the defaulting vendor.

6 ~~D. Regulations may permit or require the inclusion in state contracts of~~
7 ~~clauses relative to reverse auctions pursuant to the implementation of the provisions~~
8 ~~of R.S. 39:1598.1.~~

9 §1662. Modification of contracts

10 The office of state procurement may adopt and promulgate rules and
11 regulations permitting or requiring the insertion in contracts for the procurement of
12 professional, personal, consulting, and social services appropriate clauses to enable
13 the state to effect desired changes and modifications to such contracts.

14 §1663. Termination of contracts

15 A. The office of state procurement may adopt and promulgate rules and
16 regulations relating to the termination of contracts for the procurement of
17 professional, personal, consulting, and social services for the default of the
18 contractor.

19 B. The office of state procurement is authorized to issue rules and
20 regulations relating to the termination of contracts for the procurement of
21 professional, personal, consulting, and social services for the convenience of the
22 state.

23 §1664. Cost principles rules and regulations required

24 The office of state procurement shall issue rules and regulations setting forth
25 cost principles which shall be used:

26 (1) As guidelines in the negotiation of:

27 (a) Equitable adjustments for state directed changes or modifications in
28 contract performance; and

29 (b) Settlements of contracts which have been terminated;

1 (2) To determine the allowability of incurred costs for the purpose of
2 reimbursing costs under contract provisions which provide for the reimbursement of
3 costs.

4 (3) As appropriate in any other situation where the determination of the
5 estimated or the incurred costs of performing contracts may be required.

6 PART VI. LEGAL AND CONTRACTUAL REMEDIES

7 SUBPART A. PRE-LITIGATION RESOLUTION

8 OF CONTROVERSIES

9 §1671. Authority to resolve protested solicitations and awards

10 A. Right to protest. Any person who is aggrieved in connection with the
11 solicitation or award of a contract issued by the office of state procurement shall
12 protest to the chief procurement officer. Protests with respect to a solicitation shall
13 be submitted in writing at least two days prior to the opening of bids on all matters
14 except housing of state agencies, their personnel, operations, equipment, or activities
15 pursuant to R.S. 39:1643 for which such protest shall be submitted at least ten days
16 prior to the opening of bids. Protests with respect to the award of a contract shall be
17 submitted in writing within fourteen days after contract award.

18 B. Authority to resolve protests. The chief procurement officer or his
19 designee shall have authority, prior to the commencement of an action in court
20 concerning the controversy, to settle and resolve a protest of an aggrieved person
21 concerning the solicitation or award of a contract. This authority shall be exercised
22 in accordance with regulations.

23 C. Decision. If the protest is not resolved by mutual agreement, the chief
24 procurement officer or his designee shall, within fourteen days, issue a decision in
25 writing. The decision shall:

26 (1) State the reasons for the action taken; and

27 (2) Inform the protestant of its right to administrative and judicial review as
28 provided in this ~~Part~~ Chapter.

1 D. Notice of decision. A copy of the decision under Subsection C of this
2 Section shall be mailed or otherwise furnished immediately to the protestant and any
3 other party intervening.

4 E. Finality of decision. A decision under Subsection C of this Section shall
5 be final and conclusive unless:

6 (1) The decision is fraudulent; or

7 (2) The person adversely affected by the decision has timely appealed
8 administratively to the Commissioner in accordance with R.S. 39:1683.

9 F. Stay of procurements during protests. In the event of a timely protest
10 under Subsection A of this Section, the state shall not proceed further with the
11 solicitation or with the awarding of the contract unless the chief procurement officer
12 makes a written determination that the awarding of the contract is necessary without
13 delay to protect the substantial interests of the state. Upon such determination by the
14 chief procurement officer, no court shall enjoin progress under the award except after
15 notice and hearing.

16 G. Award of costs to protestants. In addition to any other relief, when the
17 protest is administratively or judicially sustained and the protesting bidder or ~~offeror~~
18 proposer should have been awarded the contract but is not, the protesting bidder or
19 ~~offeror~~ proposer shall be entitled to the reasonable costs incurred in connection with
20 the solicitation, including bid or proposal preparation costs other than attorney's fees,
21 provided that any administrative determination of such costs shall be subject to the
22 written concurrence of the attorney general.

23 H. Promulgation of regulations. The state ~~director of purchasing~~ chief
24 procurement officer is hereby authorized to promulgate regulations relative to
25 protests, in accordance with the Administrative Procedure Act, to implement the
26 provisions of R.S. 39:1598.1.

27 §1671.1. Resolution of disputes between the chief procurement officer and using
28 agencies

1 If a dispute arises between the chief procurement officer and a using agency
2 as to any items required to be certified by the using agency to the chief procurement
3 officer pursuant to R.S. 39:1497 and R.S. 39:1494.1, or any items that must be
4 determined by the chief procurement officer pursuant to the provisions of R.S.
5 39:1498, either the chief procurement officer or the using agency may request the
6 commissioner of administration to make a final determination on the matter.

7 §1672. Authority to debar or suspend

8 A. Applicability. This Section applies to a debarment for cause from
9 consideration for award of contracts or a suspension from such consideration during
10 an investigation where there is probable cause for such a debarment.

11 B. Authority. After reasonable notice to the person involved and reasonable
12 opportunity for that person to be heard, the chief procurement officer shall have
13 authority to suspend or debar a person for cause from consideration for award of
14 contracts, provided that doing so is in the best interests of the state. The causes for
15 debarment are set forth in Subsection C of this Section. The chief procurement
16 officer may suspend a person from consideration for award of contracts if he
17 determines that there is probable cause to believe that such person has engaged in
18 any activity which might lead to debarment. The suspension shall not be for a period
19 exceeding six months. The authority to debar or suspend shall be exercised in
20 accordance with regulations.

21 C. Causes for debarment. The causes for debarment include the following:

22 (1) Conviction for commission of a criminal offense as an incident to
23 obtaining or attempting to obtain a public or private contract or subcontract, or in the
24 performance of such contract or subcontract;

25 (2) Conviction under state or federal statutes of embezzlement, theft, forgery,
26 bribery, falsification or destruction of records, receiving stolen property, or any other
27 offense indicating a lack of business integrity or business honesty which currently,
28 seriously, and directly affects responsibility as a state contractor;

1 (3) Conviction under state or federal antitrust statutes arising out of the
2 submission of bids or proposals;

3 (4) Violation of contract provisions, as set forth below, of a character which
4 is regarded by the chief procurement officer to be so serious as to justify debarment
5 action:

6 (a) Deliberate failure without good cause to perform in accordance with the
7 specifications or within the time limit provided in the contract; or

8 (b) A recent record of failure to perform or of unsatisfactory performance in
9 accordance with the terms of one or more contracts; provided that failure to perform
10 or unsatisfactory performance caused by acts beyond the control of the contractor
11 shall not be considered to be a basis for debarment.

