

2021 Regular Session

SENATE BILL NO. 180

BY SENATOR FRED MILLS

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

PROCUREMENT CODE. Provides relative to state procurement of certain services by use of reverse auction technology. (8/1/21)

1 AN ACT

2 To amend and reenact R.S. 38:2271(A)(1) and (2)(b) and the introductory paragraph of

3 2271(C) and R.S. 39:1556(42) and (50), 1600(D)(1) and (3), and 1648(C), and to

4 enact R.S. 42:802(B)(12) and R.S. 46:450.7(C), relative to state procurement through

5 the reverse auction process; to provide for the use of reverse auction technology in

6 the procurement of professional services by state and local governments; to provide

7 for the definition of professional service; to provide for the procurement of pharmacy

8 benefit manager services through reverse auction; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 38:2271(A)(1) and (2)(b) and the introductory paragraph of 2271(C)

11 are hereby amended and reenacted to read as follows:

12 §2271. Purchase of materials, supplies, or equipment **or professional services** by

13 certain political subdivisions using certain auction methods

14 A.(1) The bidding provisions of this Chapter shall not apply when a political

15 subdivision purchases materials, supplies, or equipment **or professional services**

16 using a reverse auction as authorized by, and in the manner provided in, this Part. A

17 political subdivision may use reverse auction only with the determination by its

1 procurement officer that the best interests of the political subdivision would be
2 served and that electronic online bidding is more advantageous than other
3 procurement methods provided in this Chapter.

4 (2) For the purposes of this Part:

5 * * *

6 (b) "Reverse auction" means a competitive online solicitation process on the
7 Internet for equipment, supplies, and other materials **or professional services** in
8 which vendors compete against each other online in real time in an open and
9 interactive environment.

10 * * *

11 C. Adequate public notice for the purchases of materials, supplies, or
12 equipment **or professional services** by a political subdivision using a reverse auction
13 shall be given as follows:

14 * * *

15 Section 2. R.S. 39:1556(42) and (50), 1600(D)(1) and (3), and 1648(C) are hereby
16 amended and reenacted to read as follows:

17 §1556. Definitions

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

22 * * *

23 (42) "Professional service" means work rendered by an independent
24 contractor who has a professed knowledge of some department of learning or science
25 used by its practical application to the affairs of others or in the practice of an art
26 founded on it, which independent contractor shall include but not be limited to
27 lawyers, doctors, dentists, psychologists, certified advanced practice nurses,
28 veterinarians, architects, engineers, land surveyors, landscape architects, accountants,
29 actuaries, **pharmacy benefit managers**, and claims adjusters. A profession is a

1 vocation founded upon prolonged and specialized intellectual training which enables
 2 a particular service to be rendered. The word "professional" implies professed
 3 attainments in special knowledge as distinguished from mere skill. For contracts with
 4 a total amount of compensation of fifty thousand dollars or more, the definition of
 5 "professional service" shall be limited to lawyers, doctors, dentists, psychologists,
 6 certified advanced practice nurses, veterinarians, architects, engineers, land
 7 surveyors, landscape architects, accountants, actuaries, **pharmacy benefit**
 8 **managers**, claims adjusters, and any other profession that may be added by
 9 regulations adopted by the office of state procurement of the division of
 10 administration.

11 * * *

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

16 * * *

17 §1600. Other procurement methods

18 * * *

19 D. Reverse auction.

20 (1) Notwithstanding the provisions of Subpart A of this Part, with the
 21 approval of the state chief procurement officer that the best interests of the state
 22 would be served, a reverse auction may be utilized for the acquisition of materials,
 23 supplies, services of any type, products, or equipment **or professional services** of
 24 any monetary amount, including small purchases.

25 * * *

26 (3) Adequate public notice for the purchase of materials, supplies, services,
 27 or equipment **or professional services** using a reverse auction shall be given. The
 28 advertisement or notice shall conform to the requirements for public notice of sealed
 29 bidding or small purchases as applicable, pursuant respectively to R.S. 39:1594 or

1 1596, such that the extent, timing, location, form, and duration of public notice
2 activities for the reverse auction process shall be fully consistent with the public
3 notice activities required for a sealed bid or small purchase of equivalent value.

4 * * *

5 §1648. Medicaid contracts or subcontracts for pharmacy benefit manager services

6 * * *

7 C.(1) After August 1, 2018, any subsequent requests for proposal issued by
8 the Louisiana Department of Health for Medicaid managed care organization
9 services that include the provision of pharmacy or pharmacy benefit manager
10 services shall include the provisions of Subsection A of this Section.

11 **(2) The Louisiana Department of Health may procure and negotiate**
12 **pharmacy benefit manager contracts through the use of a reverse auction**
13 **pursuant to R.S. 39:1600(D) in compliance with the requirements of this**
14 **Section.**

15 * * *

16 Section 3. R.S. 42:802(B)(12) is hereby enacted to read as follows:

17 §802. Powers and duties; Office of Group Benefits

18 * * *

19 B. In addition, the office shall have the following powers and duties:

20 * * *

21 **(12) To procure and negotiate pharmacy benefit manager contracts**
22 **through the use of a reverse auction pursuant to R.S. 39:1600(D).**

23 * * *

24 Section 4. R.S. 46:450.7(C) is hereby enacted to read as follows:

25 §450.7. Medicaid prescription drug benefit program

26 * * *

27 **C. The Louisiana Department of Health may procure and negotiate**
28 **pharmacy benefit manager contracts through the use of a reverse auction**
29 **pursuant to R.S. 39:1600(D) in compliance with the requirements of this**

1

Section.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Brandi Cannon.

DIGEST

SB 180 Original 2021 Regular Session Fred Mills

Present law provides for the use of a reverse auction by a political subdivision to purchase materials, supplies, or equipment when the procurement officer determines that the best interests of the political subdivision would be served and that electronic online bidding is more advantageous than other procurement methods. Proposed law provides that professional services may also be procured through the reverse auction process.

Present law provides for the use of a reverse auction by the state for the acquisition of materials, supplies, services of any type, products, or equipment with the approval of the state chief procurement officer that the best interests of the state would be served. Proposed law provides that professional services may also be procured through the reverse auction process.

Present law defines professional service for the purposes of the Louisiana Procurement Code and provides examples of professional services. Proposed law adds pharmacy benefit manager services as an example.

Present law provides that the Louisiana Department of Health (LDH) shall administer the Medicaid prescription drug benefit program and requires contracts for pharmacy benefit manager services, either directly with LDH or as a subcontractor or subsidiary of a managed care organization, to meet certain requirements. Proposed law adds authority for LDH to procure and negotiate pharmacy benefit manager contracts through the use of a reverse auction.

Present law provides that the Office of Group Benefits may negotiate and contract directly for the provision of other health care services to the program's covered persons. Proposed law adds authority for OGB to procure and negotiate pharmacy benefit manager contracts through the use of a reverse auction.

Effective August 1, 2021.

(Amends R.S. 38:2271(A)(1) and (2)(b) and 2271(C)(intro para) and R.S. 39:1556(42) and (50), 1600(D)(1) and (3), and 1648(C); adds R.S. 42:802(B)(12) and R.S. 46:450.7(C))