

Regular Session, 2014

SENATE BILL NO. 480

BY SENATOR WALSWORTH

PROCUREMENT CODE. Provides relative to the merging of the Professional, Personal, Consulting and Social Services Procurement Code with the Louisiana Procurement Code. (1/1/15)

1 AN ACT
2 To amend and reenact Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised
3 Statutes of 1950, to be comprised of R.S. 39:1551 through 1554.1, 1556 through
4 1558, 1561 through 1569.1, 1571 through 1572, 1581, 1586 through 1587, 1593
5 through 1598, 1600 through 1608, 1611 through 1633, 1641 through 1644, 1646,
6 1651 through 1658, 1661 through 1662, 1671 through 1673, 1676 through 1679,
7 1681 through 1685, 1691 through 1692, 1695 through 1697, 1702 through 1710,
8 1716, 1731 through 1736, and 1751 through 1755, and to repeal Chapter 16 of
9 Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, comprised of R.S.
10 39:1481 through 1526, relative to the procurement code; to provide for procurement
11 by public bodies, including provisions for a central purchasing agency, for
12 procurement regulations, and for source selection for items to be purchased and
13 methods for such purchases; to provide for definitions and access to procurement
14 information; to provide for the authority and duties of the commissioner of
15 administration with respect to procurement; to provide for certain appointments and
16 qualifications; to provide for mandatory information requirements; to provide for bid
17 procedures and for types of contracts; to provide for contract modification,

1 termination, and contract clauses; to provide for legal and contractual remedies and
2 for administrative appeals; to provide for cooperative purchasing; to provide with
3 respect to conflicts with other provisions of law; to provide for changes in
4 designations by the Louisiana State Law Institute; to provide for an effective date;
5 and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes
8 of 1950, comprised of R.S. 39:1551 through 1554.1, 1556 through 1558, 1561 through
9 1569.1, 1571 through 1572, 1581, 1586 through 1587, 1593 through 1598, 1600 through
10 1608, 1611 through 1633, 1641 through 1644, 1646, 1651 through 1658, 1661 through 1662,
11 1671 through 1673, 1676 through 1679, 1681 through 1685, 1691 through 1692, 1695
12 through 1697, 1702 through 1710, 1716, 1731 through 1736, and 1751 through 1755, is
13 hereby amended and reenacted to read as follows:

14 CHAPTER 17. LOUISIANA PROCUREMENT CODE

15 PART I. GENERAL PROVISIONS

16 SUBPART A. SHORT TITLE, PURPOSES,
17 CONSTRUCTION, AND APPLICATION

18 §1551. Short title

19 This Chapter shall be known as and may be cited as the Louisiana
20 Procurement Code.

21 §1552. Purposes; rules of construction

22 A. Interpretation. This Chapter shall be construed and applied to promote
23 its underlying purposes and policies.

24 B. Purposes and policies. The underlying purposes and policies of this
25 Chapter are:

26 (1) To simplify, clarify, and modernize the law governing procurement by
27 this state.

28 (2) To permit the continued development of procurement policies and
29 practices.

1 (3) To provide for increased public confidence in the procedures followed
2 in public procurement.

3 (4) To ensure the fair and equitable treatment of all persons who deal with
4 the procurement system of this state.

5 (5) To provide increased economy in state procurement activities by
6 fostering effective competition.

7 (6) To provide safeguards for the maintenance of a procurement system of
8 quality and integrity.

9 §1553. Construction

10 A. Supplementary general principles of law applicable. To the extent not
11 inconsistent with the particular provisions of this Chapter, the principles of Louisiana
12 law shall supplement its provisions.

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

17 §1554. Application of this Chapter

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

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

1 **38:2318** shall govern the procurement of construction and the selection of architects,
2 engineers, and landscape architects by governmental bodies of this state, and R.S.
3 38:2181 through R.S. ~~38:2316~~ **38:2318** shall not apply to any procurement of
4 supplies, services, or major repairs by the state ~~except that the provisions of R.S.~~
5 ~~38:2301 shall be applicable to major repairs.~~

6 C. Procurement by the governor. Notwithstanding any other provisions of
7 this Chapter, the governor shall procure all materials, supplies, equipment, and
8 contractual services required for the governor's mansion, the cafeteria operated in the
9 state capitol, and similar agencies. The procurement shall, insofar as practicable, be
10 in accordance with the provisions of this Chapter.

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

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

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

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

18 (d) R.S. 23:3025, as regarding the purchase of products or services from
19 individuals who are blind.

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

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

28 (4) This Chapter shall not be applicable to any hospital owned or operated
29 by the state through the Department of Health and Hospitals for the purchase of

1 supplies, materials, and equipment from a qualified group purchasing organization
2 if the Department of Health and Hospitals, with the concurrence of the division of
3 administration, has determined that the cost is less than the state procurement prices,
4 and that it is in the best interest of the state to purchase the supplies, materials, and
5 equipment from the qualified group purchasing organization.

6 (5) This Chapter shall not be applicable to the purchase of any medical
7 supplies or medical equipment from a qualified group purchasing organization if the
8 commissioner of administration has determined that it is in the best interest of the
9 state to purchase the medical supply or medical equipment from the qualified group
10 purchasing organization. An annual report on the number, type, and volume of such
11 procurements shall be made to the commissioner of administration, the speaker of
12 the House of Representatives, and the president of the Senate.

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

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

21 ~~§1502.1~~ **(8)** Contracts awarded by an agency for the benefit of an industry,
22 payment of which comes from self-generated funds received from that industry, are
23 exempt from the requirements of this ~~Part~~ **Chapter** provided that any such contract
24 is awarded through a competitive process.

25 E.(1) Political subdivisions authorized to adopt this Chapter. The
26 procurement of supplies, services, major repairs, and construction by political
27 subdivisions of this state shall be in accordance with the provisions of Chapter 10 of
28 Title 38 of the Louisiana Revised Statutes of 1950, except that all political
29 subdivisions are authorized to adopt all or any part of this Chapter and its

1 accompanying regulations.

2 (2) Additionally, all political subdivisions which are not subject to this
3 Chapter may adopt the provisions of R.S. ~~39:1598.1~~**39:1600(D)** and its
4 accompanying regulations.

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

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

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

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

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

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

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

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

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

28 ~~(iv)~~**(d)** The fact that following the procedures set out in the Louisiana
29 Procurement Code will result in the loss of the opportunity to purchase the

1 equipment.

2 H. Exemption for inmate canteens and the employee commissary of the
3 Louisiana State Penitentiary. Whenever, for sound economic reasons and improved
4 administrative procedures, the secretary of the Department of Public Safety and
5 Corrections certifies in writing that it is not practical to comply with the provisions
6 of this Chapter, the Department of Public Safety and Corrections may procure the
7 various items for resale to inmates at the inmate canteens in state correctional
8 facilities and the various items for resale to employees of the department at the
9 employee commissary of the Louisiana State Penitentiary, without competitive
10 sealed bidding as required in R.S. 39:1594 and without complying with the
11 requirements of R.S. 39:1597. Any procurement pursuant to this Subsection is
12 exempt from the provisions of R.S. 39:1611. Any contract entered into pursuant to
13 this Subsection must have prior written approval of the commissioner of
14 administration, the Joint Legislative Committee on the Budget, and the attorney
15 general, who shall only approve the contract if they determine in writing that it is in
16 the best interest of the state to enter into the contract. All such information shall be
17 of public record.

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

28 ~~§1482(A)~~ **J. This Chapter shall not apply to the following procurements:**

29 (1)(a) Professional services for engineering design contracts, construction

1 contracts, or contracts for surveying pertaining to the maintenance and construction
 2 of roads and bridges, flood control, integrated coastal protection, aviation, public
 3 transportation, or public works entered into by the Department of Transportation and
 4 Development as provided in Part XIII-A of Chapter 1 of Title 48 of the Louisiana
 5 Revised Statutes of 1950.

6 (b) Consulting service contracts with appraisers, foresters, economists, right-
 7 of-way agents, title abstractors, asbestos abatement inspectors, negotiators,
 8 accountants, and cost consultants relating to acquisition of rights-of-way for
 9 maintenance and construction projects entered into by the Department of
 10 Transportation and Development.

11 (2) Grants or contracts **or nonsocial service contracts** or like business
 12 agreements between the state and its political subdivisions or other governmental
 13 entities, or between higher education boards and institutions under their jurisdiction;
 14 ~~except this Chapter shall apply to interagency contracts as defined in R.S.~~
 15 ~~39:1490(C), and to contracts or grants between the state and its political subdivisions~~
 16 ~~to procure social services.~~

17 ~~§1482(B)~~**K.** This Chapter shall not apply or affect licensed insurance agents
 18 appointed as agents of record on policies insuring any of the state's insurable
 19 interests. Nor shall it apply to or affect insurance consultants and actuaries when
 20 used in lieu of agents of record, so long as fees paid do not exceed the commission
 21 that would have been paid to said agents of record.

22 ~~§1482(C)~~**L.** This Chapter shall not apply to those services performed by
 23 architects, engineers, or landscape architects as provided for in ~~L.S.A.~~**R.S.** 38:2310=
 24 **through** ~~38:2316~~ **38:2318**, nor shall the provisions of this Chapter affect or
 25 otherwise limit the duties, functions, and jurisdiction of the Louisiana Architect
 26 Selection Board, the Louisiana Engineer Selection Board, or the Louisiana
 27 Landscape Architect Selection Board.

28 ~~§1482(E)~~**M.** This Chapter shall not apply to any contract or like business
 29 agreement to purchase professional, personal, consulting, or contract services

1 required or utilized by the Louisiana Agricultural Finance Authority authorized
2 under the provisions of Chapter 3-B of Title 3 of the Louisiana Revised Statutes of
3 1950.

4 ~~§1482(F)~~**N**(1) This Chapter shall not apply to those personal, professional,
5 or social services provided to the clients of the Department of Health and Hospitals,
6 the Department of Children and Family Services, the office of special education
7 services within the Department of Education, provided that the expense for these
8 special education services is five thousand dollars or less per child, corrections
9 services within the Department of Public Safety and Corrections, or the office of
10 juvenile justice, Department of Public Safety and Corrections, in the following
11 circumstances:

12 (a) When these services are accessed directly by clients through utilization
13 of medical vendor cards, with the clients arranging services with providers and
14 providers then billing the agency for payment.

15 (b) When clients of a particular program area are guaranteed freedom of
16 choice in selection of a provider of services.

17 (c) When personal and professional services are arranged on a case-by-case
18 basis by a worker as the need arises.

19 (d) When social services are arranged on a case-by-case basis from a social
20 service provider qualifying under R.S. ~~39:1494.1(A)~~ **39:1619(B)**.

21 (e) When the using agency arranging social services on a case-by-case basis
22 makes no guarantee of specific sums of monthly or annual payment or referrals of
23 clientele.

24 (2) If personal, professional, or social services are provided for the primary
25 benefit of a single using agency provided for in R.S. ~~39:1482(F)(1)~~ **39:1554(N)**, and
26 said agency exhibits budgetary and programmatic control over the provider of the
27 services, and the deliverables of the services are intended solely for the benefit of the
28 using agency, the provisions of this Chapter shall apply.

29 (3) This Chapter shall not apply to the use of professional services of

1 physicians who provide consultative examinations regarding applicants for disability
2 benefits under the Social Security act by the disability determinations service of the
3 Department of Children and Family Services.

4 (4) This Chapter shall not apply to the taking of Medicaid applications by
5 certified Medicaid enrollment centers for prospective Medicaid clients pursuant to
6 an agreement with the Department of Health and Hospitals and in accordance with
7 federal regulations.

8 ~~§1482(H)~~ **Q.** This Chapter shall not apply to any contract or like business
9 agreement to hire professional, personal, consulting, or contract services required or
10 utilized by the State Market Commission under the provisions of Part I-D of Chapter
11 5 of Title 3 of the Louisiana Revised Statutes of 1950.

12 ~~§1482(I)~~ **P.** This Chapter shall not apply to any contract for a court reporter
13 or expert witness utilized by a governmental body for the purpose of taking
14 depositions, giving expert testimony, or other related matters if such contract has a
15 total amount of compensation of less than five thousand dollars.

16 ~~§1482(J)~~ **Q.** This Chapter shall not apply to any contract for the procurement
17 of individualized agreements for persons with developmental disabilities by the
18 Department of Health and Hospitals.

19 ~~§1482(K)~~ **R.**(1) This Chapter shall not apply to contracts of an institution of
20 higher education or other agency of higher education, hereinafter collectively
21 referred to as "higher education entity", to which the ~~director of the office of~~
22 ~~contractual review~~ **state chief procurement officer** has delegated authority to
23 procure services with private grant funds or federal funds specifically provided for
24 such purpose.

25 (2) Procurements conducted by a higher education entity operating under
26 delegation of authority as provided herein shall be made in accordance with all
27 federal requirements necessary for the receipt and use of such private grant or federal
28 funds, particularly with regard to competitive bidding requirements for procurement
29 of research services. Further, in making such procurements, such entity may also

1 consider factors such as quality, reliability, expected life span, and compatibility
2 with existing equipment or research protocols, as permitted under federal guidelines.

3 §1554.1. Federal block grants

4 The provisions of this ~~Part~~ **Chapter** shall be applicable to any goods and
5 services procured with funds pursuant to the federally enacted community services
6 block grant or community development block grant.

7 SUBPART B. DEFINITIONS

8 §1556. Definitions

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

13 ~~§1752(1)~~ **(1) "Agency"** as used in this ~~Part~~ **Chapter** and in Part V-~~A~~ of this
14 Title shall have the same meaning ascribed to it as provided in R.S. 36:3(1).

15 ~~§1591(9)~~**(2)** "Assembled" means the process of putting together all
16 component parts of an item of equipment by the manufacturer where the assembly
17 plant is located within the territorial borders of the state of Louisiana. "Assembled"
18 shall not mean the reassembly of parts packed for shipping purposes.

19 ~~(1)~~**(3)** "Business" means any corporation, partnership, individual, sole
20 proprietorship, joint stock company, joint venture, or any other legal entity **through**
21 **which business is conducted.**

22 **(4) "Central purchasing agency" means the office of state procurement.**

23 ~~(2)~~**(5)** "Change order" means a written order signed by the procurement
24 officer, directing the contractor to make changes which the ~~changes clause of the~~
25 contract authorizes the procurement officer to order without the consent of the
26 contractor.

27 ~~(3)~~**(6)** "Chief procurement officer" means the ~~state director of purchasing~~
28 **person holding the position created in R.S. 39:1562** and the directors of
29 purchasing of the departments exempt from ~~central purchasing~~ **the office of state**

1 **procurement** by R.S. 39:1572.

2 ~~§1484(A)(1.1)(7)~~ "Claims adjuster" means an individual engaged in the
3 investigation, evaluation, and negotiation of property, casualty, and worker's
4 compensation insurance claims.

5 ~~§1484(A)(4)(a)(8)~~ "**Complex procurement**" means that the procurement
6 **requires any combination of supplies, services, consulting services, or major**
7 **repairs to fulfill a specified scope of work. The scope of work is so complicated**
8 **or intricate that factors other than price must be evaluated in order to identify**
9 **the best value.**

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

18 ~~(b)~~ The term "consulting service" includes the procurement of supplies and
19 services by a contractor without the necessity of complying with provisions of the
20 Louisiana Procurement Code when such supplies and services are merely ancillary
21 to the provision of consulting services under a contingency fee arrangement, even
22 though the procurement of such supplies or services directly by a governmental body
23 would require compliance with the Louisiana Procurement Code. Supplies or
24 services ancillary to the provision of consulting services are those supplies or
25 services which assist the contractor in fulfilling the objective of his contract when
26 the cost for such supplies and services is less than the cost of providing consulting
27 services, as determined by the using agency.