12 (5) Any other cause the chief procurement officer determines to be so serious
13 and compelling as to affect responsibility as a state contractor, including debarment
14 by another governmental entity for any cause listed in regulations; and

15 (6) Violation of the ethical standards set forth in Chapter 15 of Title 42.

16 D. Decision. The chief procurement officer shall issue a written decision to
17 debar or suspend. The decision shall:

18 (1) State the reasons for the action taken; and

19 (2) Inform the debarred or suspended person involved of its rights to
20 administrative and judicial review as provided in this ~~Part~~ Chapter.

21 E. Notice of decision. A copy of the decision under Subsection D of this
22 Section shall be mailed or otherwise furnished immediately to the debarred or
23 suspended person and any other party intervening.

24 F. Finality of decision. A decision under Subsection D of this Section shall
25 be final and conclusive unless:

26 (1) The decision is fraudulent; or

27 (2) The debarred or suspended person has timely appealed administratively
28 to the commissioner in accordance with R.S. 39:1684.

1 SUBPART B. SETTLEMENT OF CONTROVERSIES LEGAL AND
2 CONTRACTUAL REMEDIES FOR CONTRACTS OTHER THAN PROFESSIONAL,
3 PERSONAL, CONSULTING, AND SOCIAL SERVICES CONTRACTS

4 §1673. Authority to resolve contract and breach of contract controversies other than
5 professional, personal, consulting, and social service contracts

6 A. Applicability. This Section applies to controversies between the state and
7 a contractor and which arise under or by virtue of a contract between them. This
8 includes without limitation controversies based upon breach of contract, mistake,
9 misrepresentation, or other cause for contract modification or rescission. Any
10 contractor who seeks a remedy with regard to such controversy shall file a complaint
11 with the chief procurement officer.

12 B. Authority. The chief procurement officer or his designee is authorized,
13 prior to the commencement of an action in court concerning the controversy, to settle
14 and resolve, with the approval of the attorney general, a controversy described in
15 Subsection A of this Section. This authority shall be exercised in accordance with
16 regulations.

17 C. Decision. If such a claim or controversy is not resolved by mutual
18 agreement, the chief procurement officer or his designee shall promptly issue a
19 decision in writing. The decision shall:

20 (1) State the reasons for the action taken; and

21 (2) Inform the contractor of its right to administrative and judicial review as
22 provided in this Part.

23 D. Notice of decision. A copy of the decision under Subsection C of this
24 Section shall be mailed or otherwise furnished immediately to the contractor.

25 E. Finality of decision. The decision under Subsection C of this Section
26 shall be final and conclusive unless:

27 (1) The decision is fraudulent; or

28 (2) The contractor has timely appealed administratively to the commissioner
29 in accordance with R.S. 39:1685.

1 F. Failure to render timely decision. If the chief procurement officer or his
2 designee does not issue the written decision required under Subsection C of this
3 Section within sixty days after written request for a final decision, or within such
4 longer period as may be agreed upon by the parties, then the contractor may proceed
5 as if an adverse decision had been received.

6 SUBPART C. SETTLEMENT OF CONTROVERSIES FOR PROFESSIONAL,
7 PERSONAL, CONSULTING, AND SOCIAL SERVICE CONTRACTS

8 §1674. Applicability of Subpart

9 This Subpart applies only to those contracts solicited and entered into after
10 the effective date of this Chapter, unless the parties agree in writing to its application
11 to a contract entered into prior to that effective date.

12 §1675. Authority of the commissioner of administration

13 Prior to the institution of any action in a court concerning any contract, claim
14 or controversy, the commissioner of administration with the concurrence of the
15 attorney general is authorized to compromise, pay, or otherwise adjust the claim by
16 or against or a controversy with a contractor relating to a professional, personal,
17 consulting, or social service contract entered into with the state under their respective
18 authority, including a claim or controversy based on breach of contract, mistake,
19 misrepresentation, or other cause for contract modification or rescission. Nothing
20 herein shall limit the authority of the commissioner of administration, pursuant to
21 rules and regulations to issue, negotiate, or accept changes in the terms and
22 conditions of a contract. When authorized, such compromise, payments, or
23 adjustments shall be promptly paid; however, subject to any limitations or conditions
24 imposed by rule or regulation, the commissioner of administration shall charge back
25 all or any portion of such payments to the department or departments for whose
26 benefit the contract was let.

27 §1675.1. Action on contract claims

28 This Section applies to a claim by or controversy between the state and a
29 contractor arising out of a contract for professional, personal, consulting, or social

1 services. If such a claim or controversy is not resolved by mutual agreement, the
2 commissioner of administration, or his designee, shall promptly issue a decision in
3 writing. A copy of that decision shall be mailed or otherwise furnished to the
4 contractor, shall state the reasons for the action taken, and shall inform the contractor
5 of his right to judicial relief as provided in this Part. The decision shall be final and
6 conclusive unless fraudulent, or unless the contractor institutes suit pursuant to R.S.
7 39:1526. If the commissioner of administration, or his designee, does not issue a
8 written decision within one hundred twenty days after written request for a final
9 decision, or within such longer period as may be established in writing by the parties
10 to the contract, then the contractor may proceed as if an adverse decision had been
11 received.

12 §1675.2. Jurisdiction; actions in certain cases

13 A. The Nineteenth Judicial District Court, subject to appeal or review by the
14 First Circuit Court of Appeal or by the supreme court, as otherwise permitted in civil
15 cases by law and the state constitution, shall have jurisdiction over any claims arising
16 out of a request for proposal or award of a contract, any controversies involving the
17 state, or any other matters in connection with a petition for review of a decision
18 made pursuant to this Chapter, following the exhaustion of administrative remedies
19 as provided by law or regulation.

20 B. In any action by a contractor based upon any express or implied contract
21 or breach thereof, no action shall be maintained based upon any contract or any act
22 of any state officer which the officer is not authorized to make or do by the laws of
23 this state, unless the contractor, acting in good faith and without actual or
24 constructive knowledge of the lack of authorization, has commenced performance
25 under the apparent contract. In that event, the court may (1) cancel the contract and
26 reimburse the contractor only for the actual expenses incurred in performing the
27 work already performed or (2) where the best interests of the state require, allow the
28 performance of the contract to continue.

29 SUBPART B: D. SOLICITATIONS OR AWARDS

1 IN VIOLATION OF LAW

2 §1676. Applicability of this Subpart

3 The provisions of this Subpart apply where it is determined administratively,
4 or upon administrative or judicial review, that a solicitation or award of a contract
5 is in violation of law.