28 ~~(4)(10)~~ "Contract" means all types of state agreements, regardless of what
29 they may be called, **including orders and documents purporting to represent**

1 **grants, which are** for the purchase **or disposal** of supplies, services, ~~or~~ major
2 repairs, **or any other item**. It includes awards and notices of award; contracts of a
3 fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the
4 issuance of job or task orders; leases; letter contracts; and purchase orders. It also
5 includes supplemental agreements with respect to any of the foregoing.

6 ~~(5)~~**(11)** "Contract modification" means any written alteration in
7 specifications, delivery point, rate of delivery, period of performance, price, quantity,
8 or other provisions of any contract accomplished by mutual action of the parties to
9 the contract.

10 ~~(6)~~**(12)** "Contractor" means any person having a contract with a governmental
11 body.

12 ~~§1701(1)~~**(13)** "Cooperative purchasing" means procurement conducted by or
13 on behalf of more than one public procurement unit or by a public procurement unit
14 with an external procurement activity or by a private procurement unit.

15 ~~§1591(1)~~ **(14)** "Cost-reimbursement contract" means a contract under which
16 a contractor is reimbursed for costs which are allowable and allocable in accordance
17 with cost principles as provided for in regulations, and a fee, if any.

18 ~~§1522~~ **(15)** ~~For the purpose of this Chapter, the term "court"~~ **"Court"** means
19 the Nineteenth Judicial District located in Baton Rouge and, in the event of an appeal
20 from such a court, the First Circuit Court of Appeal located in Baton Rouge.

21 ~~(7)~~**(16)** "Data" means recorded information, regardless of form or
22 characteristic.

23 ~~(8)~~**(17)** "Debarment" means the disqualification of a person to receive
24 invitations for bids or requests for proposals, or the award of any contract by any
25 governmental body, for a specified period of time commensurate with the
26 seriousness of the offense or the failure or the inadequacy of performance.

27 ~~(9)~~**(18)** "Designee" means a duly authorized representative of a person
28 holding a superior position.

29 **(19) "Electronic" means electrical, digital, magnetic, optical,**

1 **electromagnet, or any other similar technology.**

2 §~~1484(A)(10)~~(20) "Employee" means an individual drawing a salary from a
3 governmental body, whether elected or not, and any nonsalaried individual
4 performing personal services for any governmental body.

5 §~~1591(2)~~(21) "Established catalog price" means the price included in a
6 catalog, price list, schedule, or other form that:

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

8 (b) Is either published or otherwise available for inspection by customers, and

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

12 §~~1701(2)~~(22) "External procurement activity" means any buying organization
13 not located in this state which, if located in this state, would qualify as a public
14 procurement unit. An agency of the United States government is an external
15 procurement activity.

16 ~~(10)~~(23) "Governmental body" means any department, office, division,
17 commission, council, board, bureau, committee, institution, agency, government
18 corporation, or other establishment or official of the executive ~~or judicial branches~~
19 **branch** of state government. **For purposes of procurement of personal,**
20 **professional, consulting, and social services contracts, governmental shall not**
21 **include the judicial branch of state government.**

22 ~~1484(A)(11.1)~~(24) "Governmental entity" means any governmental unit
23 which is not included in the definition of "governmental body" in R.S. ~~39:1484(11.1)~~
24 **39:1556(23).**

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

1 **(26) "Information technology", which includes telecommunications,**
 2 **means those commodities subject to the authority of the office of information**
 3 **technology in accordance with R.S. 39:15.3.**

4 ~~(12)~~**(27)** "Installment-purchase contract" means a contract which is utilized
 5 to procure supplies or equipment from a contractor where payment for the supplies
 6 or equipment is made in a set of installment payments over a fixed period of time in
 7 accordance with the provisions of the contract, and in which the contractor agrees to
 8 deliver title of the property to the governmental body in accordance with the terms
 9 and conditions of the contract.

10 ~~§1591(3)~~**(28)** "Invitation for bids" means all documents, whether attached or
 11 incorporated by reference, utilized for soliciting bids in accordance with the
 12 procedures set forth in R.S. 39:1594.

13 ~~§1490(C)~~**(29)** ~~As used in this Chapter, "interagency "~~**Interagency** contract"
 14 means any contract in which each of the parties thereto is a "governmental body" as
 15 defined in R.S. ~~39:1484(11)~~ **39:1556(23)**.

16 ~~§1701(3)~~**(30)** "Local public procurement unit" means any parish, city, town,
 17 governmental body, and any other subdivision of the state or public agency thereof,
 18 public authority, public educational, health, or other institution, and to the extent
 19 provided by law, any other entity which expends public funds for the acquisition or
 20 leasing of supplies, services, major repairs, and construction, and any nonprofit
 21 corporation operating a charitable hospital.

22 ~~(13)~~**(31)** "Major repairs" means those repairs payable with funds appropriated
 23 in the general appropriations act, except those funds transferred from the operating
 24 budget of one governmental body to supplement and complete a project under
 25 contract by the division of administration facility planning and control section.

26 ~~(14)~~**(32)** "May" denotes the permissive.

27 ~~§1484(A)(13)~~**(33)** "Negotiation" means the formulation of a contractual
 28 relationship ~~by either of the methods set forth in Sections 1494, 1495, and 1496 of~~
 29 **through discussions as may be allowed under** this Chapter.

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

4 ~~§1484(A)(14)~~**(35)** "Performance-based energy efficiency contract" means a
5 contract for energy efficiency services and equipment in which the payment
6 obligation for each year of the contract is either:

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

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

11 ~~(15)~~**(36)** "Person" means any business, individual, union, committee, club,
12 or other organization or group of individuals.

13 ~~§1484(A)(16)~~**(37)** "Personal service" means work rendered by individuals
14 which requires use of creative or artistic skills, such as but not limited to graphic
15 artists, sculptors, musicians, photographers, and writers, or which requires use of
16 highly technical or unique individual skills or talents, such as but not limited to
17 paramedicals, therapists, handwriting analysts, foreign representatives, and expert
18 witnesses for adjudications or other court proceedings. A "foreign representative"
19 shall mean a person in a foreign country whose education and experience qualify
20 such person to represent the state in such foreign country.

21 ~~(16)~~**(38)** "Practicable" means that which can be done or put into practice;
22 feasible.

23 ~~§1701(4)~~**(39)** "Private procurement unit" means any independent institution
24 of higher education in this state.

25 ~~(17)~~**(40)** "Procurement" means the buying, purchasing, renting, leasing, or
26 otherwise obtaining any supplies, services, or major repairs. It also includes all
27 functions that pertain to the obtaining of any public procurement, including
28 description of requirements, selection and solicitation of sources, preparation and
29 award of contract, and all phases of contract administration.

1 ~~(18)~~**(41)** "Procurement officer" means any person authorized by a
2 governmental body, in accordance with procedures prescribed by regulations, to
3 enter into and administer contracts and make written determinations and findings
4 with respect thereto. The term also includes an authorized representative acting
5 within the limits of authority.

6 ~~1484(A)(18)(a)~~**(42)** "Professional service" means work rendered by an
7 independent contractor who has a professed knowledge of some department of
8 learning or science used by its practical application to the affairs of others or in the
9 practice of an art founded on it, which independent contractor shall include but not
10 be limited to lawyers, doctors, dentists, psychologists, certified advanced practice
11 nurses, veterinarians, architects, engineers, land surveyors, landscape architects,
12 accountants, actuaries, and claims adjusters. A profession is a vocation founded upon
13 prolonged and specialized intellectual training which enables a particular service to
14 be rendered. The word "professional" implies professed attainments in special
15 knowledge as distinguished from mere skill. For contracts with a total amount of
16 compensation of fifty thousand dollars or more, the definition of "professional
17 service" shall be limited to lawyers, doctors, dentists, psychologists, certified
18 advanced practice nurses, veterinarians, architects, engineers, land surveyors,
19 landscape architects, accountants, actuaries, claims adjusters, and any other
20 profession that may be added by regulations adopted by the office of ~~contractual~~
21 ~~review~~ **state procurement** of the division of administration.

22 ~~(b) For the period beginning July 1, 2008, and ending June 30, 2009,~~
23 ~~"professional service" shall include work rendered by an educational consultant~~
24 ~~which is procured by the Department of Education through a contract which has a~~
25 ~~maximum amount of compensation of two hundred fifty thousand dollars and a term~~
26 ~~of no longer than twelve months. Regardless of the number of contracts, the~~
27 ~~aggregate total compensation to be paid to any contractor for contracts authorized~~
28 ~~pursuant to this Subparagraph shall not exceed two hundred fifty thousand dollars.~~
29 ~~Any contract entered into pursuant to this Subparagraph shall contain specific~~

1 ~~measurable objectives and goals for achievement, and shall be available for public~~
2 ~~inspection for a period of at least thirty days prior to the execution of the contract.~~
3 ~~For purposes of this Subparagraph "educational consultant" shall mean a person who~~
4 ~~holds an earned doctorate degree in education from a postsecondary institution~~
5 ~~accredited by a regional accrediting organization which is recognized by the United~~
6 ~~States Department of Education. The provisions of this Subparagraph shall be null,~~
7 ~~void, and of no effect on July 1, 2009.~~

8 ~~§1701(5)(43)~~ "Public procurement unit" means either a local public
9 procurement unit or a state public procurement unit.

10 ~~§1591(4)(44)~~ "Purchase description" means specifications or any other
11 document 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~~ **chief procurement officer**, to contract on its
21 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 ~~§1591(5)(48)~~ "Request for proposals" means all documents, whether attached
28 or incorporated by reference, utilized for soliciting proposals in accordance with the
29 procedures set forth in ~~R.S. 39:1595, R.S. 39:1596, R.S. 39:1597, or R.S. 39:1598~~

1 **this Chapter.**

2 §1591(6)(49) "Resident business" means one authorized to do and doing
3 business under the laws of this state, which either:

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

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

6 §1591(7)(50) "Responsible bidder or ~~offeror~~ **proposer**" means a person who
7 has the capability in all respects to perform the contract requirements and the
8 integrity and reliability which will assure good faith performance.

9 §1591(8)(51) "Responsive bidder" means a person who has submitted a bid
10 under R.S. 39:1594 which conforms in all substantive respects to the invitation for
11 bids, including the specifications set forth in the invitation.

12 §1598.1(A)(2)(52) ~~For purposes of this Subpart, "reverse~~ **"Reverse** auction"
13 means a competitive online solicitation process on the Internet for materials,
14 supplies, services, products, or equipment in which vendors compete against each
15 other online in real time in an open and interactive environment.

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

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

24 **(a) Services include but are not limited to the following:**

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

27 **(ii) Routine recurring maintenance of real property.**

28 **(iii) Housekeeping and services.**

29 **(iv) Advisory and assistance services.**

1 (v) Operation of government owned equipment, real property, and
 2 systems.

3 (vi) Information technology services.

4 (vii) Research and development.

5 (b) ~~This~~ The term "services" shall not include:

6 (a)(i) Employment agreements or collective bargaining agreements.

7 (b)(ii) Personal, professional, consultant, or social services as ~~provided by~~
 8 ~~R.S. 39:1481 through R.S. 39:1526~~ as defined in this Chapter.

9 (c)(iii) Services performed by lawyers as provided by R.S. 42:261 through
 10 R.S. 42:264.

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

13 (24)(55) "Shall" denotes the imperative.

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

16 §1484(A)(22)(57) "Social service" means work rendered by any person, firm,
 17 corporation, organization, governmental body, or governmental entity in furtherance
 18 of the general welfare of the citizens of Louisiana, including but not limited to the
 19 objectives provided for in ~~Subsection B of this Section~~ R.S. 39:1619(A).

20 §1651(B)(58) ~~As used in this Part, the term "specification"~~ "Specification"
 21 means any description of the physical or functional characteristics, or of the nature
 22 of a supply, service, or major repair. It may include a description of any requirement
 23 for inspecting, testing, or preparing a supply, service, or major repair for delivery.

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

26 (59) "State chief procurement officer" means the person holding the
 27 position created in R.S. 39:1562 as head of the central purchasing agency of
 28 Louisiana.

29 §1701(6)(60) "State public procurement unit" means the central purchasing

1 agency and any other purchasing agency of this state.

2 ~~§1484(A)(23)(61)~~ "Supplemental agreement" means any contract
3 modification which is accomplished by the mutual action of the parties.

4 ~~(26)(62)~~ "Supplies" means all property, including but not limited to
5 equipment, **materials**, insurance, and leases on real property excluding land or a
6 permanent interest in land.

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

13 ~~(28)(64)~~ "Using agency" means any governmental body of the state which
14 utilizes any supplies, services, or major repairs purchased under this Chapter.

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

19 SUBPART C. RECORDS; PUBLIC ACCESS

20 §1557. Public access to procurement information

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

24 §1557.1. Change orders; recordation

25 Each change order to a contract which adds an amount of ten percent or more
26 of the original contract amount and which additional amount is at least ten thousand
27 dollars or all change orders to a contract aggregating to an amount of twenty percent
28 or more of the original contract amount and which additional amount is at least ten
29 thousand dollars shall be recorded by the governmental body which entered into the

1 contract in the office of the recorder of mortgages in the parish where the work is to
 2 be done or where the entity is domiciled not later than thirty days after the date of the
 3 change order which requires that the recordation take place. In addition, the original
 4 contract shall be recorded together with the amendments or other revisions if not
 5 previously recorded. The provisions of this Section shall not apply to the office of
 6 facility planning and control, and the office of state ~~purchasing~~ **procurement**.

7 §1558. Determinations

8 Written determinations and findings required by this Chapter shall be retained
 9 in an official contract file in the central purchasing agency or purchasing agency or
 10 by the governmental body administering the contract.

11 PART II. PURCHASING ORGANIZATION

12 SUBPART A. DIVISION OF ADMINISTRATION

13 §1561. Authority and duties of the commissioner of administration

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

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

1 procurement regulations and the requirements of this Chapter.

2 SUBPART B. CENTRAL PURCHASING AGENCY

3 §1562. Central purchasing agency; creation

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

7 §1563. Appointment and qualifications

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

16 §1564. Authority of the state ~~director of purchasing~~ **chief procurement officer**

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

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

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

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

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

29 (3) Establish and maintain programs for the inspection, testing, and

1 acceptance of supplies, services, and major repairs.

2 §1565. Duties of the attorney general

3 The attorney general shall be the chief legal adviser to the ~~director~~ **state chief**
4 **procurement officer**.

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

13 §1567. Reporting requirements

14 **A.** The ~~director~~ **state chief procurement officer** shall prepare any reports
15 that 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~~ **state chief procurement officer**. The quarterly report listing purchases
22 for under five thousand dollars and the annual report for purchases above five
23 thousand dollars on all items purchased from state contracts, shall be sufficient to
24 meet the requirements of this Section.

25 ~~§1489~~ **B.** The ~~director~~ **state chief procurement officer** shall prepare such
26 reports as he finds necessary for the proper conduct of his duties, to include an
27 annual report of all professional, personal, consulting, social services, and other
28 contracts over which the office of ~~contractual review~~ **state procurement** has power
29 and authority under the provisions of this Chapter or through administrative rules and

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

7 ~~§1517(A)C.(1)~~ **C.(1)** When for any reason collusion is suspected among any
8 ~~offerers~~ **proposers**, a written notice of the facts giving rise to such suspicion shall
9 be transmitted to the ~~director of contractual review~~ **state chief procurement officer**
10 and the attorney general.

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

16 ~~§1493D.~~ **D.** The using agencies shall cooperate with the office of ~~contractual~~
17 ~~review~~ **state procurement** in the preparation of statistical data concerning the
18 acquisition, usage, and disposition of all professional, personal, consulting, and
19 social services, and may employ trained personnel, as necessary, to carry out this
20 function. All using agencies shall furnish such reports as the office of ~~contractual~~
21 ~~review~~ **state procurement** may require concerning usage and needs, and the office
22 of ~~contractual review~~ **state procurement** shall have authority to prescribe forms to
23 be used by the using agencies in the reporting of professional, personal, consulting,
24 and social services.