6 §1677. Remedies prior to an award

7 If it is determined prior to award that a solicitation or proposed award of a
8 contract is in violation of law, then the solicitation or proposed award shall be
9 cancelled.

10 §1678. Remedies after an award

11 If it is determined after an award that a solicitation or award of a contract is
12 in violation of law, then:

13 (1) If the person awarded the contract has not acted fraudulently or in bad
14 faith:

15 (a) The contract may be ratified and affirmed, provided it is determined in
16 writing by the commissioner of administration that doing so is in the best interests
17 of the state and the law violation had no significant effect on the outcome of the
18 contract award; or

19 (b) The contract may be terminated and the person awarded the contract shall
20 be compensated for the actual expenses reasonably incurred under the contract prior
21 to the termination, provided that any administrative determination of such costs shall
22 be subject to the written concurrence of the attorney general.

23 (2) If the person awarded the contract has acted fraudulently or in bad faith,
24 the contract shall be declared null and void.

25 §1678.1. Damages

26 A. Damages recoverable by any aggrieved person in any action brought
27 pursuant to the provisions of R.S. 39:1671 or otherwise asserted at law, shall be
28 limited exclusively to reasonable costs incurred in connection with the solicitation
29 including bid preparation costs other than attorney's fees.

1 B. Except as provided in Subsection E of this Section and R.S. 39:1678(1),
2 damages recoverable by any contractor under any contract entered into pursuant to
3 the provisions of this Chapter, shall be limited exclusively to the actual expenses
4 reasonably incurred in performance of the contract.

5 C. The provisions of R.S. 49:965.1 shall not apply to actions instituted
6 pursuant to the provisions of this Chapter.

7 D. Any administrative determination of costs or expenses recoverable by a
8 contractor or aggrieved person under Subsections A and B of this Section shall be
9 subject to the written concurrence of the attorney general.

10 E. In no event shall damages awarded by the chief procurement officer, his
11 designee, any hearing officer or any court include attorney's fees or any incidental,
12 indirect, special, or consequential damages, including but not limited to loss of use,
13 revenue or profit whether reasonably certain or not.

14 §1679. Violations; penalties

15 A. No person shall intentionally violate the Louisiana Procurement Code or
16 any rule or regulation promulgated by the commissioner of administration with
17 respect to purchasing.

18 B. Any person who intentionally violates such law, rule or regulation shall
19 be fined not more than five hundred dollars, or imprisoned for not more than six
20 months, or both.

21 ~~SUBPART C.~~ E. ADMINISTRATIVE APPEALS PROCEDURES

22 §1681. Authority of the commissioner of administration

23 The commissioner of administration shall have the authority to review and
24 determine any appeal by an aggrieved person from a determination by the ~~state~~
25 ~~director of purchasing~~ state chief procurement officer or his designee which is
26 authorized by R.S. 39:1671, R.S. 39:1672, or R.S. 39:1673.

27 §1682. Exempted departments

28 The secretary who is vested with authority to promulgate regulations by R.S.
29 39:1581 shall have, within his department, the same authority and responsibilities to

1 review and determine appeals of decisions of the chief procurement officer of his
2 department as are vested in the commissioner of administration by this Subpart.

3 §1683. Protest of solicitations or awards

4 A. Scope. This Section applies to an appeal addressed to the commissioner
5 of administration of a decision under R.S. 39:1671(C).

6 B. Time limitation on filing an appeal. The aggrieved person shall file an
7 appeal within seven days of receipt of a decision under R.S. 39:1671(C).

8 C. Decision. On any appeal under Subsection A of this Section, the
9 commissioner shall decide within fourteen days whether the solicitation or award
10 was in accordance with the constitution, statutes, regulations, and the terms and
11 conditions of the solicitation. Any prior determinations by the ~~director~~ state chief
12 procurement officer or his designee shall not be final or conclusive.

13 D. Notice of decision. A copy of the decision under Subsection C of this
14 Section shall be mailed or otherwise furnished immediately to the protestant or any
15 other party intervening.

16 E. Finality of decision. A decision under Subsection C of this Section shall
17 be final and conclusive unless:

18 (1) The decision is fraudulent; or

19 (2) The person adversely affected by the decision has timely appealed to the
20 court in accordance with R.S. 39:1691(A).

21 §1684. Suspension or debarment proceedings

22 A. Scope. This Section applies to a review by the commissioner of a
23 decision under R.S. 39:1672.

24 B. Time limitation on filing an appeal. The aggrieved person shall file its
25 appeal with the commissioner of administration within fourteen days of the receipt
26 of a decision under R.S. 39:1672(D).

27 C. Decision. The commissioner of administration shall decide within
28 fourteen days whether, or the extent to which, the debarment or suspension was in
29 accordance with the constitution, statutes, regulations, and the best interests of the

1 state, and was fair. Any prior determination by the ~~director~~ state chief procurement
2 officer or his designee shall not be final or conclusive.

3 D. Notice of decision. A copy of the decision under Subsection C of this
4 Section shall be mailed or otherwise furnished immediately to the debarred or
5 suspended person or any other party interviewing.

6 E. Finality of decision. A decision under Subsection C of this Section shall
7 be final and conclusive unless:

8 (1) The decision is fraudulent; or

9 (2) The debarred or suspended person has timely appealed an adverse
10 decision of the ~~Commissioner~~ commissioner of administration to the court in
11 accordance with R.S. 39:1691(B).

12 §1685. Contract and breach of contract controversies

13 A. Scope. This Section applies to a review by the commissioner of
14 administration of a decision under R.S. 39:1673.

15 B. Time limitation on filing an appeal. The aggrieved contractor shall file
16 its appeal with the commissioner of administration within fourteen days of the
17 receipt of the determination under R.S. 39:1673(C).

18 C. Decision. The commissioner of administration shall decide within
19 fourteen days the contract or breach of contract controversy. Any prior
20 determination by the ~~director~~ state chief procurement officer or his designee shall not
21 be final or conclusive.

22 D. Notice of decision. A copy of the decision under Subsection C of this
23 Section shall be mailed or otherwise furnished immediately to the contractor.

24 E. Finality of decision. A decision under Subsection C of this Section shall
25 be final and conclusive unless:

26 (1) The decision is fraudulent; or

27 (2) The contractor has timely appealed an adverse decision of the
28 commissioner to the court in accordance with R.S. 39:1691(C).