25 ~~§1658~~ **§1568.** Mandatory information requirement for contracts let without
26 competition under the authority of an executive order related to
27 Hurricane Katrina or Rita

28 A. The provisions of this Section shall apply to any contract for state
29 procurement of goods or services which is subject to the provisions of this Chapter,

1 hereinafter referred to as "state procurement law", which contract is let without
2 competition pursuant to an executive order issued by authority granted under the
3 Louisiana Homeland Security and Emergency Assistance and Disaster Act, which
4 order grants exceptions to the requirements of state procurement law. Such
5 provisions shall apply to contracts which have been or will be let without
6 competition pursuant to executive orders related to Hurricane Katrina or Rita which
7 granted exceptions to the requirements of state procurement law.

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

14 (a) The name of the primary contractor.

15 (b) The amount of the contract.

16 (c) The name of each subcontractor.

17 (d) The amount of each subcontract.

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

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

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

29 D. Failure to submit all of the information required as provided in Subsection

1 B of this Section shall be grounds for debarment. It shall be unlawful for any person
2 to intentionally fail to submit such information, which failure is hereby deemed to
3 be a violation of the duty to provide the mandatory information. Whomever violates
4 such provisions of Subsection B of this Section shall be fined in an amount not to
5 exceed one-half of the contract amount and imprisoned for not more than six months,
6 or both.

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

10 ~~§1613~~**§1568.1**. Use of other types of contracts

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

18 ~~§1517.1~~**§1568.2**. The Road Home Program; reporting on certain contract payments,
19 subcontractors, and performance **for professional, personal,**
20 **consulting, and social services contracts**

21 Notwithstanding any other provision of law to the contrary, the division of
22 administration, office of community development, shall report monthly to the
23 Legislative Audit Advisory Council with respect to the contract between the office
24 of community development and ICF Emergency Management Services dated June
25 30, 2006, as amended. The report shall contain information relating to
26 subcontractors, inclusive of subcontractors of subcontractors, payments made to any
27 contractor or subcontractor, the value of the contract, contractor performance in the
28 achievement of goals and objectives of the contract, and any penalties which have
29 been assessed for insufficient performance. The information shall be compiled by the

1 office of community development and delivered to the Legislative Audit Advisory
2 Council on a monthly basis, on a date to be established by the chairman of the
3 council. The commissioner of administration shall consult with the chairman of the
4 Legislative Audit Advisory Council to develop the format in which the information
5 will be presented to the council.

6 ~~§1518~~**§1569**. Reports of procurement actions **related to professional, personal,**
7 **consulting, and social services contracts**

8 A. A written report shall be compiled annually, within one hundred twenty
9 days after the close of the fiscal year, of contracts made under Sections ~~1494, 1495~~
10 **1617, 1620**, and ~~1496~~ **1621** of this Chapter during that preceding fiscal year. The
11 report shall (1) name each contract; (2) state the amount and type of each contract;
12 (3) describe the services purchased by each contract, and (4) include, as attachments,
13 copies of all determinations and findings required to be made by provisions of this
14 Part and implementing rules and regulations.

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

26 (2) Notwithstanding ~~the~~ **any other** provisions of ~~R.S. 39:1482~~ **this Chapter**,
27 each state agency, board, commission, or department, including nonbudget units,
28 shall forward on an annual basis on forms to be supplied by the office of ~~contractual~~
29 **review state procurement**, a report containing the data and information on all

1 professional services retained or employed which are required to be listed in a central
2 listing as provided in Subsection B of this Section.

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

4 ~~§1500~~**§1569.1**. Contract administration

5 A. Upon entering into a professional, personal, consulting, or social service
6 contract, the using agency shall have full responsibility for the diligent
7 administration and monitoring of the contract. The ~~director of the office of~~
8 ~~contractual review~~ **state chief procurement officer** may require the using agency
9 to report at any time on the status of any such outstanding contracts to which the
10 using agency is a party.

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

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

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

25 (3) Any contract modifications.

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

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

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

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

5 D. No contract **for professional, personal, consulting, or social services**
6 shall be entered into by a using agency with any contractor for which a delinquent
7 final evaluation report remains outstanding for a contract with such using agency.

8 **§1615(A)E. A report of all multiyear contracts shall be provided to the**
9 **Joint Legislative Committee on the Budget no later than ninety days after the**
10 **end of each fiscal year.**

11 SUBPART C. CENTRALIZATION OF PUBLIC PROCUREMENT

12 §1571. Centralization of procurement authority

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

17 §1572. Exemptions

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

25 (1) The Department of Transportation and Development, for procurement
26 of materials, **services,** and supplies that will become a component part of any road,
27 highway, bridge, or appurtenance thereto, and

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

1 B. Exemptions from central purchasing only. **Unless otherwise provided**
 2 **in R.S. 39:1554, exemptions from central purchasing do not apply to**
 3 **professional services, personal services, consulting services, social services,**
 4 **information technology, or vehicle acquisition.** Unless otherwise ordered by
 5 regulation of the commissioner with approval of the governor, the following
 6 governmental bodies shall not be required to conduct procurement through the
 7 central purchasing agency, but shall nevertheless be subject to the requirements of
 8 this Chapter and the regulations promulgated by the commissioner:

9 (1) Louisiana State University System.

10 (2) Southern University System.

11 (3) ~~Board of Trustees of State Colleges and Universities~~ **University of**
 12 **Louisiana** System.

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

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

17 ~~(6)~~ The office of the state bond commission in the Department of the
 18 Treasury for printing only.

19 ~~(7)~~**(6)** Louisiana Community and Technical College System.

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

23 SUBPART D. STATE PROCUREMENT REGULATIONS

24 §1581. State procurement regulations

25 A. Regulations. Regulations promulgated by the commissioner in accordance
 26 with the Administrative Procedure Act shall govern all procurements by all
 27 governmental bodies except for:

28 (1) Regulations promulgated by the secretary of the Department of
 29 Transportation and Development governing procurement by that department, for

1 procurement of materials and supplies that will become a component part of any
2 road, highway, bridge, or appurtenance thereto.

3 (2) Regulations promulgated by the State Superintendent of Education
4 governing the procurement of textbooks, scientific and laboratory equipment,
5 teaching materials, teaching devices, and teaching supplies by the Department of
6 Education.

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

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

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

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

23 SUBPART E. COORDINATION, TRAINING, AND EDUCATION

24 §1586. Relationship with using agencies

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

1 recommendations to the commissioner or the ~~director~~ **state chief procurement**
 2 **officer**, and the commissioner or ~~director~~ **state chief procurement officer** may at
 3 any time make recommendations to any using agency.

4 §1587. Procurement advisory council; other advisory groups

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

14 B. Other advisory groups. The ~~director~~ **state chief procurement officer**
 15 may appoint advisory groups to assist with respect to specifications and procurement
 16 in specific areas and with respect to any other matters within the authority of the
 17 ~~director~~ **state chief procurement officer**.

18 C. Drug procurement advisory council. The commissioner shall establish
 19 a Drug Procurement Advisory Council which shall be composed of persons from the
 20 division of administration and from using agencies of drugs procured by the division
 21 and persons qualified in the fields of medicine and pharmacy. The council shall
 22 advise the commissioner with respect to the procurement of drugs for any using
 23 agency by generic contract, as further provided in R.S. ~~39:1594.139:1601~~.

24 PART III. SOURCE SELECTION AND CONTRACT FORMATION

25 ~~SUBPART A. DEFINITIONS~~

26 ~~§1591. Definitions of terms used in this Part~~

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

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

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

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

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

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

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

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

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

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

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

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

23 ~~(8) "Responsive bidder" means a person who has submitted a bid under R.S.~~
24 ~~39:1594 which conforms in all substantive respects to the invitation for bids,~~
25 ~~including the specifications set forth in the invitation.~~

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

1 SUBPART B: A. METHODS OF SOURCE SELECTION

2 §1593. Methods of source selection

3 ~~A.~~ Unless otherwise authorized by law, all state contracts shall be awarded
4 by ~~competitive sealed bidding, pursuant to R.S. 39:1594, except as provided in R.S.~~
5 ~~39:1593.1 and R.S. 39:1595 through 1598~~ **one of the following methods:**6 **(1) R.S. 39:1594, competitive sealed bids.**7 **(2) R.S. 39:1595, competitive sealed proposals.**8 **(3) R.S. 39:1596, small purchases.**9 **(4) R.S. 39:1597, sole source.**10 **(5) R.S. 39:1598, emergency procurements.**11 **(6) R.S. 39:1600, other procurement methods:**12 **(a) Unstable market conditions.**13 **(b) Group purchasing organizations.**14 **(c) Used equipment.**15 **(d) Reverse auctions.**16 **(e) Negotiation of noncompetitive contracts.**17 ~~B. Notwithstanding any other provisions of this Section to the contrary and~~
18 ~~in accordance with rules and regulations promulgated by the commissioner in~~
19 ~~accordance with the Administrative Procedure Act, the directors of state purchasing~~
20 ~~or directors of purchasing at a college or university, with the approval of the~~
21 ~~commissioner, may procure by solicitation requiring written response from at least~~
22 ~~three bona fide bidders under the provisions of this Subsection, when it is determined~~
23 ~~that market conditions are unstable and the competitive bid process is not conducive~~
24 ~~for best pricing for products, supplies and other materials. The provisions of this~~
25 ~~Subsection shall be applicable only if the value of the contract is fifty thousand~~
26 ~~dollars or less and only after sufficient documentation is provided to the~~
27 ~~commissioner by the director to substantiate the unstable market.~~28 ~~C.(1) Notwithstanding any other provision of this Section to the contrary,~~29 ~~with the approval of the commissioner and the written determination by the director~~

1 of state purchasing that the best interests of the state would be served, a competitive
2 request for proposals process as provided in this Subsection may be used in the
3 following circumstances:

4 (a) For the procurement of supplies, services, or major repairs, including but
5 not limited to the procurement of high technology acquisitions or of complex
6 services:

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

12 (2)(a)(i) For a contract to be let under the provisions of this Subsection, the
13 agency shall give adequate public notice of the request for proposals by advertising
14 in the official journal of the state at least thirty days before the last day that proposals
15 will be accepted. In addition, the agency shall mail written notice to persons, firms,
16 or corporations who are known to be in a position to furnish the required services at
17 least thirty days before the last day that proposals will be accepted:

18 (ii) All requests for proposals shall be advertised through a centralized
19 electronic interactive environment administered by the division of administration as
20 provided in this Section. The advertisement or written notice required by this Section
21 shall contain the name and address of the using agency and shall establish the
22 specific date, time, and place by which the request for proposals must be received:

23 (b) The request for proposals shall clearly state the technological or other
24 outcome desired from the procurement of the technological or complex systems
25 and/or services, if applicable, and shall indicate the relative importance of price and
26 other evaluation factors, the criteria to be used in evaluating the proposals, and the
27 time frames within which the work must be completed:

28 (c) Written or oral discussions shall be conducted with all responsible
29 offerers who submit proposals determined in writing to be reasonably susceptible of

1 being selected for award. Discussions shall not disclose any information derived
2 from proposals submitted by competing offers. Discussions need not be conducted:

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

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

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

11 (d)(i) Award shall be made to the responsible offerer whose proposal is
12 determined in writing by the agency to be the most advantageous to the state, taking
13 into consideration review of price and the evaluation factors set forth in the request
14 for proposals.

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

18 (e) Each contract entered into pursuant to this Subsection shall contain as a
19 minimum:

20 (i) Description of the work to be performed and/or objectives to be met, when
21 applicable:

22 (ii) Amount and time of payments to be made:

23 (iii) Description of reports or other deliverables to be received, when
24 applicable:

25 (iv) Date of reports or other deliverables to be received, when applicable:

26 (v) Responsibility for payment of taxes, when applicable:

27 (vi) Circumstances under which the contract can be terminated either with or
28 without cause:

29 (vii) Remedies for default.

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

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

11 ~~(ii)(aa) No contract shall be valid, nor shall the state be bound by the contract,~~
12 ~~until it has first been executed by the head of the using agency, or his designee,~~
13 ~~which is a party to the contract and the contractor and has been approved in writing~~
14 ~~by the director of state purchasing.~~

15 ~~(bb) 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 director of state purchasing.~~

19 §1594. Competitive sealed **bidding bids**

20 A. Conditions for use. Contracts exceeding the amount provided by R.S.
21 39:1596 shall be awarded by competitive sealed bidding **unless otherwise provided**
22 **in this Chapter.**

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

27 C. Public notice.

28 (1) Adequate public notice of the invitation for bids shall be given at least
29 ten days prior to the date set forth therein for the opening of bids on all matters

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

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

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

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

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

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

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

24 (a) The signature on the bid is that of any corporate officer listed on the most
25 current annual report on file with the secretary of state, or the signature on the bid
26 is that of any member of a partnership or partnership in commendam listed in the
27 most current partnership records on file with the secretary of state.

28 (b) The signature on the bid is that of an authorized representative of the
29 corporation, partnership, or other legal entity and the ~~bid is accompanied by~~ **bidder**

1 **submits or provides upon request** a corporate resolution, certification as to the
2 corporate principal, or other documents indicating authority which are acceptable to
3 the public entity, **including registration on an electronic Internet database**
4 **maintained by the public entity.**

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

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

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

20 E. Bid evaluation.

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

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

- 1 (a) Location of the proposed space.
- 2 (b) Condition of the proposed space.
- 3 (c) Suitability of the proposed space for the advertiser's needs.
- 4 (d) Timeliness of availability of the proposed space.

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

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

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

17 I. Exemption.

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

26 (2) Purchases of raw materials and supplies used in the manufacturing
27 process by the Department of Public Safety and Corrections, division of prison
28 enterprises, with the approval of the ~~director of state purchasing~~ **state chief**
29 **procurement officer**, shall be exempt from the provisions of this Section and shall

1 be procured through the use of written bids.

2 ~~§1593(C)~~**§1595. Competitive sealed proposals**

3 **A.**(1) Notwithstanding any other provision of this Section to the contrary,
4 with the approval of the commissioner and the written determination by the ~~director~~
5 ~~of state purchasing~~ **state chief procurement officer** that the best interests of the
6 state would be served, a competitive request for proposals process as provided in this
7 Subsection may be used in the following circumstances:

8 (a) For the procurement of supplies, services, or major repairs, including but
9 not limited to the procurement of high technology acquisitions or of complex
10 services.

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

16 **(c) The approval and written determination requirements of this**
17 **Paragraph shall not apply to a request for proposals for professional, personal,**
18 **consulting, or social services.**

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

25 ~~§1503(A)~~**B.** Requests for proposals

26 (1) For consulting service contracts with a total maximum compensation of
27 fifty thousand dollars or more, except for such contracts entered into by the
28 Department of Transportation and Development, adequate public notice of the
29 request for proposals shall be given by advertising in the official journal of the state

1 and in one or more newspapers of general circulation in the state at least once. The
2 advertisement shall appear at least thirty days before the last day that proposals will
3 be accepted. When available, advertisements shall be placed in those national trade
4 journals which serve the particular type of contractor desired. In addition, written
5 notice shall be provided to persons, firms, or corporations who are known to be in
6 a position to furnish such services, at least thirty days before the last day that
7 proposals will be accepted.