29 SUBPART ~~D.~~ E. ACTIONS BY OR AGAINST

1 THE STATE; PRESCRIPTION

2 §1691. Actions by or against the state in connection with contracts

3 A. Solicitation and award of contracts. The Nineteenth Judicial District
4 Court shall have exclusive venue over an action between the state and a bidder,
5 ~~offeror~~ proposer, or contractor, prospective or actual, to determine whether a
6 solicitation or award of a contract is in accordance with the constitution, statutes,
7 regulations, and the terms and conditions of the solicitation. Such actions shall
8 extend to all kinds of actions, whether for monetary damages or for declaratory,
9 injunctive, or other equitable relief.

10 B. Debarment or suspension. The Nineteenth Judicial District Court shall
11 have exclusive venue over an action between the state and a person who is subject
12 to a suspension or debarment proceeding, to determine whether the debarment or
13 suspension is in accordance with the constitution, statutes, and regulations. Such
14 actions shall extend to actions for declaratory, injunctive, or other equitable relief.

15 C. Actions under contracts or for breach of contract. The Nineteenth Judicial
16 District Court shall have exclusive venue over an action between the state and a
17 contractor who contracts with the state, for any cause of action which arises under
18 or by virtue of the contract, whether the action is on the contract or for a breach of
19 the contract or whether the action is for declaratory, injunctive, or other equitable
20 relief.

21 D. Limited finality for administrative determinations. In any judicial action
22 under this Section, factual or legal determination by employees, agents, or other
23 persons appointed by the state shall have no finality and shall not be conclusive,
24 notwithstanding any contract provision, regulation, or rule of law to the contrary,
25 except to the extent provided in: R.S. 39:1625, R.S. 39:1671(E), R.S. 39:1672(F),
26 R.S. 39:1673(E), R.S. 39:1683(E), R.S. 39:1684(E), and R.S. 39:1685(E).

27 E. Writs or appeals; district court decisions. Any party aggrieved by a final
28 judgment or interlocutory order or ruling of the Nineteenth Judicial District Court
29 may appeal or seek review thereof, as the case may be, to the Court of Appeal, First

1 Circuit, or the Supreme Court of Louisiana, as otherwise permitted in civil cases by
2 law and the constitution.

3 §1692. Commencement of actions

4 A. Protested solicitations and awards. Any action under R.S. 39:1691(A)
5 shall be commenced within fourteen days after receipt of the decision of the
6 commissioner under R.S. 39:1683(C).

7 B. Debarments and suspension for cause. Any action under R.S. 39:1691(B)
8 shall be commenced within sixty days after receipt of the decision of the
9 commissioner under R.S. 39:1684(C).

10 C. Actions under contracts or for breach of contract controversies. Any
11 action under R.S. 39:1691(C) shall be commenced within sixty days after receipt of
12 the decision of the commissioner under R.S. 39:1685(C).

13 SUBPART ~~E~~. G. DELINQUENT PAYMENT PENALTIES

14 §1695. Late payment to business; penalty paid by state agency

15 A. If a state agency without reasonable cause fails to make any payment due
16 within ninety days of the due date prescribed by contract, to a business awarded a
17 contract with the state agency to supply equipment, supplies, materials, or textbooks,
18 or to provide services, the state agency shall pay, in addition to the payment, interest
19 on the amount due at the rate established pursuant to ~~Civil Code Article 2924(B)(3)~~
20 the judicial interest rate referenced in R.S. 13:4202(B) per year, from the ninety-first
21 day after the due date prescribed by the contract. In applying this Section to a claim
22 related in any way to an entitlement program, payment for claims shall be due ninety
23 days after a claim is received by the state.

24 B. If it is determined by the state agency that additional evidence of the
25 validity of the claim for payment is required, such evidence shall be requested within
26 ten working days from the date the bill is received by the state agency. In instances
27 where additional evidence is required, the bill shall be reviewed and payment or
28 rejection made within thirty days from receipt of the evidence requested in the office
29 of the paying agency.

1 C. Any penalty required to be paid by a state agency pursuant to this Section
2 shall be disbursed upon warrants drawn by the state agency upon that agency's
3 operating expenses budget.

4 §1696. Reporting requirements

5 A. Whenever a state agency is required by R.S. 39:1695 to pay a penalty, it
6 shall be presumed that the fault is that of the head of the state agency and, in such
7 cases, the head of the state agency shall submit to the Joint Legislative Committee
8 on the Budget at its next regular meeting following the payment of such a penalty a
9 report on the actions taken to correct the problem.

10 B. Any state agency which requests that the legislature make a supplemental
11 appropriation for the agency shall identify at the time of the request what part of the
12 amount is necessitated because of any penalties imposed by R.S. 39:1695.

13 §1697. Disputed claims

14 A. In cases where a state agency states that payment is late due to reasonable
15 cause, and said claim is disputed by the business owed payment, upon the request of
16 a representative of the business the Joint Legislative Committee on the Budget shall
17 determine whether or not the circumstances constitute "reasonable cause" as used in
18 R.S. 39:1695.

19 B. No state agency shall be required to pay a penalty if it has submitted a
20 warrant to the state treasurer at least thirty days prior to the due date prescribed by
21 the contract.

22 PART VII. INTERGOVERNMENTAL RELATIONS

23 ~~SUBPART A. DEFINITIONS~~

24 ~~§1701. Definitions of terms used in this Part~~

25 ~~(1) "Cooperative purchasing" means procurement conducted by or on behalf~~
26 ~~of more than one public procurement unit or by a public procurement unit with an~~
27 ~~external procurement activity or by a private procurement unit.~~

28 ~~(2) "External procurement activity" means any buying organization not~~
29 ~~located in this state which, if located in this state, would qualify as a public~~

1 ~~procurement unit. An agency of the United States government is an external~~
2 ~~procurement activity.~~

3 ~~(3) "Local public procurement unit" means any parish, city, town,~~
4 ~~governmental body, and any other subdivision of the state or public agency thereof,~~
5 ~~public authority, public educational, health, or other institution, and to the extent~~
6 ~~provided by law, any other entity which expends public funds for the acquisition or~~
7 ~~leasing of supplies, services, major repairs, and construction, and any nonprofit~~
8 ~~corporation operating a charitable hospital.~~

9 ~~(4) "Private procurement unit" means any independent institution of higher~~
10 ~~education in this state.~~

11 ~~(5) "Public procurement unit" means either a local public procurement unit~~
12 ~~or a state public procurement unit.~~

13 ~~(6) "State public procurement unit" means the central purchasing agency and~~
14 ~~any other purchasing agency of this state.~~

15 SUBPART B. A. COOPERATIVE PURCHASING

16 §1702. Cooperative purchasing authorized; participation in federal General Services
17 Administration vendor list

18 A.(1) Any public procurement unit may either participate in, sponsor,
19 conduct, or administer a cooperative purchasing agreement for the acquisition of any
20 supplies, services, major repairs, or construction with one or more public
21 procurement units or external procurement activities or one or more private
22 procurement units in accordance with an agreement entered into between the
23 participants. Such cooperative purchasing may include but is not limited to joint or
24 multi-party contracts between public procurement units and open-ended state public
25 procurement unit contracts which are made available to local public procurement
26 units.

27 (2) Any public procurement unit may procure materials, supplies, and
28 equipment from federal General Services Administration supply schedules in
29 accordance with rules and regulations which may be adopted by the central

1 purchasing agency of the division of administration. Such purchases need not
2 comply with the competitive bidding requirements of this Chapter. However, such
3 materials, supplies, or equipment shall not be purchased at a price higher than the
4 price of the same item listed on any available state ~~purchasing~~ procurement contract.

5 (3) Any public procurement unit may procure materials, supplies, equipment,
6 and services related to homeland security from federal General Services
7 Administration supply schedules. Such purchases shall:

8 (a) Utilize a Louisiana distributor.

9 (b) Use the competitive ordering procedures of the federal General Services
10 Administration.

11 (c) Receive prior approval from the director of the Governor's Office of
12 Homeland Security and Emergency Preparedness, or his designee.

13 B.(1) A private procurement unit acquiring supplies through cooperative
14 purchasing shall acquire such supplies for its own use and not for the purpose of
15 resale in competition with private enterprise.

16 (2) A private procurement unit shall certify to the vendor with each order
17 that the supplies covered thereby are to be acquired for its own use and not for the
18 purpose of resale in competition with private enterprise and shall provide a copy of
19 such certification to the ~~Central Purchasing Agency within the Division of~~
20 ~~Administration~~ office of state procurement.

21 (3) Upon certification by the ~~Commissioner of Administration~~ commissioner
22 of administration that the purchase of one or more types of supplies by a private
23 procurement unit under this Section may adversely affect the interests of the state by
24 impeding the ability of the ~~Division of Administration~~ division of administration to
25 attract responsible bidders for such supplies, the governor shall have the authority
26 to limit or eliminate the right of a private procurement unit to purchase such types
27 of supplies to the extent necessary to eliminate the adverse affect on the state.

1 C. No use shall be made of federal General Services Administration supply
2 schedules under the provisions of this Section without the participation of a
3 Louisiana licensed dealer or distributor.

4 §1703. Sale, acquisition, or use of supplies by a public procurement unit

5 Any public procurement unit may sell to, acquire from, or use any supplies
6 belonging to another public procurement unit or external procurement activity
7 independent of the requirements of Part III of this Chapter or of Title 38.

8 §1704. Cooperative use of supplies or services

9 Any public procurement unit may enter into an agreement, independent of the
10 requirements of Part III of this Chapter or Title 38, with any other public
11 procurement unit or external procurement activity for the cooperative use of supplies
12 or services, under the terms agreed upon between the parties.

13 §1705. Joint use of facilities

14 Any public procurement unit may enter into agreements for the common use
15 or lease of warehousing facilities, capital equipment, and other facilities with another
16 public procurement unit or an external procurement activity under the terms agreed
17 upon between the parties.

18 §1706. Supply of personnel, information, and technical services

19 A. Supply of personnel. Any public procurement unit is authorized, in its
20 discretion, upon written request from another public procurement unit or external
21 procurement activity, to provide personnel to the requesting public procurement unit
22 or external procurement activity. The public procurement unit or external
23 procurement activity making the request shall pay the public procurement unit
24 providing the personnel the direct and indirect cost of furnishing the personnel, in
25 accordance with an agreement between the parties.

26 B. Supply of services. The informational, technical, and other services of
27 any public procurement unit may be made available to any other public procurement
28 unit or external procurement activity provided that the requirements of the public
29 procurement unit tendering the services shall have precedence over the requesting

1 public procurement unit or external procurement activity. The requesting public
2 procurement unit or external procurement activity shall pay for the expenses of the
3 services so provided, in accordance with an agreement between the parties.

4 C. State information services. Upon request, the chief procurement officer
5 may make available to public procurement units the following services, among
6 others:

7 (1) Standard forms.

8 (2) Printed manuals.

9 (3) Product specifications and standards.

10 (4) Quality assurance testing services and methods.

11 (5) Qualified products lists.

12 (6) Source information.

13 (7) Common use commodities listings.

14 (8) Supplier prequalification information.

15 (9) Supplier performance ratings.

16 (10) Debarred and suspended bidders lists.

17 (11) Forms for invitations for bids, requests for proposals, instructions to
18 bidders, general contract provisions, and other contract forms; and

19 (12) Contracts or published summaries thereof, including price and time of
20 delivery information.

21 D. State technical services. The state, through the chief procurement officer
22 may provide the following technical services, among others:

23 (1) Development of products specifications.

24 (2) Development of quality assurance test methods, including receiving,
25 inspection, and acceptance procedures.

26 (3) Use of state product testing and inspection facilities; and

27 (4) Use of state personnel training programs.

1 E. Fees. The chief procurement officer may enter into contractual
2 arrangements and publish a schedule of fees for the services provided under
3 Subsections C and D of this Section.

4 §1707. Use of payments received by a supplying public procurement unit

5 All payments from any public procurement unit or external procurement
6 activity received by a public procurement unit supplying personnel or services shall
7 be available to the supplying public procurement unit as authorized by law.

8 §1708. Public procurement units in compliance with code requirements

9 Where the public procurement unit or external procurement activity
10 administering a cooperative purchase complies with the requirements of this Chapter,
11 any public procurement unit participating in such a purchase shall be deemed to have
12 complied with this Chapter. Public procurement units may not enter into a
13 cooperative purchasing agreement for the purpose of circumventing this Chapter.

14 §1709. Review of procurement requirements

15 To the extent possible, the chief procurement officer shall collect information
16 concerning the type, cost, quality, and quantity of commonly used supplies, services,
17 major repairs, or construction being procured or used by state public procurement
18 units. The chief procurement officer may also collect such information from local
19 public procurement units.

20 §1710. Local governing authorities; purchases from local vendors, payment of
21 certain costs

22 When a local governing authority purchases an item at the state bid price
23 through a local vendor, the local governing authority may pay to the local vendor the
24 costs for shipping, preparation, and delivery of the item, provided that these costs
25 shall not exceed the state bid price by seven percent on purchases up to ten thousand
26 dollars, five percent on purchases over ten thousand dollars and up to twenty
27 thousand dollars, and three percent on purchases over twenty thousand dollars.