8 (2) For social service contracts not qualifying under R.S. ~~39:1494.1(A)~~
9 **39:1619(B)**, adequate public notice of the request for proposals shall be given by
10 advertising in the official journal of the state, in the official journal of the parish in
11 which the services are to be performed and such other newspapers, bulletins, or other
12 media as are appropriate in the circumstances. Such advertisements shall appear at
13 least once in the official journal of the state and once in the official journal of the
14 parish. If the services are to be performed in or made available to residents of a
15 multiparish area, advertising in the official journal of the state and in one or more
16 newspapers of general circulation in the state at least once shall be sufficient to meet
17 this requirement. In all cases, the advertisement shall appear at least fourteen days
18 before the last day that the proposals will be accepted. In addition, written notice
19 shall be provided to persons, firms, or corporations who are known to be in a
20 position to furnish such services, at least fourteen days before the last day that
21 proposals will be accepted. This last requirement is subject to reasonable limitation
22 at the discretion of the using agency.

23 (3) For consulting service contracts entered into by the Department of
24 Transportation and Development with a total maximum compensation of fifty
25 thousand dollars or more, adequate public notice of the request for proposals shall
26 be given by advertising in the official journal of the state at least once. The first
27 advertisement shall appear at least fifteen days before the last day that proposals will
28 be accepted. In addition, written notice shall be provided to persons, firms, or
29 corporations who are known to be in a position to furnish such services, at least

1 fifteen days prior to the last day that proposals will be accepted.

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

8 ~~§1503(B)(5)~~ The Request for Proposals **requests for proposals:**

9 **(a) For consulting, social, and some professional services** shall indicate the
10 relative importance of price and other evaluation factors, shall clearly define the
11 tasks to be performed under the contract, the criteria to be used in evaluating the
12 proposals and the time frames within which the work must be completed.

13 **(b) For all others, it shall clearly state the technological or other outcome**
14 **desired from the procurement of the technological or complex systems or**
15 **services, if applicable, and shall indicate the relative importance of price and**
16 **other evaluation factors, the criteria to be used in evaluating the proposals, and**
17 **the time frames within which the work must be completed.**

18 ~~§1503(D)(6)~~ Written or oral discussions shall be conducted with all
19 responsible offerers who submit proposals determined in writing to be reasonably
20 susceptible of being selected for award. Discussions shall not disclose any
21 information derived from proposals submitted by competing offerers. Discussions
22 need not be conducted:

23 ~~(1)(a)~~ ~~With respect to prices, where such~~ **If** prices are fixed by law or
24 regulation, except that consideration shall be given to competitive terms and
25 conditions; ~~or,~~

26 ~~(2)(b)~~ ~~Where~~ **If** time of delivery or performance will not permit discussions;
27 ~~or,~~

28 ~~(3)(c)~~ ~~Where~~ **If** it can be clearly demonstrated and documented from the
29 existence of adequate competition or accurate prior cost experience with ~~that~~ **the**

1 particular service that acceptance of an initial offer without discussion would result
 2 in fair and reasonable prices, and the ~~Request for Proposals~~ **request for proposals**
 3 notifies all ~~offerers~~ **proposers** of the possibility that award may be made on the basis
 4 of the initial offers.

5 ~~€. (7)(a)~~ Award shall be made to the responsible ~~offerer~~ **proposer** whose
 6 proposal is determined in writing by the ~~head of the using~~ agency to be the most
 7 advantageous to the state, taking into consideration **review of** price and the
 8 evaluation factors set forth in the ~~Request for Proposals~~ **request for proposals**.

9 ~~§1504(b)~~ A request for proposals or other solicitation may be cancelled or
 10 all proposals may be rejected only if it is determined, based on reasons provided in
 11 writing, that such action is taken in the best interest of the state.

12 ~~§1593(C)(2)(d)(ii)(8)~~ A request for proposals or other solicitation may be
 13 cancelled or all proposals may be rejected only if it is determined, based on reasons
 14 provided in writing, that such action is taken in the best interest of the state.

15 ~~§1593(C)(2)(e)(9)~~ Each contract entered into pursuant to this Subsection
 16 shall contain as a minimum:

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

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

20 ~~(iii)(c)~~ Description of reports or other deliverables to be received, when
 21 applicable.

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

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

24 ~~(vi)(f)~~ Circumstances under which the contract can be terminated either with
 25 or without cause.

26 ~~(vii)(g)~~ Remedies for default.

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

29 **(i) Performance measurements.**

(j) Monitoring plan.

~~(f)(i)(10)(a)~~ Upon entering into a contract, the using agency shall have full responsibility for the diligent administration and monitoring of the contract. The ~~director of state purchasing~~ **state chief procurement officer** may require the using agency to report at any time on the status of any such outstanding contracts to which the using agency is a party. After completion of performance under a contract, the using agency shall evaluate contract performance and the utility of the final product. This evaluation shall be delivered to the ~~director of state purchasing~~ **state chief procurement officer or his designee or the director of purchasing at a college or university, as applicable**, within one hundred twenty days after completion of performance and shall be retained in the official contract file.

~~(ii)(aa)(b)(i)~~ No contract shall be valid, nor shall the state be bound by the contract, until it has first been executed by the head of the using agency, or his designee, which is a party to the contract and the contractor and has been approved in writing by the ~~director of state purchasing~~ **state chief procurement officer or his designee or the director of purchasing at a college or university, as applicable**.

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

~~§1502(E)(11)~~ Requests for proposals shall not be required for "interagency contracts" as defined in R.S. ~~39:1490(C)~~ **39:1556(29)**.

~~§1502(F)(12)~~ Notwithstanding the provisions of this Chapter, all relevant federal statutes and regulations shall be followed by the using agency in procuring services. The burden of complying with these federal statutes and regulations shall rest with the using agency and shall be documented in the contract record submitted to the office of ~~contractual review~~ **state procurement**.

~~§1502:~~**§1595.1**. Validity of professional, personal, consulting, and social service

1 contracts

2 A. No contract shall be valid, nor shall the state be bound by the contract,
3 until it has first been executed by the head of the using agency, or his designee,
4 which is a party to the contract and the contractor, and has been approved in writing
5 by the ~~director of the office of contractual review~~ **state chief procurement officer**.

6 B. In cases where the head of the using agency wants to delegate authority
7 to one or more of his subordinates to sign contracts on behalf of the agency, this
8 delegation must be made in accordance with regulations of the office of ~~contractual~~
9 ~~review~~ **state procurement** and shall be subject to the approval of the office of
10 ~~contractual review~~ **state procurement**.

11 §1596. Small purchases

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

16 §1597. Sole source procurements

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

21 §1598. Emergency procurements

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

27 B. Written quotations. Every effort shall be made to obtain quotations from
28 three or more vendors when supplies, services, or major repairs are to be purchased
29 on an emergency basis, except for standard equipment parts for which prices are

1 established. Immediate purchasing shall be discouraged as much as is practicable.
 2 When supplies, services, or major repairs are urgently required and time does not
 3 permit the obtaining of written quotations, the procurement officer may obtain
 4 quotations by telephoning or otherwise, but such quotations shall be made on the
 5 relative purchase requisitions. So far as practicable, quotations shall be secured from
 6 institutions of the state as provided by law.

7 C. Determination required. The ~~Chief Procurement Officer~~ **chief**
 8 **procurement officer** shall make a written determination of the basis of the
 9 emergency that includes the facts and circumstances leading to the conclusion that
 10 such procurement was necessary as well as a written determination detailing the
 11 steps taken prior to selecting a particular contractor and the basis for the final
 12 selection. The written determination shall be included in the contract file either prior
 13 to contracting or as soon thereafter as practicable.

14 ~~§1593(B)~~**§1600. Other procurement methods**

15 **A. Unstable market conditions**

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

28 ~~§1593.1B.~~ **Group purchasing**

29 ~~A.(1)~~ The Louisiana State University Health Sciences Center may contract

1 with a group purchasing organization through a competitive request for proposals
2 process for medical and laboratory supplies and medical equipment required for the
3 purpose of diagnosis or direct treatment of a patient by a health care provider in a
4 hospital or clinic setting.

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

11 ~~C.(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 ~~§1645.C. Procurement of used~~ **Used** equipment

18 ~~A.(1)~~ Any agency covered by this Chapter may procure any equipment
19 which is used or which has been previously purchased by an individual or
20 corporation where the agency proposing to make such procurement can present
21 satisfactory information to the procurement officer to illustrate that the procurement
22 of said equipment is cost effective to the state.

23 ~~B.(1)(2)(a)~~ The used equipment shall be purchased by the head of the
24 agency, college, or university, within the price range set by the ~~director of state~~
25 ~~purchasing~~ **state chief procurement officer**, or the directors of purchasing at
26 colleges and universities, in a statement of written approval for the purchase which
27 must be obtained by the head of the agency, college, or university, prior to the
28 purchase.

29 ~~(2)(b)~~ The head of the agency, college, or university, shall certify in writing

1 to the ~~director of state purchasing~~ **state chief procurement officer**, or the directors
2 of purchasing at colleges and universities, all of the following:

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

4 ~~(b)~~**(ii)** The plan for maintenance and repair of the equipment and the cost
5 thereof.

6 ~~(c)~~**(iii)** The savings that will accrue to the state because of the purchase of
7 the used equipment.

8 ~~(d)~~**(iv)** The fact that following the procedures set out in the Louisiana
9 Procurement Code will result in the loss of the opportunity to purchase the
10 equipment.

11 ~~§1598.1~~**D.** Reverse auction

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

18 ~~B.~~**(2)** Prior to the implementation of this ~~Subpart~~ **Paragraph**, the state
19 ~~director of purchasing~~ **chief procurement officer** shall develop policies, procedures,
20 and promulgate regulations, in accordance with the Administrative Procedure Act.
21 Such policies and procedures may require that:

22 ~~(1)~~**(a)** Vendors shall register before the opening date and time, and as part
23 of the registration, require that the vendors agree to any terms and conditions and
24 other requirements of the solicitation.

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

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

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

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

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

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

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

13 ~~E.~~**(3)** Adequate public notice for the purchase of materials, supplies,
14 services, or equipment using a reverse auction shall be given as follows:

15 ~~(1)~~**(a)** The advertisement or notice shall be published one time in the official
16 journal of the state at least twenty days before the opening date of the reverse
17 auction.

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

23 ~~§1499~~**E.** Negotiation

24 The head of the using agency or the agency procurement officer shall
25 negotiate with the highest qualified persons for all contracts for professional,
26 personal, or those consulting services for less than fifty thousand dollars, or those
27 social services qualifying under R.S. ~~39:1494.1(A)~~ **39:1619(B)** at compensation
28 which the head of the using agency determines in writing to be fair and reasonable
29 to the state. In making this determination, the head of the using agency shall take

1 into account, in the following order of importance, the professional or technical
2 competence of offerers, the technical merits of offers, and the compensation for
3 which the services are to be rendered, including fee. Negotiation of consulting
4 services for fifty thousand dollars or more or social services not qualifying under
5 R.S. ~~39:1494.1(A)~~ **39:1619(B)** shall be conducted in accordance with ~~Part II, Subpart~~
6 **B R.S. 39:1595(B)** hereof.

7 ~~§1594.1~~ **§1601**. Contracts for drugs

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

18 ~~§1594.2~~ **§1602**. Right to reject bids from Communist countries

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

26 ~~§1594.3~~ **§1603**. Limitations on consultants competing for contracts

27 A. Any person contracting with an agency for the purposes of developing
28 bidding documents, requests for proposals, or any other type of solicitation related
29 to a specific procurement shall be prohibited from bidding, proposing, or otherwise

1 competing for award of that procurement. Such persons shall further be prohibited
2 from participating as subcontractors related to the award of that procurement.

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

6 (1) Architectural and engineering programming.

7 (2) Master planning.

8 (3) Budgeting.

9 (4) Feasibility analysis.

10 (5) Constructability review.

11 (6) Furnishing specification data or other product information.

12 (7) Any other services that do not establish selection qualifications or
13 evaluation criteria for the procurement of an architect or engineer.

14 ~~§1595~~**§1604**. Preference for all types of products produced, manufactured,
15 assembled, grown, or harvested in Louisiana; exceptions

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

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

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

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

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

28 B. Notwithstanding any other provision of this Section to the contrary, each
29 procurement officer, purchasing agent, or similar official who procures or purchases

1 agricultural or forestry products, including meat, seafood, produce, eggs, paper or
2 paper products under the provisions of this Chapter shall procure or purchase
3 Louisiana products provided all of the following conditions are met:

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

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

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

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

12 (1) Produce shall be produced in Louisiana and produce products shall be
13 produced and processed in Louisiana.

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

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

18 (4)(a) Seafood shall be:

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

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

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

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

25 (6) Paper and paper products shall be manufactured or converted in
26 Louisiana. For the purposes of this Paragraph, "manufactured" shall mean the
27 process of making a product suitable for use from raw materials by hand or by
28 machinery, and "converted" shall mean the process of converting roll stock into a
29 sheeted and fully packaged product in a full-time converting operation. For paper

1 supplied in wrapped reams, each carton and each individual ream shall be clearly
2 labeled with the name of the manufacturer or converter and the location within
3 Louisiana where such paper is manufactured or converted. For paper and paper
4 products supplied in bulk or in other forms, the smallest unit of packaging shall be
5 clearly labeled with the name of the manufacturer or converter and the location
6 within Louisiana where such paper or paper product is manufactured or converted.

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

9 D. Notwithstanding any other provision of this Section to the contrary, each
10 procurement officer, purchasing agent, or similar official who procures or purchases
11 products under the provisions of this Chapter shall procure or purchase meat and
12 meat products which are further processed in Louisiana under the grading and
13 certification service of the Louisiana Department of Agriculture and Forestry and
14 which are equal in quality to other meat and meat products, provided the cost of the
15 further processed meat and meat products does not exceed the cost of other meat or
16 meat products by more than seven percent.

17 E. Notwithstanding any other provision of this Section to the contrary, each
18 procurement officer, purchasing agent, or similar official who procures or purchases
19 products under the provisions of this Part shall procure or purchase domesticated or
20 wild catfish which are processed in Louisiana but grown outside of Louisiana and
21 which are equal in quality to domesticated or wild catfish which are processed
22 outside of Louisiana provided the cost of the domesticated or wild catfish which are
23 processed in Louisiana does not exceed the cost of the domesticated or wild catfish
24 which are processed outside of Louisiana by more than seven percent.

25 F. Notwithstanding any other provision of this Section to the contrary, each
26 procurement officer, purchasing agent, or similar official who procures or purchases
27 products under the provisions of this Part shall procure or purchase produce
28 processed in Louisiana but grown outside of Louisiana and which is equal in quality
29 to produce processed and grown outside of Louisiana, provided the cost of the

1 produce processed in Louisiana does not exceed the cost of the produce processed
2 outside of Louisiana by more than seven percent.

3 G. 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 Chapter shall procure or purchase eggs or
6 crawfish which are further processed in Louisiana under the grading service of the
7 Louisiana Department of Agriculture and Forestry and which are equal in quality to
8 other eggs or crawfish, provided the cost of the further processed eggs or crawfish
9 does not exceed the cost of other eggs or crawfish by more than seven percent.

10 H. Except as otherwise provided in this Section, each procurement officer,
11 purchasing agent, or similar official who procures or purchases materials, supplies,
12 products, provisions, or equipment under the provisions of this Chapter may
13 purchase such materials, supplies, products, provisions, or equipment which are
14 produced, manufactured, or assembled in Louisiana, as defined in R.S. 38:2251(A),
15 and which are equal in quality to other materials, supplies, products, provisions, or
16 equipment, provided that all of the following conditions are met:

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

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

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

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

28 J. Notwithstanding any other provision of this Section to the contrary, such
29 preference shall not apply to Louisiana products whose source is a clay which is

1 mined or originates in Louisiana, and which is manufactured, processed or refined
2 in Louisiana for sale as an expanded clay aggregate form different than its original
3 state. No provision of this Subsection shall affect the preferences applicable to brick
4 manufacturers.