28 SUBPART ~~C~~. B. CONTRACT CONTROVERSIES

29 §1716. Contract controversies

1 Under a cooperative purchasing agreement, controversies arising between an
2 administering public procurement unit and its bidders, ~~offerors~~ proposers, or
3 contractors shall be resolved in accordance with Part VI of this Chapter, where the
4 administering public procurement unit is a state public procurement unit or otherwise
5 subject to Part VI.

6 PART VIII. ASSISTANCE TO SMALL AND DISADVANTAGED
7 BUSINESSES AND WOMEN OWNED BUSINESSES

8 §1731. Short title

9 The provisions of this Part shall be known and may be cited as the Louisiana
10 Small Business Procurement Act.

11 §1732. Definitions of terms used in this Part

12 As used in this Part, the following words and phrases shall have the meaning
13 ascribed to them in this Section, except as otherwise may be provided or unless a
14 different meaning is plainly required by the context:

15 (1) "Small business" means a small business as defined by the Small
16 Business Administration of the United States Government which for purposes of size
17 eligibility or other factors meets the applicable criteria set forth in 13 Code of
18 Federal Regulations, Part 121, as amended, and which has its principal place of
19 business in Louisiana.

20 (2) "Dominant in its field of operation" means exercising a controlling or
21 major influence in a business activity in which a number of businesses are engaged.
22 In determining if a business is dominant, the following criteria, among others, shall
23 be considered: number of employees; volume of business; financial resources;
24 competitive status or position; ownership or control of materials, processes, patents,
25 license agreements, and facilities; sales territory; and nature of business activity.

26 (3) "Affiliate or subsidiary of a business dominant in its field of operation"
27 means a business which is at least twenty percent owned by a business dominant in
28 that field of operation, or by partners, officers, directors, majority shareholders, or
29 their equivalent of a business dominant in that field of operation.

1 (4) "Socially or economically disadvantaged person" means a person who
2 has been deprived of the opportunity to develop and maintain a competitive position
3 in the economy because of social or economic disadvantage. This disadvantage may
4 arise from cultural, social or economic circumstances or background or physical
5 location.

6 (5) "Women owned business" means a business that is at least ~~51~~ fifty-one
7 percent owned by a woman or women who also control and operate it. "Control" in
8 this context means exercising the power to make policy decisions. "Operate" in this
9 context means being actively involved in the day-to-day management. In
10 determining whether a business is ~~51~~ fifty-one percent owned by a woman or
11 women, the percent ownership of the woman or women shall not be diminished
12 because she is part of a community property regime.

13 (6) "Services" means the furnishing of labor, time, or effort by a contractor,
14 not involving the delivery of a specific end product other than reports which are
15 merely incidental to the required performance. This term shall include those services
16 covered by Chapter 16 of Title 39 of the Louisiana Revised Statutes of 1950 and
17 services performed by an architect, engineer, or landscape architect as provided by
18 Part VII of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950. This
19 term shall not include collective bargaining agreements.

20 §1733. Procurement from small businesses

21 A. Set aside. The commissioner of the division of administration shall for
22 each fiscal year designate and set aside for awarding to small businesses, an amount
23 not to exceed ten percent of the value of anticipated total state procurement of goods
24 and services excluding construction. The commissioner shall divide the
25 procurements so designated into contract award units of economically feasible
26 production runs in order to facilitate offers or bids from small businesses. In making
27 his annual designation of set aside procurements the commissioner shall attempt to
28 vary the included procurements so that a variety of goods and services produced by
29 different small businesses shall be set aside each year. The failure of the

1 commissioner to set aside particular procurements shall not be deemed to prohibit
2 or discourage small businesses from seeking the procurement award through the
3 normal solicitation and bidding processes.

4 B. Contract procedure. The commissioner shall establish a contract
5 procedure in accordance with law, for the awarding of a procurement contract under
6 the set aside program established in this Part. Surety bonds guaranteed by the federal
7 small business administration shall be acceptable security for a construction award
8 under this Part.

9 C. Responsibility of bidder or offeror. Before making a set aside award, the
10 commissioner shall evaluate whether the small business scheduled to receive the
11 award is able to perform the set aside contract. This determination shall include
12 consideration of production and financial capacity and technical competence.

13 D. Preference to disadvantaged persons. At least ten percent of the value of
14 the procurements designated for set aside awards shall be awarded, if possible to
15 businesses owned and operated by socially or economically disadvantaged persons.
16 In the event small businesses owned and operated by socially or economically
17 disadvantaged persons are unable to perform at least ten percent of the set aside
18 awards, then the commissioner shall award the balance of the set aside contracts to
19 other small businesses.

20 E. Preference to women. At least ten percent of the value of the
21 procurements designated for set aside awards shall be awarded, if possible, to
22 businesses owned and operated by women. In the event small businesses owned and
23 operated by women are unable to perform at least ten percent of the set aside awards,
24 then the commissioner shall award the balance of the set aside contracts to other
25 small businesses.

26 F. Award of contracts after unsuccessful set aside procedures. In the event
27 that the provisions of this Part do not operate to extend a contract award to a small
28 business, the award shall be placed pursuant to the existing solicitation and award
29 provisions established by law. The commissioner shall thereupon designate and set

1 aside for small businesses additional state procurements corresponding in
2 approximate value to the contract unable to be awarded pursuant to the provisions
3 of this Part.

4 G. Conflict with other code provisions. All laws and rules pertaining to
5 solicitations, bid evaluations, contract awards, and other procurement matters shall
6 apply as consistent to procurements set aside for small businesses. In the event of
7 conflict with other rules, the provisions of this Part shall govern.

8 §1734. Assistance to small businesses

9 The commissioner of administration and the executive director of the
10 Louisiana division of minority and women's business enterprise in the Department
11 of Economic Development shall publicize the provisions of the set-aside program,
12 attempt to locate small businesses able to perform set-aside procurement awards, and
13 encourage participation. When the commissioner of administration determines that
14 a small business is unable to perform under a set-aside contract, he shall so inform
15 the secretary of economic development, who shall assist the small business in
16 attempting to remedy the causes of the inability to perform a set-aside award. In
17 assisting the small business, the executive director of the Louisiana division of
18 minority and women's business enterprise, in cooperation with the commissioner of
19 administration, shall use any management or financial assistance programs that may
20 be available by or through the Louisiana division of minority and women's business
21 enterprise or other state or governmental agencies.

22 §1735. Determination of disadvantaged

23 The commissioner of administration shall promulgate regulations, rules,
24 standards, and procedures for certifying that small businesses and small businesses
25 owned and operated by socially or economically disadvantaged persons are eligible
26 to participate under the requirements of R.S. 39:1733 and 1734. The procedure for
27 determination of eligibility may include self certification by a business, provided that
28 the commissioner retains the ability to verify a self certification. The commissioner

1 shall promulgate other regulations and rules as may be necessary to carry out the
2 duties set forth in this Part.