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

7 ~~§1595.1~~**§1604.1**. Preference in awarding contracts

8 A. In the awarding of contracts by any public entity, except contracts for the
9 construction, maintenance, or repair of highways and streets, and contracts financed
10 in whole or in part by contributions or loans from any agency of the United States
11 government, where both in-state and out-of-state vendors are bidding, in-state
12 vendors shall be given a preference in the same manner that any of the out-of-state
13 vendors would be given on a comparative bid in their own state. If one party to a
14 joint venture is qualified under this Section as a vendor domiciled in Louisiana, this
15 qualification shall extend to all parties to the joint venture. For the purpose of this
16 Section, a foreign corporation which was qualified to do business in the state of
17 Louisiana in the manner required by law more than six months prior to the
18 advertising of bids on a contract shall be considered to be a vendor domiciled in the
19 state of Louisiana for the purpose of awarding the contract.

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

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

25 ~~§1595.2~~**§1604.2**. Preference in letting contracts for public work

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

29 (a) Preference shall be given to contractors domiciled in the state of

1 Louisiana over contractors domiciled in a state that provides for a preference in favor
2 of contractors domiciled in that state over contractors domiciled in the state of
3 Louisiana for the same type of work; and

4 (b) Contractors domiciled in the state of Louisiana are to be granted the same
5 preference over contractors domiciled in such state favoring contractors domiciled
6 therein with a preference over contractors domiciled in the state of Louisiana in the
7 same manner and on the same basis and to the same extent that such preference may
8 be granted in letting contracts for the same type of work by such other state to
9 contractors domiciled therein over contractors domiciled in the state of Louisiana.

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

13 (3) For the purpose of this Section, a foreign corporation that has qualified
14 to do business in the state of Louisiana in the manner required by law more than six
15 months prior to the advertising for bids on a contract for public work shall be
16 considered to be a contractor domiciled in the state of Louisiana for the purpose of
17 letting the contract ~~for such public work~~.

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

20 ~~§1595.3~~ **§1604.3**. Preference in awarding contracts for certain services

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

27 ~~§1595.4~~ **§1604.4**. Preference for goods manufactured, or services performed, by
28 sheltered workshops; definitions; coordinating council

29 A. Every governmental body shall give a preference in its purchasing

1 practices to goods manufactured and services performed by severely handicapped
2 individuals in state-operated and state-supported sheltered workshops.

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

6 C. There is hereby created within the Department of Health and Hospitals
7 a council whose function shall be to coordinate and facilitate the carrying out of
8 provisions of this Section. The membership of this council shall be determined by
9 the secretary of the Department of Health and Hospitals. It shall have authority to
10 designate and contract with a central nonprofit agency to assist sheltered workshops
11 in submitting applications for the selection of suitable goods and services, to
12 facilitate the allocation of orders among qualified sheltered workshops, and
13 otherwise to assist the council in performing its functions.

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

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

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

23 (2) "Goods manufactured and services performed by severely handicapped
24 individuals" means goods and services for which not less than seventy-five percent
25 of the man-hours of direct labor required for manufacture or performance is provided
26 by severely handicapped individuals.

27 (3) "Qualified nonprofit agency for the severely handicapped" means an
28 agency that:

29 (a) Is incorporated under the Louisiana Nonprofit Corporation Law and

1 operated in the interests of severely handicapped individuals, and the income of
2 which does not inure in whole or in part to the benefit of any shareholder or other
3 private individual, and

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

6 (4) "Severely handicapped individuals" means individuals with a physical,
7 mental, or substance abuse disability which constitutes a substantial obstacle to their
8 employment and is of such a nature as to prevent an individual from engaging in
9 normal competitive employment.

10 (5) "Sheltered workshop" means a facility designed to provide gainful
11 employment for severely handicapped individuals who cannot be absorbed into the
12 competitive labor market or to provide interim employment for such individuals
13 when employment opportunities for them in the competitive labor market do not
14 exist.

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

17 (7) "State-supported sheltered workshop" means a sheltered workshop funded
18 in whole or in part by the state and staffed by personnel from a qualified nonprofit
19 agency for the severely handicapped.

20 ~~§1595.5~~**§1604.5**. Preference for items purchased from Louisiana retailers

21 A. When purchasing items at retail, every procurement officer under the
22 provisions of this Chapter or other person acting as purchasing agent shall purchase
23 items from a retail dealer located in the state of Louisiana which items are equal in
24 quality to items purchased from a retail dealer located outside the state, provided the
25 cost of items purchased from a retail dealer located in this state does not exceed by
26 more than ten percent the cost of items purchased from a retail dealer located outside
27 the state.

28 B. A retail dealer shall qualify for the preference if the dealer can show that
29 he has paid Louisiana corporate income, corporate franchise, and inventory taxes or

1 any combination thereof during the previous twelve-month period.

2 C. Retailers domiciled in the state of Louisiana are to be granted the same
3 preference over retailers domiciled in the state favoring retailers domiciled therein
4 with a preference over retailers domiciled in the state of Louisiana in the same
5 manner and on the same basis and to the same extent that such preference may be
6 granted in purchasing items of the same type by such other state to retailers
7 domiciled therein over retailers domiciled in the state of Louisiana.

8 ~~§1595.6~~**§1604.6**. Preference for steel rolled in Louisiana

9 A. When purchasing steel, every person acting as purchasing agent for any
10 agency, board, commission, department, or other instrumentality of the state or of
11 a parish, municipality, or other unit of local government, including a levee board,
12 drainage district, school board, or special district, shall purchase steel rolled in this
13 state which is equal in quality to steel rolled outside the state, provided the cost of
14 steel rolled in this state does not exceed by more than ten percent the cost of steel
15 which is rolled outside the state.

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

18 ~~§1595.7~~**§1604.7**. Preference for items manufactured in the United States; definitions

19 A. This Section may be cited as the "Procurement of Domestic Products
20 Act".

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

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

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

28 C. In the event a contract is not entered into for products purchased under the
29 provisions of R.S. 39:1595, each procurement officer, purchasing agent, or similar

1 official who procures or purchases materials, supplies, products, provisions, or
 2 equipment under the provisions of this Chapter may purchase such materials,
 3 supplies, products, provisions, or equipment which are manufactured in the United
 4 States, and which are equal in quality to other materials, supplies, products,
 5 provisions, or equipment, provided that all of the following conditions are met:

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

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

10 (3) In cases where more than one bidder offers items manufactured in the
 11 United States which are within five percent of the lowest bid, the bidder offering the
 12 lowest bid on such items is entitled to accept the price of the lowest bid made on
 13 such items.

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

16 D. The office of state **purchasing procurement** may promulgate rules and
 17 regulations for the implementation of this Section in accordance with the
 18 Administrative Procedure Act.

19 ~~SUBPART C.~~ **B.** CANCELLATION OF INVITATIONS

20 FOR BIDS OR REQUESTS FOR PROPOSALS

21 ~~§1599~~ **§1605.** Cancellation of invitations for bids or requests for proposals

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

26 ~~SUBPART D.~~ **C.** QUALIFICATIONS AND DUTIES

27 ~~§1601~~ **§1606.** Responsibility of bidders and ~~offerers~~ **proposers**

28 A. A reasonable inquiry to determine the responsibility of a bidder or ~~offerer~~
 29 **proposer** may be conducted. The unreasonable failure of a bidder or ~~offerer~~

1 **proposer** promptly to supply information in connection with such an inquiry may
2 be grounds for a determination of nonresponsibility with respect to such bidder or
3 offerer **proposer**.

4 B. Whenever the ~~Chief Procurement Officer, Commissioner~~ **chief**
5 **procurement officer, commissioner**, or head of a governmental body with such
6 authority proposes to disqualify the lowest bidder on bids of \$5,000 or more such
7 individual shall:

8 1) **(1)** Give written notice of the proposed disqualification to such bidder and
9 include in the written notice all reasons for the proposed disqualification; and

10 2) **(2)** Give such bidder who is proposed to be disqualified, a reasonable
11 opportunity to be heard at an informal hearing at which such bidder is afforded the
12 opportunity to refute the reasons for the disqualification.

13 ~~§1505BC~~. Except as otherwise provided by law, information furnished by
14 ~~an offerer~~ **a proposer** pursuant to this Section may not be disclosed outside of the
15 user agency or the ~~Office of Contractual Review~~ **state central purchasing agency**
16 without prior written ~~consent of~~ **notice to** the offerer **proposer**.

17 ~~§1602~~**§1607**. Prequalification of suppliers

18 Prospective suppliers may be prequalified for particular types of supplies and
19 services.

20 ~~§1603~~**§1608**. Cost or pricing data

21 A. Contractor certification. A contractor shall submit cost or pricing data
22 and shall certify that, to the best of its knowledge and belief, the cost or pricing data
23 submitted was accurate, complete, and current as of a mutually determined specified
24 date prior to the date of:

25 (1) Pricing of any contract awarded by other than competitive sealed bidding,
26 as provided in R.S. 39:1594, or small purchase procedures, as provided in R.S.
27 39:1596, where the total contract price is expected to exceed an amount established
28 by regulations; or

29 (2) Pricing of any change order or contract modification which is expected

1 to exceed an amount established by regulations.

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

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

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

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

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

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

17 **SUBPART ~~E~~D. TYPES OF CONTRACTS**

18 §1611. Cost-plus-a-percentage-of-cost contracts

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

21 §1612. Cost-reimbursement contracts

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

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

1 shall govern the use and amounts of advance payments made.

2 E. Interagency contracts as defined in R.S. ~~39:1490(C)~~ **39:1556(29)** are
3 exempt from the provisions of Subsections B and C of this Section.

4 F. The provisions of this Section shall not be construed to authorize
5 payments in advance of services to be performed pursuant to a professional service
6 contract.

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

9 §1614. Approval of accounting system

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

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

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

18 §1615. Multiyear contracts

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

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

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

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

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

11 C. Termination due to unavailability of funds in succeeding years. When
12 funds are not appropriated to support continuation of performance in a subsequent
13 year of a multiyear contract, the contract for such subsequent year shall be
14 terminated. When a contract is terminated under these conditions, no additional
15 funds shall be paid to the contractor as a result of such action.

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

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

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

27 F. The Department of Environmental Quality may enter into a multiyear
28 contract, not to exceed seven years, for the operation of privately operated vehicle
29 emission inspection facilities pursuant to R.S. 30:2054(B)(8). The secretary shall

1 seek and consider proposals for an enhanced inspection maintenance program to be
2 implemented no sooner than January 1, 1995, from contractors proposing to
3 implement currently evolving, cost-effective technologies, presenting minimal public
4 inconvenience, designed to bring Louisiana into compliance with federal ambient air
5 quality standards and meeting EPA required program standards.

6 ~~§1514(A)~~**G**.(1) Unless otherwise provided in the statutes making
7 appropriations therefor, a contract for professional, personal, consulting, or social
8 services may be entered into for periods of not more than five years, except that:

9 (a) Contracts for management of food services at public universities and
10 colleges, contracts of retirement systems for investment management services and
11 investment advisory services, contracts for electronic disbursement services for child
12 support payments, contracts for prisoner dialysis, and contracts for central banking
13 services for the state may be entered into for periods of up to five years.

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

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

23 (d)(i) Contracts or amendments to existing contracts issued to institutions of
24 higher education under the authority of grants or joint agreements between the Board
25 of Regents and federal agencies for research, educational, or infrastructure
26 development activities, and contracts or amendments to existing contracts issued by
27 such institutions under the authority of grants or joint agreements issued by federal
28 agencies or private grants, may be entered into for a period corresponding to the
29 performance period of the grant or agreement.

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

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

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

17 ~~§1514(B)~~**H**. Prior to the utilization of a multi-year contract, it shall be
18 determined in writing by the commissioner of administration that (1) estimated
19 requirements cover the period of the contract and are reasonably firm and continuing
20 and (2) such a contract will serve the best interests of the state by encouraging
21 effective competition or otherwise promoting economies in state procurement.

22 ~~§1514(C)~~**I**. When funds are not appropriated or otherwise made available to
23 support continuation of performance in a subsequent year of a multi-year contract,
24 the contract for such subsequent year shall be cancelled and the contractor shall be
25 reimbursed in accordance with the terms of the contract for the reasonable value of
26 any nonrecurring costs incurred but not amortized in the price of the services
27 delivered under the contract. The cost of cancellation may be paid from (1)
28 appropriations currently available for performance of the contract; (2) appropriations
29 currently available for procurement of similar services and not otherwise obligated,

1 or (3) appropriations made specifically for the payment of such cancellation costs.

2 ~~§1514(D)~~**J**. Except for those contracts provided in Subparagraph
3 ~~(A)~~**(G)**(1)(a) through (e) of this Section, any contract entered into for a period of not
4 more than five years but for a period of more than three years as authorized by this
5 Section shall be subject to prior approval of the Joint Legislative Committee on the
6 Budget.

7 §1616. Installment-purchase contract

8 The central purchasing agency may, on behalf of any governmental body,
9 enter into contracts for the installment purchase of supplies or equipment, including
10 but not limited to data processing equipment and telecommunications equipment,
11 procured under ~~the Louisiana Procurement Code~~ **this Chapter** and any other
12 applicable laws on the procurement of supplies or equipment, in accordance with the
13 following provisions:

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

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

20 (3) Each contract shall contain an annual appropriation dependency clause
21 which shall provide that the continuation of the contract is contingent upon the
22 continuation of an appropriation of funds by the legislature to fulfill the requirements
23 of the contract. If the legislature fails to appropriate sufficient monies to provide for
24 the continuation of the contract or if a veto or reduction of appropriation of funds
25 necessitates the discontinuance of the contract, the contract shall terminate on the last
26 day of the fiscal year for which funds were appropriated, in accordance with R.S.
27 39:1615(C).

28 (4) Such contracts shall also conform to any other requirements which may
29 be established by the central purchasing agency through rules and regulations,

1 promulgated in accordance with law.

2 ~~§1494~~**§1617**. Professional service contracts

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

5 ~~§1521.1~~**§1618**. Contractual attorney's fees; affidavit

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

11 **§1619. Social service contracts**

12 ~~§1484(B)~~ **A. Social services include:**

13 (1) Rehabilitation and health support include services rendered by a
14 contractor with special knowledge or service available to assist individuals attain or
15 maintain a favorable condition of physical and mental health. These services include
16 but are not limited to:

- 17 (a) Health-related counseling.
- 18 (b) Alcohol or drug abuse training and treatment.
- 19 (c) Training to support emergency medical services.
- 20 (d) Services to support family planning.
- 21 (e) Counseling, delinquency prevention.
- 22 (f) Genetic disease evaluation and counseling.
- 23 (g) Community-based medical support services.
- 24 (h) Evaluation and training for physically/mentally handicapped.
- 25 (i) Other services in support of same.

26 (2) Habilitation and socialization include services rendered by a contractor
27 with special knowledge to assist specified client groups to enhance their
28 self-sufficiency or alleviate their dependency or isolation from the community. These
29 services include but are not limited to:

- 1 (a) Day care.
- 2 (b) Work and training.
- 3 (c) Early intervention for the mentally ~~retarded~~ **disabled**, developmentally
4 delayed, or physically handicapped.
- 5 (d) Transportation for service access.
- 6 (e) Homemaker, home management, and housing improvement services.
- 7 (f) In-home and out-of-home respite care.
- 8 (g) Socialization services for low income and other special needs groups.
- 9 (h) Nursing home ombudsman.
- 10 (i) Nutritional, employment, case management, senior center activities, or
11 other services to aid independent living by the elderly.
- 12 (j) Training and community planning services for same.
- 13 (3) Protection for adults and children include services rendered by a
14 contractor to provide therapeutic intervention for adults or children who are in
15 danger or threatened with danger of physical or mental injury, neglect, maltreatment,
16 extortion, or exploitation, including victims of family violence. These services
17 include but are not limited to:
- 18 (a) Community planning for neglect/abuse.
- 19 (b) Adoption.
- 20 (c) Substitute care.
- 21 (d) Education and training.
- 22 (e) Crisis intervention type services.
- 23 (f) Emergency shelter for victims of rape/family violence or services in
24 support of same.
- 25 (g) Training and evaluation services for same.
- 26 (4) Improvement of living conditions and health include services rendered by
27 an authorized contractor with special knowledge or services available to assist
28 individuals to attain or maintain favorable conditions in which to live. These services
29 include but are not limited to:

1 (a) Distribution of foodstuffs either purchased or that are made available from
2 government-owned commodities.