3 §1736. Reports

4 The commissioner of administration shall submit an annual report to the
5 governor and the legislature, with a copy thereof going to the Louisiana division of
6 minority and women's business enterprise, indicating the progress being made
7 toward the objectives and goals of this Part during each fiscal year. This report shall
8 include the following information:

9 (1) The total dollar value and number of potential set-aside awards identified
10 during this period and the percentage of total state procurement this figure reflects.

11 (2) The number of small businesses identified by and responding to the
12 set-aside contracts actually awarded to small businesses, with appropriate
13 designation as to the total number and value of set-aside contracts awarded to each
14 small business, and the total number of small businesses that were awarded set-aside
15 contracts.

16 (3) The total dollar value and number of set-aside contracts awarded to small
17 businesses owned and operated by economically or socially disadvantaged persons,
18 with appropriate designation as to the total number and value of set-aside contracts
19 awarded to each small business, and the percentages of the total state procurements
20 the figures of total dollar value and the number of set asides reflect.

21 (4) The total dollar value and number of set-aside contracts awarded to small
22 businesses owned and operated by women, with appropriate designation as to the
23 total number and value of set-aside contracts awarded to each small business, and the
24 percentages of the total state procurements the figures of total dollar value and the
25 number of set asides reflect.

26 (5) The number of contracts which were designated and set aside but which
27 were not awarded to a small business, the estimated total dollar value of these
28 awards, the lowest offer or bid on each of these awards made by the small business,

1 and the price at which these contracts were awarded pursuant to the normal
2 procurement procedures.

3 PART IX. TELECOMMUNICATIONS PROCUREMENT

4 §1751. Application

5 A. The provisions of this Part shall be applicable to any agency, as defined
6 in R.S. 36:3(1), within the executive branch of state government with respect to the
7 procurement of all telecommunications systems and telecommunications services.
8 However, nothing provided in this Part shall be construed to preempt the authorities
9 granted to the higher education boards in Article VIII of the Constitution of
10 Louisiana.

11 B. The office of telecommunications management shall, subject to the
12 provisions of this Part, have sole authority and responsibility for defining the specific
13 telecommunications systems and telecommunications services to which the
14 provisions of this Part shall be applicable. Rules and regulations shall be
15 promulgated as may be necessary to carry out the provisions of this Part.

16 §1752. Definitions

17 For the purposes of this Part, the following words and phrases shall be
18 defined as follows:

19 (1) "Agency" as used in this Part and in Part V of Chapter 1 of this Title shall
20 have the same meaning ascribed to it as provided in R.S. 36:3(1).

21 (2) "Competitive sealed bidding" means a method of procurement which
22 strictly follows the requirements set forth in this Chapter except for such variations
23 as are specifically established in this Part.

24 (3) "Local area network" means a limited distance data
25 processing/communications network or system used to link computers and peripheral
26 devices.

27 (4) "Multi-year contracts" are contracts for a term of more than one year, not
28 to exceed ten years.

1 (5) "Procurement" means the selling, buying, purchasing, renting, leasing,
2 or otherwise obtaining telecommunications systems, telecommunications services,
3 or their related software as well as all activities engaged in, resulting in, or expected
4 to result in the selling, buying, purchasing, renting, leasing, or otherwise obtaining
5 telecommunications systems, telecommunications services, or their related software
6 by the state or its agencies.

7 (6) "Software" means computer programs and documentation essential to
8 and necessary for a telecommunications system or telecommunications service to
9 perform productive operations.

10 (7) "Telecommunications service contract" means a contract for the
11 procurement of telecommunications services to include but not be limited to long
12 distance, pay telephone, radio paging, and utility-type services such as local dial
13 tone.

14 (8) "Telecommunications systems", which shall include telecommunications
15 equipment and related services, and "telecommunications services" are limited to the
16 equipment and services and means to provide:

17 (a) Telecommunications transmission facilities and services.

18 (b) Voice telecommunications systems and services.

19 (c) Local area network systems and services.

20 (d) Wide area network systems and services.

21 (e) Video systems and services, except those video systems and services
22 specifically reserved to the Louisiana Educational Television Authority pursuant to
23 R.S. 17:2501.

24 (f) Wireless systems and services to include, but not be limited to, cellular
25 and personal communications systems.

26 (g) Radio systems, to include but not be limited to two-way radio systems;
27 however, the operational abilities and priorities of two-way communications of the
28 departments in the executive branch shall not be impeded.

29 (h) Intercom and electro-mechanical paging systems.

1 (i) Any and all systems and services based on emerging and future
2 telecommunications technologies relating to Subparagraphs (a) through (h) of this
3 Paragraph.

4 (9) "Telecommunications systems contract" means a contract for the
5 procurement of telecommunications systems including equipment and related
6 services to include but not be limited to installation and maintenance.

7 (10) "Telecommunications systems lease contract" means a contract between
8 a supplier of telecommunications systems and the division of administration, office
9 of telecommunications management, or the procuring agency, through which
10 telecommunications systems may be procured for a term which shall not exceed ten
11 years. The contract may be either an operating lease, installment purchase, or a
12 financed lease without a balloon payment.

13 (11) "Telecommunications transmission facility" means any transmission
14 medium, switch, instrument, wiring system, or other facility which is used, in whole
15 or in part, to provide any transmission.

16 (12) "Utility" means any telecommunications service provided by the office
17 of telecommunications management and used in the essential operations of a state
18 agency, such as local dial tone, wide area network, and local area network.

19 (13) "Wide area network" means a data processing/communications network
20 or system generally utilizing common carrier facilities to link geographically
21 dispersed local area networks to other local area networks or computer systems.

22 §1753. Types of contracts permitted

23 A. The types of contracts permitted in the procurement of
24 telecommunications systems and telecommunications services are defined in this
25 Part, and the provisions of this Part supplement the provisions of R.S. 39:1551
26 through 1736.

27 B. The office of telecommunications management, through the ~~state~~
28 ~~purchasing office~~ office of state procurement, may, on behalf of any state agency,

1 enter into telecommunications systems contracts in accordance with the following
2 provisions:

3 (1) Contracts of this type shall be entered into through a request for
4 proposals as defined in this Part. An invitation to bid format may be utilized with
5 written approval from the director of the office of telecommunications management.

6 (2) The term of such contracts shall not exceed five years.