3 (b) Determining the needs of the poor, and development of programs to
4 distribute the available resources.

5 (c) Determining the needs of the poor and identifying programs to alleviate
6 these poverty conditions.

7 (d) Providing services to respond to the educational/employment needs of
8 eligible individuals in the communities needing these services. The primary purpose
9 of this service is to provide the participating individuals with the skills necessary for
10 them to advance socially, academically, and occupationally.

11 (e) Providing training and evaluation of services for any of the above
12 services.

13 (5) Evaluation, testing, and remedial educational services for exceptional
14 handicapped or learning disabled nonpublic school students include services
15 rendered by a contractor with special knowledge or services available to provide
16 special educational and related services for exceptional or handicapped students
17 voluntarily enrolled in approved nonpublic schools of Louisiana who are not
18 otherwise provided with such services through either their local school program or
19 through other services afforded to them by local school boards or other public
20 agencies. These services include but are not limited to:

21 (a) Identification, assessment, appraisal, and evaluation of exceptional or
22 handicapped children.

23 (b) Development of individualized educational programs.

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

27 ~~§1494.1(A)~~**B**. Contracts for social services may be awarded without the
28 necessity of competitive bidding or competitive negotiation only if the ~~director of the~~
29 ~~office of contractual review~~ **state chief procurement officer** determines that any

1 one of the following conditions is present. The using agency shall document the
2 condition present and such documentation shall be part of the contract record
3 submitted to the office of ~~contractual review~~ **state procurement**.

4 (1) The services are available only from a single source (sole source). Sole
5 source procurement shall be determined by the ~~director of the office of contractual~~
6 ~~review~~ **state chief procurement officer**. A contract shall also be considered as sole
7 source if a request for proposals is issued in accordance with R.S. ~~39:1503~~
8 **39:1595(B)** and only one or no proposals are received.

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

11 (3) A quasi-public and/or nonprofit corporation, such as a parish voluntary
12 council on aging, an area agency on aging, an association of ~~retarded~~ **mentally**
13 **disabled** citizens or equivalent, an organization serving children, youth, and/or
14 families, or an organization promoting independence from public assistance has been
15 established in coordination with the state to provide the particular service involved
16 in the contract.

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

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

24 (6) An emergency exists which will not permit the delay in procurement
25 necessitated by the request for proposal procedure given in R.S. ~~39:1503~~ **39:1595(B)**.
26 Such emergency shall be determined by the ~~director of the office of contractual~~
27 ~~review~~ **state chief procurement officer**.

28 (7) The total contract amount is less than two hundred fifty thousand dollars
29 per twelve-month period. Service requirements shall not be artificially divided so as

1 to exempt contracts from the request for proposal process.

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

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

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

8 (a) The services are satisfactory.

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

10 ~~§1494.1(B)~~**C**. If none of the conditions given in R.S. ~~39:1494.1(A)~~
11 **39:1619(B)** are determined by the ~~director of the office of contractual review~~ **state**
12 **chief procurement officer** to be present in a contract for social service, then that
13 contract shall be awarded through a request for proposal process in accordance with
14 R.S. ~~39:1503~~ **39:1595(B)** under rules and regulations issued by the office of
15 ~~contractual review~~ **state procurement**.

16 ~~§1482.A(2)~~**D**. Grants or contracts or like business agreements between the
17 state and its political subdivisions or other governmental entities, or between higher
18 education boards and institutions under their jurisdiction, except this **This** Chapter
19 shall apply to interagency contracts as defined in R.S. ~~39:1490(C)~~ **39:1556(29)**, and
20 to contracts or grants between the state and its political subdivisions to procure social
21 services.

22 ~~§1495~~**§1620**. Personal service contracts

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

25 ~~§1496~~**§1621**. Consulting service contracts

26 A. Contracts for consulting services which have a total maximum amount
27 of compensation less than fifty thousand dollars **for a twelve-month period** may be
28 awarded without the necessity of competitive bidding or competitive negotiation.

29 B. Contracts for consulting services which have a total maximum amount of

1 compensation of fifty thousand dollars or more **for a twelve-month period** shall be
2 awarded through a request for proposal process under rules and regulations issued
3 by the office of ~~contractual review~~ **state procurement**. Service requirements shall
4 not be artificially divided so as to exempt contracts from the request for proposal
5 process.

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

11 (2) For each such consulting contract the office of ~~contractual review~~ **state**
12 **procurement** may establish a procurement support team which shall include one or
13 more representatives from each of the following:

14 (a) The office of ~~contractual review~~ **state procurement**.

15 (b) The using agency initiating the contract.

16 (c) The office of the attorney general.

17 (d) The ~~Legislative Fiscal Office~~ **legislative fiscal office**.

18 (3) Participation of the procurement support team must include, at a
19 minimum, assistance in development or review of the request for proposals,
20 evaluation of responses received to the request for proposals, and formulation of
21 recommendations to be submitted to the ~~director of the office of contractual review~~
22 **state chief procurement officer** concerning the final contract.

23 ~~§1496.1~~**§1622**. Performance-based energy efficiency contracts

24 A. Any state agency as defined in R.S. 39:2 may enter into a performance-
25 based energy efficiency contract for services and equipment as provided in this
26 Section. The commissioner of administration shall adopt and promulgate rules and
27 regulations necessary to implement the provisions of this Section, which rules shall
28 be consistent with the Energy Management Act of 2001. Any such rules and
29 regulations shall be adopted and promulgated only after the review and approval of

1 the Joint Legislative Committee on the Budget. The commissioner of administration
2 shall submit the proposed rules and regulations to the Joint Legislative Committee
3 on the Budget thirty days prior to the review and approval of such rules and
4 regulations by the committee.

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

9 C.(1) Notwithstanding the requirements of R.S. 39:1514(A), any
10 performance-based energy efficiency contract entered into shall be for a period equal
11 to the lesser of twenty years or the average life of the equipment installed by the
12 performance contractor and shall contain a guarantee of energy savings. The
13 guarantee of energy savings shall, at a minimum, ensure a total annual savings
14 sufficient to fully fund any financing arrangement entered into to fund the contract.
15 In addition, any performance-based energy efficiency contract shall contain the
16 following clause:

17 "The continuation of this contract is contingent upon the appropriation of
18 funds by the legislature to fulfill the requirements of the contract. If the legislature
19 fails to appropriate sufficient monies to provide for the continuation of the contract,
20 the contract shall terminate on the last day of the fiscal year for which funds have
21 been appropriated. Such termination shall be without penalty or expense to the
22 agency, board, or commission except for payments which have been earned prior to
23 the termination date."

24 (2) Any contract entered into pursuant to this Section shall include the total
25 units of energy saved, the method, device or financial arrangement to establish a firm
26 amount for the savings, the cost per unit of energy, and, if applicable, the basis for
27 any adjustment in the stated cost for the term of the contract, and for each energy
28 saving measure included in the contract, provide the following:

29 (a) Detailed scope of work.

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

2 (c) Annual energy cost savings.

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

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

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

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

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

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

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

27 (b) A state agency shall forward the results of its evaluation of each such
28 proposal to the commissioner of administration. The commissioner of administration
29 may select an independent third-party evaluation consultant to review and evaluate

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

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

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

29 (e) The provisions of Subparagraphs (a) through (d) of this Paragraph shall

1 not be applicable when the requests for proposals or the proposed contract was
2 received by the division of administration prior to January 1, 2004.

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

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

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

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

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

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

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

29 ~~§1497~~**§1623**. Certification by using agency

1 A. Upon seeking approval to enter into a proposed professional, personal,
2 consulting, or social service contract valued in excess of five thousand dollars, an
3 individual or individuals specifically designated by the head of the using agency for
4 such purpose shall certify to the ~~director of the office of contractual review~~ **state**
5 **chief procurement officer** 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~~ **39:1595(B)**.

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 to
19 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 the
23 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~~ **state chief procurement officer** shall
3 promulgate, as necessary, rules and regulations relative to the form and content of
4 a cost-benefit analysis.

5 ~~§1498~~**§1624**. Approval of contract; penalties

6 A. Before approving a proposed contract for professional, personal,
7 consulting, or social services, the ~~director of the office of contractual review~~ **state**
8 **chief procurement officer** or an assistant shall have determined that:

9 (1) All provisions of R.S. ~~39:1497~~ **39:1623** have been complied with.

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

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

14 (4) No current state employee will engage in the performance of the proposed
15 contract except as provided for in R.S. ~~39:1498.2~~ **39:1626**.

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

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

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

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

28 (9) The provisions of R.S. 12:25(E) have been complied with, if the contract
29 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 ~~§1498.1~~**§1625**. Contract content

7 Each contract for professional, personal, consulting, or social services entered
8 into by a governmental body as defined in R.S. ~~39:1484(11)~~ **39:1556(23)** shall
9 contain as a minimum: description of the work to be performed and objectives to be
10 met; amount and time of payments to be made; description of reports or other
11 deliverables to be received, when applicable; date of reports or other deliverables to
12 be received, when applicable; responsibility for payment of taxes, when applicable;
13 circumstances under which the contract can be terminated either with or without
14 cause; remedies for default; and a statement giving the legislative auditor the
15 authority to audit records of the individual(s) or firm(s).

16 ~~§1498.2~~**§1626**. Professional, personal, and consulting service contracts with state
17 employees

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

28 B. Additionally, each professional, personal, consulting, and social service
29 agreement between a governmental body as defined in R.S. ~~39:1484(11)~~ **39:1556(23)**

1 and a faculty member of any state college or state university shall be subject to the
 2 policies and procedures promulgated by each respective state college and university
 3 and the management boards having authority over the respective institution of higher
 4 education in which the faculty member is a member and the Board of Regents.
 5 Notwithstanding any other provision of law, each such agreement shall be subject
 6 to the written approval of the president of the college or university which employs
 7 the faculty member, and written notification of agreement and approval shall be
 8 given to the appropriate management board.

9 C. The list of occupations exempted in this Section from the provision of
 10 R.S. ~~39:1498(4)~~ **39:1624(A)(4)** may be increased by rules adopted by the office of
 11 ~~contractual review~~ **state chief procurement officer**.

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

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

25 ~~PART III.~~ **SUBPART E.** CONTRACT MODIFICATIONS

26 AND TERMINATION

27 ~~§1519~~**§1627.** Modification of contracts

28 The office of ~~contractual review~~ **state procurement** may adopt and
 29 promulgate rules and regulations permitting or requiring the insertion in contracts for

1 the procurement of professional, personal, consulting, and social services appropriate
2 clauses to enable the state to effect desired changes and modifications to such
3 contracts.

4 ~~§1520~~**§1628**. Termination of contracts

5 A. The office of ~~contractual review~~ **state procurement** may adopt and
6 promulgate rules and regulations relating to the termination of contracts for the
7 procurement of professional, personal, consulting, and social services for the default
8 of the contractor.

9 B. The office of ~~contractual review~~ **state procurement** is authorized to issue
10 rules and regulations relating to the termination of contracts for the procurement of
11 professional, personal, consulting, and social services for the convenience of the
12 state.

13 SUBPART F. INSPECTION OF PLANT AND AUDIT OF RECORDS

14 ~~§1621~~**§1629**. Right to inspect plant

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

18 ~~§1622~~**§1629.1**. Right to audit records

19 A. Audit of persons submitting cost or pricing data. The state may, at
20 reasonable times and places, audit the books and records of any person who has
21 submitted cost or pricing data pursuant to R.S. ~~39:1603~~ **39:1608** to the extent that
22 such books and records relate to such cost or pricing data.

23 B. Contract audit. The state shall be entitled to audit the books and records
24 of a contractor or any subcontractor under any negotiated contract or subcontract
25 other than a firm fixed-price contract to the extent that such books and records relate
26 to the performance of such contract or subcontract. Such books and records shall be
27 maintained by the contractor for a period of five years from the date of final payment
28 under the prime contract and by the subcontractor for a period of five years from the
29 date of final payment under the subcontract.

1 of the commission derived from the sale of insurance to the state; except that on
2 policies involving properties or exposure in more than one geographic area of the
3 state, said commission may be split, shared, or passed on if authorized in writing by
4 the commissioner of administration. In any such instance where the sharing of a
5 commission on state insurance is authorized, it shall be only with a bona fide
6 insurance agent. Whoever violates the provisions of this Section shall, upon
7 conviction, be fined not less than one thousand dollars nor more than five thousand
8 dollars and shall be imprisoned for not more than two years.

9 §1633. Authorization constitutes public record

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

13 SUBPART I. ACQUISITION OF HOUSING SPACE

14 §1641. Budget for acquisition of housing space and leases by budget units

15 A. Contracts and agreements by and in name of state agencies. All contracts
16 and agreements for the lease or rental of space for the housing of state agencies, their
17 personnel, operations, equipment, or activities shall be made in the name of and by
18 the authorized representative or representative body of the state agency but shall be
19 made and entered into only with the approval of the commissioner of administration.
20 The cost of such housing shall be provided for in and defrayed from the budgets of
21 the using agencies.

22 B. Contracts and agreements by and in name of the state, executed by the
23 commissioner.

24 (1) When a contract or agreement for the lease or rental of space for the
25 housing of state agencies, their personnel, operation, equipment, or activities, shall
26 pertain to more than one building or facility or shall pertain to a building or facility
27 which is to house more than one state agency, their personnel, operation, equipment,
28 or activities, such contract or agreement may be made in the name of the state and
29 executed by the commissioner of administration, rather than in the name of and by

1 an authorized representative or a representative body of the state agency or agencies
2 to be housed in such building or buildings or facility or facilities.

3 (2) The commissioner of administration shall allocate space to one or more
4 state agencies in the building or buildings or facility or facilities to which such
5 contract or agreement pertains and shall allocate the cost of such housing to or
6 among such using agency or agencies, which cost shall be provided for in and
7 defrayed from the budgets of the using agency or agencies. The commissioner shall
8 determine the amount of the allocations of the costs of such housing to the various
9 agencies using such building or buildings and facility or facilities in such manner so
10 that the aggregate of the amount so allocated equals the total cost of such housing.

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

18 D. Applicability. The provisions of this Subpart shall be applicable to all
19 agencies meeting the definition of R.S. 39:2(1) established by the laws of Louisiana.
20 §1642. Uniform space standards; inventory and evaluation of budget unit space
21 utilization

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

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

28 C. Evaluation of space utilization. The division of administration shall
29 evaluate the utilization of all leased space on a continuing basis to determine the

1 feasibility of locating state agencies in buildings to be purchased and/or constructed
2 by the state.

3 §1643. Advertisement and award of lease bids

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

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

12 §1644. Amendment of leases

13 A.(1) An existing lease for office or warehouse space may be renegotiated
14 with the present lessor, but only after the division of administration has entered into
15 a competitive negotiation process involving discussions with at least three, unless
16 there are less than three, offerers who submit written proposals. Such proposals shall
17 be solicited by advertising as in R.S. 39:1594(C).

18 (2) If it is determined by the commissioner of administration or his designee,
19 after the evaluation of these proposals and discussions with the current lessor, that
20 to renew the present lease would be in the best interest of the state, the renewal of an
21 existing lease may be renegotiated or the commissioner may enter into a lease with
22 one of these ~~offerers~~ **proposers** if determined to be in the state's best interest. In
23 making such a determination the commissioner, or his designee, shall take into
24 consideration, over the duration of the lease, rental rates, the amount of funds
25 necessary to relocate, any geographical considerations particular to that state
26 program, the amount of disruption to state business that may be incurred in moving
27 to a new location, and any other relevant factors presented.