7 C. The office of telecommunications management, through the ~~state~~
8 ~~purchasing office~~ office of state procurement, may on behalf of any state agency,
9 enter into telecommunications services contracts in accordance with the following
10 provisions:

11 (1) Contracts of this type shall be entered into through a request for
12 proposals as defined in this Part. An invitation to bid format may be utilized with
13 written approval from the director of the office of telecommunications management.

14 (2) The term of such contracts shall not exceed ten years.

15 D. The office of telecommunications management, through the ~~state~~
16 ~~purchasing office~~ office of state procurement, may on behalf of any state agency,
17 enter into a telecommunications systems lease contract for an operating lease,
18 installment purchase, or financed lease for telecommunications systems in
19 accordance with the following provisions:

20 (1) All contracts of this type shall be entered into through a request for
21 proposals as defined in this Part.

22 (2) The justification of such contracts must be approved by the office of
23 telecommunications management prior to issuance of a request for proposals. Such
24 justification shall identify and consider all cost factors relevant to that contract.

25 (3) The term of such contracts shall not exceed ten years, except financed
26 contracts shall be for a term not to exceed the economic life of the system or ten
27 years, whichever is less.

28 (4) Upon the advance written approval of the office of telecommunications
29 management, state agencies may extend operating leases of telecommunications

1 systems on a month-to-month basis for a period not to exceed one calendar year for
2 the stated lease prices.

3 E. Notwithstanding the provisions of R.S. 39:1615 to the contrary, the use
4 of a multi-year contract for telecommunications systems and telecommunications
5 services shall be in accordance with rules and regulations and under the following
6 conditions:

7 (1) The director of the office of telecommunications management shall
8 approve in writing the use of a multi-year contract over one year, not to exceed three
9 years.

10 (2) The ~~director of the state purchasing office~~ state chief procurement officer
11 shall approve in writing the use of a multi-year contract over three years, not to
12 exceed five years.

13 (3) The commissioner of administration, or his designee, shall approve in
14 writing the use of a multi-year contract over five years.

15 §1754. Methods of procurement

16 A. The office of telecommunications management, through the ~~state~~
17 ~~purchasing office~~ office of state procurement, may procure telecommunications
18 systems and telecommunications services by a request for proposals to conform with
19 the following requirements:

20 (1) Public notice of the request for proposals shall be the same as for an
21 invitation to bid as provided in R.S. 39:1594(C).

22 (2)(a) The request for proposals shall indicate the relative importance of all
23 evaluation factors and shall clearly define the work, service, or solution to be
24 provided under the contract, the functional specifications, the criteria to be used in
25 evaluating the proposals, and the time frames within which the work must be
26 completed or the service provided.

27 (b) For telecommunications systems lease contracts, the request for
28 proposals shall require that proposals contain a declaration as to the maximum price
29 for which the system may be purchased following the termination of the lease

1 contract. No other basis of evaluation shall be used except that set out in the request
2 for proposals.

3 (3) The office of telecommunications management shall evaluate all
4 proposals to determine the proposal most advantageous to the state, taking into
5 consideration all evaluation criteria set forth in the request for proposals, and shall
6 make a recommendation of award to the ~~state purchasing office~~ office of state
7 procurement.

8 (4) The office of telecommunications management may request that the ~~state~~
9 ~~purchasing office~~ office of state procurement reject all proposals when it is deemed
10 that such action is in the best interest of the state.

11 B. The office of telecommunications management may procure
12 telecommunications systems and telecommunications services in accordance with
13 the law or regulations, or both, which govern the ~~state purchasing office, the division~~
14 ~~of administration~~ office of state procurement.

15 §1755. General provisions

16 The following general provisions shall apply to all procurements under this
17 Part:

18 (1) No contracts entered into shall have an initial effective date earlier than
19 the date on which such contract receives approval as required by this Part.

20 (2) All changes, modifications, and amendments to any contract hereunder
21 shall be approved in advance by the director of the office of telecommunications
22 management and the ~~state purchasing office~~ state chief procurement officer, in
23 addition to any other approvals required by law.

24 (3) Where written proposals or bids are submitted by vendors, the proposal
25 or bid of the successful vendor shall be incorporated into the final contract
26 consummated with that vendor.

27 (4) All contracts must contain the following annual appropriation
28 dependency clause: "The continuation of this contract is contingent upon the
29 continuation of an appropriation of funds by the Legislature to fulfill the

1 requirements of the contract. If the Legislature fails to appropriate sufficient monies
2 to provide for the continuation of a contract or if such appropriation is reduced by
3 the veto of the governor or by any means provided in the appropriations act to
4 prevent the total appropriations for the year from exceeding revenues for that year
5 or for any other lawful purpose and the effect of such reduction is to provide
6 insufficient monies for the continuation of the contract, the contract shall terminate
7 on the last day of the fiscal year for which funds were appropriated."

8 (5) The provisions of this Part shall, with respect to the procurement of
9 telecommunications systems or telecommunications services, supersede
10 specifications of any contradictory or conflicting provisions of the following statutes:
11 R.S. 38:2211 et seq. with respect to awarding of public contracts, and R.S. 39:1551
12 through 1736. The provisions of this Part do not relate to the procurement of
13 services covered by R.S. 39:1481 through 1526.

14 ~~PART X. REQUIREMENTS OF CONTRACTS~~

15 ~~§1758. Repealed by Acts 2011, No. 343, §5.~~

16 Section 3. Chapter 16 of Subtitle I of Title 39 of the Louisiana Revised Statutes of
17 1950, to be comprised of R.S. 39:1481 through 1526, is hereby repealed in its entirety.

18 Section 4. The Louisiana State Law Institute is hereby authorized and requested to
19 review all statutes which contain the name of the office of contractual review and the office
20 of state purchasing, changed in this Act, and in all locations it deems appropriate change said
21 references to the office of state procurement.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Tim Burns

HB No. 927

Abstract: Provides for the merger of the functions of the office of contractual review and the office of state purchasing into the office of state procurement.

Present law provides for the creation of the office of contractual review in the division of administration headed by the director of contractual review. Present law further provides for the functions of the office in entering into state professional, personal, consulting, and social services contracts.

Proposed law repeals present law including the office of contractual review and provides for administration of state professional, personal consulting, and social services contracts through the office of state procurement created in proposed law.

Present law provides for the creation of the central purchasing agency in the division of administration headed by the state director of purchasing. Present law further provides for the functions of the office in entering into contracts for the procurement of materials, services, and major repairs.

Proposed law provides for a merger of the functions of the office of contractual review and the central purchasing agency into the office of state procurement created in proposed law headed by the state chief procurement officer.

(Amends R.S. 36:4(B)(1)(b) and R.S. 39:1551 through 1758; Repeals R.S. 39:1481 through 1526)