28 B. Any lease for office or warehouse space for under five thousand square
29 feet may be amended up to but not to exceed a maximum of four thousand nine

1 hundred ninety-nine square feet.

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

10 D. In the event alterations or modifications of space currently under lease are
11 required to meet changed operating requirements, a lease may be amended. Such
12 lease amendment may, with approval of the division of administration, provide an
13 adjustment in monthly lease payments not to exceed twenty-five percent of the
14 original annual lease price per square foot, sufficient to reimburse the lessor for
15 paying for the leasehold improvements; provided, however, that any adjustment in
16 monthly lease payments shall also require the approval of the Joint Legislative
17 Committee on the Budget and the continuance of an adjustment in excess of the
18 current lease shall be further contingent on the appropriation of funds therefor in the
19 following fiscal year.

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

24 **SUBPART ~~K~~J. ACQUISITION OF MOTOR VEHICLES**

25 §1646. Acquisition of motor vehicles; minimum requirements for fuel efficiency;
26 exceptions

27 A. Any purchase or lease of a motor vehicle by an agency which is covered
28 by this Chapter shall be made in accordance with the provisions of this Subpart. Such
29 vehicles shall have, at the time of acquisition, a fuel efficiency rating of no less than

1 §1652. Duties of the chief procurement officer

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

4 §1653. Exempted items

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

9 §1654. Relationship with using agencies

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

14 §1655. Maximum practicable competition

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

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

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

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

26 (4) Such specification is determined to be in the best interest of the state as
27 provided for by R.S. ~~39:1613~~ **39:1568.1**.

28 B. Except in Paragraph (2) of this Section, whenever such proprietary
29 specifications are used, the specifications shall clearly state that they are used only

1 to denote the quality standard of supplies, services, or major repairs desired and that
 2 they do not restrict bidders to the specific brand, make, manufacturer, or
 3 specification named; that they are used only to set forth and convey to prospective
 4 bidders the general style, type, character, and quality of supplies, services, or major
 5 repairs desired; and that equivalent supplies, services, or major repairs will be
 6 acceptable.

7 §1656. Escalation clause

8 Bid specifications may contemplate a fixed escalation or ~~deescalation~~ **de-**
 9 **escalation** in accordance with **a recognized price index. Such index may include**
 10 **but not be limited to** the United States Bureau of Labor Statistics, Consumer Price
 11 Index and Wholesale Price Index. Bids based on specifications which are subject to
 12 a recognized escalation index shall be legal and valid.

13 §1657. Specifications prepared by architects and engineers

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

17 ~~§1659~~**§1658**. Purchase of prostheses, orthoses, prosthetic services, and orthotic
 18 services by a state agency from an accredited facility

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

27 PART V. MODIFICATION AND TERMINATION OF CONTRACTS

28 FOR SUPPLIES, SERVICES, AND MAJOR REPAIRS

29 §1661. Contract clauses; administration

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

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

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

9 (b) Method of shipment or packing; or

10 (c) Place of delivery.

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

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

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

18 (1) Liquidated damages as appropriate.

19 (2) Specified excuses for delay or nonperformance.

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

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

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

25 **(6) Security for contract performance.**

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

29 **(8) Beginning and ending dates of the contract.**

(9) Maximum compensation to be paid the contractor.

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

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

~~§1521~~ **§1662**. Cost principles rules and regulations required

The ~~Office of Contractual Review~~ **state chief procurement officer** shall issue rules and regulations setting forth cost principles which shall be used: (1) as guidelines in the negotiation of (a) equitable adjustments for state directed changes or modifications in contract performance and (b) settlements of contracts which have been terminated; (2) to determine the allowability of incurred costs for the purpose of reimbursing costs under contract provisions which provide for the reimbursement of costs, and (3) as appropriate in any other situation where the determination of the estimated or the incurred costs of performing contracts may be required.

PART VI. LEGAL AND CONTRACTUAL REMEDIES

SUBPART A. PRE-LITIGATION RESOLUTION

OF CONTROVERSIES

§1671. Authority to resolve protested solicitations and awards

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

1 award.

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

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

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

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

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 and 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
20 administratively to the ~~Commissioner~~ **commissioner** in accordance with R.S.
21 39:1683.

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

29 G. Award of costs to protestants. In addition to any other relief, when the

1 protest is administratively or judicially sustained and the protesting bidder or ~~offerer~~
 2 **proposer** should have been awarded the contract but is not, the protesting bidder or
 3 ~~offerer~~ **proposer** shall be entitled to the reasonable costs incurred in connection with
 4 the solicitation, including bid **or proposal** preparation costs other than attorney's
 5 fees, provided that any administrative determination of such costs shall be subject
 6 to the written concurrence of the attorney general.

7 H. Promulgation of regulations. The ~~state director of purchasing~~ **state chief**
 8 **procurement officer** is hereby authorized to promulgate regulations relative to
 9 protests, in accordance with the Administrative Procedure Act, to implement the
 10 provisions of R.S. ~~39:1598.1~~ **39:1600(D)**.

11 ~~§1501~~**§1671.1**. Resolution of disputes between the ~~director of the office of~~
 12 ~~contractual review~~ **state chief procurement officer** and using
 13 agencies

14 If a dispute arises between the ~~director of contractual review~~ **state chief**
 15 **procurement officer** and a using agency as to any items required to be certified by
 16 the using agency to the ~~director~~ **state chief procurement officer** pursuant to R.S.
 17 ~~39:1497~~ **39:1623** and R.S. ~~39:1494.1~~ **39:1619(B)**, or any items that must be
 18 determined by the ~~director~~ **state chief procurement officer** pursuant to the
 19 provisions of R.S. ~~39:1498~~ **39:1624**, either the ~~director~~ **state chief procurement**
 20 **officer** or the using agency may request the commissioner of administration to make
 21 a final determination on the matter.

22 §1672. Authority to debar or suspend

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

26 B. Authority. After reasonable notice to the person involved and reasonable
 27 opportunity for that person to be heard, the chief procurement officer shall have
 28 authority to suspend or debar a person for cause from consideration for award of
 29 contracts, provided that doing so is in the best interests of the state. The causes for

1 debarment are set forth in Subsection C of this Section. The chief procurement
2 officer may suspend a person from consideration for award of contracts if he
3 determines that there is probable cause to believe that such person has engaged in
4 any activity which might lead to debarment. The suspension shall not be for a period
5 exceeding six months. The authority to debar or suspend shall be exercised in
6 accordance with regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (1) The decision is fraudulent; or

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

14 **SUBPART B. LEGAL AND CONTRACTUAL**

15 **REMEDIES FOR PROFESSIONAL, PERSONAL,**

16 **CONSULTING, AND SOCIAL SERVICES CONTRACTS**

17 ~~§1523~~**§1672.1**. Applicability of Part

18 This Part applies only to those contracts solicited and entered into after the
19 effective date of this Chapter, unless the parties agree in writing to its application to
20 a contract entered into prior to that effective date.

21 ~~§1524~~**§1672.2**. Authority of the commissioner of administration

22 Prior to the institution of any action in a court concerning any contract, claim
23 or controversy, the commissioner of administration with the concurrence of the
24 attorney general is authorized to compromise, pay, or otherwise adjust the claim by
25 or against or a controversy with a contractor relating to a professional, personal,
26 consulting, or social service contract entered into with the state under their respective
27 authority, including a claim or controversy based on breach of contract, mistake,
28 misrepresentation, or other cause for contract modification or rescission. Nothing
29 herein shall limit the authority of the commissioner of administration, pursuant to

1 rules and regulations to issue, negotiate, or accept changes in the terms and
2 conditions of a contract. When authorized, such compromise, payments, or
3 adjustments shall be promptly paid; however, subject to any limitations or conditions
4 imposed by rule or regulation, the commissioner of administration shall charge back
5 all or any portion of such payments to the department or departments for whose
6 benefit the contract was let.

7 ~~§1525~~**§1672.3**. Action on contract claims

8 This Section applies to a claim by or controversy between the state and a
9 contractor arising out of a contract for professional, personal, consulting, or social
10 services. If such a claim or controversy is not resolved by mutual agreement, the
11 commissioner of administration, or his designee, shall promptly issue a decision in
12 writing. A copy of that decision shall be mailed or otherwise furnished to the
13 contractor, shall state the reasons for the action taken, and shall inform the contractor
14 of his right to judicial relief as provided in this **Part Subpart**. The decision shall be
15 final and conclusive unless fraudulent, or unless the contractor institutes suit
16 pursuant to ~~R.S. 39:1526~~ **this Subpart**. If the commissioner of administration, or
17 his designee, does not issue a written decision within one hundred twenty days after
18 written request for a final decision, or within such longer period as may be
19 established in writing by the parties to the contract, then the contractor may proceed
20 as if an adverse decision had been received.

21 ~~§1526~~**§1672.4**. Jurisdiction; actions in certain cases

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

29 B. In any action by a contractor based upon any express or implied contract

1 or breach thereof, no action shall be maintained based upon any contract or any act
2 of any state officer which the officer is not authorized to make or do by the laws of
3 this state, unless the contractor, acting in good faith and without actual or
4 constructive knowledge of the lack of authorization, has commenced performance
5 under the apparent contract. In that event, the court may (1) cancel the contract and
6 reimburse the contractor only for the actual expenses incurred in performing the
7 work already performed or (2) where the best interests of the state require, allow the
8 performance of the contract to continue.

9 **SUBPART C. LEGAL AND CONTRACTUAL**

10 **REMEDIES FOR OTHER THAN PROFESSIONAL, PERSONAL,**

11 **CONSULTING, AND SOCIAL SERVICES**

12 §1673. Authority to resolve contract and breach of contract controversies **other**
13 **than professional, personal, consulting, and social services**
14 **contracts**

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

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

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

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

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

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 contractor.

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

7 (1) The decision is fraudulent; or

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

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

15 **SUBPART ~~BD~~. SOLICITATIONS OR AWARDS**

16 **IN VIOLATION OF LAW**

17 §1676. Applicability of this Subpart

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

21 §1677. Remedies prior to an award

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

25 §1678. Remedies after an award

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

28 (1) If the person awarded the contract has not acted fraudulently or in bad
29 faith:

1 (a) The contract may be ratified and affirmed, provided it is determined in
2 writing by the commissioner that doing so is in the best interests of the state and the
3 law violation had no significant effect on the outcome of the contract award; or

4 (b) The contract may be terminated and the person awarded the contract shall
5 be compensated for the actual expenses reasonably incurred under the contract prior
6 to the termination, provided that any administrative determination of such costs shall
7 be subject to the written concurrence of the attorney general.

8 (2) If the person awarded the contract has acted fraudulently or in bad faith,
9 the contract shall be declared null and void.

10 §1678.1. Damages

11 A. Damages recoverable by any aggrieved person in any action brought
12 pursuant to the provisions of R.S. 39:1671 or otherwise asserted at law, shall be
13 limited exclusively to reasonable costs incurred in connection with the solicitation
14 including bid preparation costs other than attorney's fees.

15 B. Except as provided in Subsection E of this Section and R.S. 39:1678(1),
16 damages recoverable by any contractor under any contract entered into pursuant to
17 the provisions of this Chapter, shall be limited exclusively to the actual expenses
18 reasonably incurred in performance of the contract.

19 C. The provisions of R.S. 49:965.1 shall not apply to actions instituted
20 pursuant to the provisions of this Chapter.

21 D. Any administrative determination of costs or expenses recoverable by a
22 contractor or aggrieved person under Subsections A and B of this Section shall be
23 subject to the written concurrence of the attorney general.

24 E. In no event shall damages awarded by the chief procurement officer, his
25 designee, any hearing officer or any court include attorney's fees or any incidental,
26 indirect, special, or consequential damages, including but not limited to loss of use,
27 revenue or profit whether reasonably certain or not.

28 §1679. Violations; penalties

29 A. No person shall intentionally violate the Louisiana Procurement Code or

1 any rule or regulation promulgated by the commissioner of administration with
2 respect to purchasing.

3 B. Any person who intentionally violates such law, rule or regulation shall
4 be fined not more than five hundred dollars, or imprisoned for not more than six
5 months, or both.

6 SUBPART ~~EE~~. ADMINISTRATIVE APPEALS PROCEDURES

7 §1681. Authority of the commissioner of administration

8 The commissioner of administration shall have the authority to review and
9 determine any appeal by an aggrieved person from a determination by the state
10 ~~director of purchasing~~ **chief procurement officer** or his designee which is
11 authorized by R.S. 39:1671, R.S. 39:1672, or R.S. 39:1673.

12 §1682. Exempted departments

13 The secretary who is vested with authority to promulgate regulations by R.S.
14 39:1581 shall have, within his department, the same authority and responsibilities to
15 review and determine appeals of decisions of the chief procurement officer of his
16 department as are vested in the commissioner of administration by this Subpart.

17 §1683. Protest of solicitations or awards

18 A. Scope. This Section applies to an appeal addressed to the commissioner
19 of a decision under R.S. 39:1671(C).

20 B. Time limitation on filing an appeal. The aggrieved person shall file an
21 appeal within seven days of receipt of a decision under R.S. 39:1671(C).

22 C. Decision. On any appeal under Subsection A of this Section, the
23 commissioner shall decide within fourteen days whether the solicitation or award
24 was in accordance with the constitution, statutes, regulations, and the terms and
25 conditions of the solicitation. Any prior determinations by the ~~director~~ **state chief**
26 **procurement officer** or his designee shall not be final or conclusive.

27 D. Notice of decision. A copy of the decision under Subsection C of this
28 Section shall be mailed or otherwise furnished immediately to the protestant or any
29 other party intervening.

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

3 (1) The decision is fraudulent; or

4 (2) The person adversely affected by the decision has timely appealed to the
5 court in accordance with R.S. 39:1691(A).

6 §1684. Suspension or debarment proceedings

7 A. Scope. This Section applies to a review by the commissioner of a decision
8 under R.S. 39:1672.

9 B. Time limitation on filing an appeal. The aggrieved person shall file its
10 appeal with the commissioner within fourteen days of the receipt of a decision under
11 R.S. 39:1672(D).

12 C. Decision. The commissioner shall decide within fourteen days whether,
13 or the extent to which, the debarment or suspension was in accordance with the
14 constitution, statutes, regulations, and the best interests of the state, and was fair.
15 Any prior determination by the ~~director~~ **state chief procurement officer** or his
16 designee shall not be final or conclusive.

17 D. Notice of decision. A copy of the decision under Subsection C of this
18 Section shall be mailed or otherwise furnished immediately to the debarred or
19 suspended person or any other party interviewing.

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

22 (1) The decision is fraudulent; or

23 (2) The debarred or suspended person has timely appealed an adverse
24 decision of the Commissioner to the court in accordance with R.S. 39:1691(B).

25 §1685. Contract and breach of contract controversies

26 A. Scope. This Section applies to a review by the commissioner of a
27 decision under R.S. 39:1673.

28 B. Time limitation on filing an appeal. The aggrieved contractor shall file
29 its appeal with the commissioner within fourteen days of the receipt of the

1 determination under R.S. 39:1673(C).

2 C. Decision. The commissioner shall decide within fourteen days the
3 contract or breach of contract controversy. Any prior determination by the ~~director~~
4 **state chief procurement officer** or his designee shall not be final or conclusive.

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

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

9 (1) The decision is fraudulent; or

10 (2) The contractor has timely appealed an adverse decision of the
11 commissioner to the court in accordance with R.S. 39:1691(C).

12 **SUBPART ~~DE~~. ACTIONS BY OR AGAINST THE STATE; PRESCRIPTION**

13 §1691. Actions by or against the state in connection with contracts

14 A. Solicitation and award of contracts. The Nineteenth Judicial District
15 Court shall have exclusive venue over an action between the state and a bidder,
16 offerer, or contractor, prospective or actual, to determine whether a solicitation or
17 award of a contract is in accordance with the constitution, statutes, regulations, and
18 the terms and conditions of the solicitation. Such actions shall extend to all kinds of
19 actions, whether for monetary damages or for declaratory, injunctive, or other
20 equitable relief.

21 B. Debarment or suspension. The Nineteenth Judicial District Court shall
22 have exclusive venue over an action between the state and a person who is subject
23 to a suspension or debarment proceeding, to determine whether the debarment or
24 suspension is in accordance with the constitution, statutes, and regulations. Such
25 actions shall extend to actions for declaratory, injunctive, or other equitable relief.

26 C. Actions under contracts or for breach of contract. The Nineteenth Judicial
27 District Court shall have exclusive venue over an action between the state and a
28 contractor who contracts with the state, for any cause of action which arises under
29 or by virtue of the contract, whether the action is on the contract or for a breach of

1 the contract or whether the action is for declaratory, injunctive, or other equitable
2 relief.

3 D. Limited finality for administrative determinations. In any judicial action
4 under this Section, factual or legal determination by employees, agents, or other
5 persons appointed by the state shall have no finality and shall not be conclusive,
6 notwithstanding any contract provision, regulation, or rule of law to the contrary,
7 except to the extent provided in: R.S. ~~39:1625~~ **39:1630**, R.S. 39:1671(E), R.S.
8 39:1672(F), R.S. 39:1673(E), R.S. 39:1683(E), R.S. 39:1684(E), and R.S.
9 39:1685(E).

10 E. Writs or appeals; district court decisions. Any party aggrieved by a final
11 judgment or interlocutory order or ruling of the Nineteenth Judicial District Court
12 may appeal or seek review thereof, as the case may be, to the Court of Appeal, First
13 Circuit or the Supreme Court of Louisiana, as otherwise permitted in civil cases by
14 law and the constitution.

15 §1692. Commencement of actions

16 A. Protested solicitations and awards. Any action under R.S. 39:1691(A)
17 shall be commenced within fourteen days after receipt of the decision of the
18 commissioner under R.S. 39:1683(C).

19 B. Debarments and suspension for cause. Any action under R.S. 39:1691(B)
20 shall be commenced within sixty days after receipt of the decision of the
21 commissioner under R.S. 39:1684(C).

22 C. Actions under contracts or for breach of contract controversies. Any
23 action under R.S. 39:1691(C) shall be commenced within sixty days after receipt of
24 the decision of the commissioner under R.S. 39:1685(C).

25 **SUBPART ~~E~~G. DELINQUENT PAYMENT PENALTIES**

26 §1695. Late payment to business; penalty paid by state agency

27 A. If a state agency without reasonable cause fails to make any payment due
28 within ninety days of the due date prescribed by contract, to a business awarded a
29 contract with the state agency to supply equipment, supplies, materials, or textbooks,

1 or to provide services, the state agency shall pay, in addition to the payment, interest
2 on the amount due at the rate established pursuant to ~~Civil Code Article 2924(B)(3)~~
3 **the judicial interest rate referenced in R.S. 13:4202(B)** per year, from the
4 ninety-first day after the due date prescribed by the contract. In applying this Section
5 to a claim related in any way to an entitlement program, payment for claims shall be
6 due ninety days after a claim is received by the state.

7 B. If it is determined by the state agency that additional evidence of the
8 validity of the claim for payment is required, such evidence shall be requested within
9 ten working days from the date the bill is received by the state agency. In instances
10 where additional evidence is required, the bill shall be reviewed and payment or
11 rejection made within thirty days from receipt of the evidence requested in the office
12 of the paying agency.

13 C. Any penalty required to be paid by a state agency pursuant to this Section
14 shall be disbursed upon warrants drawn by the state agency upon that agency's
15 operating expenses budget.

16 §1696. Reporting requirements

17 A. Whenever a state agency is required by R.S. 39:1695 to pay a penalty, it
18 shall be presumed that the fault is that of the head of the state agency and, in such
19 cases, the head of the state agency shall submit to the Joint Legislative Committee
20 on the Budget at its next regular meeting following the payment of such a penalty a
21 report on the actions taken to correct the problem.

22 B. Any state agency which requests that the legislature make a supplemental
23 appropriation for the agency shall identify at the time of the request what part of the
24 amount is necessitated because of any penalties imposed by R.S. 39:1695.

25 §1697. Disputed claims

26 A. In cases where a state agency states that payment is late due to reasonable
27 cause, and said claim is disputed by the business owed payment, upon the request of
28 a representative of the business the Joint Legislative Committee on the Budget shall
29 determine whether or not the circumstances constitute "reasonable cause" as used in

1 R.S. 39:1695.

2 B. No state agency shall be required to pay a penalty if it has submitted a
3 warrant to the state treasurer at least thirty days prior to the due date prescribed by
4 the contract.

5 PART VII. INTERGOVERNMENTAL RELATIONS

6 ~~SUBPART A. DEFINITIONS~~

7 ~~§1701. Definitions of terms used in this Part~~

8 ~~(1) "Cooperative purchasing" means procurement conducted by or on behalf~~
9 ~~of more than one public procurement unit or by a public procurement unit with an~~
10 ~~external procurement activity or by a private procurement unit.~~

11 ~~(2) "External procurement activity" means any buying organization not~~
12 ~~located in this state which, if located in this state, would qualify as a public~~
13 ~~procurement unit. An agency of the United States government is an external~~
14 ~~procurement activity.~~

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

21 ~~(4) "Private procurement unit" means any independent institution of higher~~
22 ~~education in this state.~~

23 ~~(5) "Public procurement unit" means either a local public procurement unit~~
24 ~~or a state public procurement unit.~~

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

27 ~~SUBPART B.~~A. COOPERATIVE PURCHASING

28 §1702. Cooperative purchasing authorized; participation in federal General Services

29 Administration vendor list

1 A.(1) Any public procurement unit may either participate in, sponsor,
2 conduct, or administer a cooperative purchasing agreement for the acquisition of any
3 supplies, services, major repairs, or construction with one or more public
4 procurement units or external procurement activities or one or more private
5 procurement units in accordance with an agreement entered into between the
6 participants. Such cooperative purchasing may include but is not limited to joint or
7 multi-party contracts between public procurement units and open-ended state public
8 procurement unit contracts which are made available to local public procurement
9 units.

10 (2) Any public procurement unit may procure materials, supplies, and
11 equipment from federal General Services Administration supply schedules in
12 accordance with rules and regulations which may be adopted by the central
13 purchasing agency of the division of administration. Such purchases need not comply
14 with the competitive bidding requirements of this Chapter. However, such materials,
15 supplies, or equipment shall not be purchased at a price higher than the price of the
16 same item listed on any available state **purchasing procurement** contract.

17 (3) Any public procurement unit may procure materials, supplies, equipment,
18 and services related to homeland security from federal General Services
19 Administration supply schedules. Such purchases shall:

20 (a) Utilize a Louisiana distributor.

21 (b) Use the competitive ordering procedures of the federal General Services
22 Administration.

23 (c) Receive prior approval from the director of the Governor's Office of
24 Homeland Security and Emergency Preparedness, or his designee.

25 B.(1) A private procurement unit acquiring supplies through cooperative
26 purchasing shall acquire such supplies for its own use and not for the purpose of
27 resale in competition with private enterprise.

28 (2) A private procurement unit shall certify to the vendor with each order that
29 the supplies covered thereby are to be acquired for its own use and not for the

1 purpose of resale in competition with private enterprise and shall provide a copy of
 2 such certification to the ~~Central Purchasing Agency~~ **central purchasing agency**
 3 within the ~~Division of Administration~~ **division of administration**.

4 (3) Upon certification by the ~~Commissioner of Administration~~ **commissioner**
 5 **of administration** that the purchase of one or more types of supplies by a private
 6 procurement unit under this Section may adversely affect the interests of the state by
 7 impeding the ability of the ~~Division of Administration~~ **division of administration**
 8 to attract responsible bidders for such supplies, the governor shall have the authority
 9 to limit or eliminate the right of a private procurement unit to purchase such types
 10 of supplies to the extent necessary to eliminate the adverse affect on the state.

11 C. No use shall be made of federal General Services Administration supply
 12 schedules under the provisions of this Section without the participation of a
 13 Louisiana licensed dealer or distributor.

14 §1703. Sale, acquisition, or use of supplies by a public procurement unit

15 Any public procurement unit may sell to, acquire from, or use any supplies
 16 belonging to another public procurement unit or external procurement activity
 17 independent of the requirements of Part III of this Chapter or of Title 38.

18 §1704. Cooperative use of supplies or services

19 Any public procurement unit may enter into an agreement, independent of the
 20 requirements of Part III of this Chapter or Title 38, with any other public
 21 procurement unit or external procurement activity for the cooperative use of supplies
 22 or services, under the terms agreed upon between the parties.

23 §1705. Joint use of facilities

24 Any public procurement unit may enter into agreements for the common use
 25 or lease of warehousing facilities, capital equipment, and other facilities with another
 26 public procurement unit or an external procurement activity under the terms agreed
 27 upon between the parties.

28 §1706. Supply of personnel, information, and technical services

29 A. Supply of personnel. Any public procurement unit is authorized, in its

1 discretion, upon written request from another public procurement unit or external
2 procurement activity, to provide personnel to the requesting public procurement unit
3 or external procurement activity. The public procurement unit or external
4 procurement activity making the request shall pay the public procurement unit
5 providing the personnel the direct and indirect cost of furnishing the personnel, in
6 accordance with an agreement between the parties.

7 B. Supply of services. The informational, technical, and other services of
8 any public procurement unit may be made available to any other public procurement
9 unit or external procurement activity provided that the requirements of the public
10 procurement unit tendering the services shall have precedence over the requesting
11 public procurement unit or external procurement activity. The requesting public
12 procurement unit or external procurement activity shall pay for the expenses of the
13 services so provided, in accordance with an agreement between the parties.

14 C. State information services. Upon request, the chief procurement officer
15 may make available to public procurement units the following services, among
16 others:

- 17 (1) Standard forms.
- 18 (2) Printed manuals.
- 19 (3) Product specifications and standards.
- 20 (4) Quality assurance testing services and methods.
- 21 (5) Qualified products lists.
- 22 (6) Source information.
- 23 (7) Common use commodities listings.
- 24 (8) Supplier prequalification information.
- 25 (9) Supplier performance ratings.
- 26 (10) Debarred and suspended bidders lists.
- 27 (11) Forms for invitations for bids, requests for proposals, instructions to
28 bidders, general contract provisions, and other contract forms; and
- 29 (12) Contracts or published summaries thereof, including price and time of

1 delivery information.

2 D. State technical services. The state, through the chief procurement officer
3 may provide the following technical services, among others:

4 (1) Development of products specifications.

5 (2) Development of quality assurance test methods, including receiving,
6 inspection, and acceptance procedures.

7 (3) Use of state product testing and inspection facilities; and

8 (4) Use of state personnel training programs.

9 E. Fees. The chief procurement officer may enter into contractual
10 arrangements and publish a schedule of fees for the services provided under
11 Subsections C and D of this Section.

12 §1707. Use of payments received by a supplying public procurement unit

13 All payments from any public procurement unit or external procurement
14 activity received by a public procurement unit supplying personnel or services shall
15 be available to the supplying public procurement unit as authorized by law.

16 §1708. Public procurement units in compliance with code requirements

17 Where the public procurement unit or external procurement activity
18 administering a cooperative purchase complies with the requirements of this Chapter,
19 any public procurement unit participating in such a purchase shall be deemed to have
20 complied with this Chapter. Public procurement units may not enter into a
21 cooperative purchasing agreement for the purpose of circumventing this Chapter.

22 §1709. Review of procurement requirements

23 To the extent possible, the chief procurement officer shall collect information
24 concerning the type, cost, quality, and quantity of commonly used supplies, services,
25 major repairs, or construction being procured or used by state public procurement
26 units. The chief procurement officer may also collect such information from local
27 public procurement units.

28 §1710. Local governing authorities; purchases from local vendors, payment of
29 certain costs

1 When a local governing authority purchases an item at the state bid price
2 through a local vendor, the local governing authority may pay to the local vendor the
3 costs for shipping, preparation, and delivery of the item, provided that these costs
4 shall not exceed the state bid price by seven percent on purchases up to ten thousand
5 dollars, five percent on purchases over ten thousand dollars and up to twenty
6 thousand dollars, and three percent on purchases over twenty thousand dollars.

7 **SUBPART ~~EB~~. CONTRACT CONTROVERSIES**

8 §1716. Contract controversies

9 Under a cooperative purchasing agreement, controversies arising between an
10 administering public procurement unit and its bidders, offerers, or contractors shall
11 be resolved in accordance with Part VI of this Chapter, where the administering
12 public procurement unit is a state public procurement unit or otherwise subject to
13 Part VI.

14 **PART VIII. ASSISTANCE TO SMALL AND DISADVANTAGED**

15 **BUSINESSES AND WOMEN OWNED BUSINESSES**

16 §1731. Short title

17 The provisions of this Part shall be known and may be cited as the Louisiana
18 Small Business Procurement Act.

19 §1732. Definitions of terms used in this Part

20 As used in this Part, the following words and phrases shall have the meaning
21 ascribed to them in this Section, except as otherwise may be provided or unless a
22 different meaning is plainly required by the context:

23 (1) "Small business" means a small business as defined by the Small
24 Business Administration of the United States Government which for purposes of size
25 eligibility or other factors meets the applicable criteria set forth in 13 Code of
26 Federal Regulations, Part 121, as amended, and which has its principal place of
27 business in Louisiana.

28 (2) "Dominant in its field of operation" means exercising a controlling or
29 major influence in a business activity in which a number of businesses are engaged.

1 In determining if a business is dominant, the following criteria, among others, shall
2 be considered: number of employees; volume of business; financial resources;
3 competitive status or position; ownership or control of materials, processes, patents,
4 license agreements, and facilities; sales territory; and nature of business activity.

5 (3) "Affiliate or subsidiary of a business dominant in its field of operation"
6 means a business which is at least twenty percent owned by a business dominant in
7 that field of operation, or by partners, officers, directors, majority shareholders, or
8 their equivalent of a business dominant in that field of operation.

9 (4) "Socially or economically disadvantaged person" means a person who
10 has been deprived of the opportunity to develop and maintain a competitive position
11 in the economy because of social or economic disadvantage. This disadvantage may
12 arise from cultural, social or economic circumstances or background or physical
13 location.

14 (5) "Women owned business" means a business that is at least ~~51~~ **fifty-one**
15 percent owned by a woman or women who also control and operate it. "Control" in
16 this context means exercising the power to make policy decisions. "Operate" in this
17 context means being actively involved in the day-to-day management. In
18 determining whether a business is ~~51~~ **fifty-one** percent owned by a woman or
19 women, the percent ownership of the woman or women shall not be diminished
20 because she is part of a community property regime.

21 (6) "Services" means the furnishing of labor, time, or effort by a contractor,
22 not involving the delivery of a specific end product other than reports which are
23 merely incidental to the required performance. This term shall include those services
24 covered by ~~this~~ Chapter ~~16 of Title 39 of the Louisiana Revised Statutes of 1950~~ and
25 services performed by an architect, engineer, or landscape architect as provided by
26 Part VII of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950. This
27 term shall not include collective bargaining agreements.

28 §1733. Procurement from small businesses

29 A. Set aside. The commissioner of the division of administration shall for

1 each fiscal year designate and set aside for awarding to small businesses, an amount
2 not to exceed ten percent of the value of anticipated total state procurement of goods
3 and services excluding construction. The commissioner shall divide the
4 procurements so designated into contract award units of economically feasible
5 production runs in order to facilitate offers or bids from small businesses. In making
6 his annual designation of set aside procurements the commissioner shall attempt to
7 vary the included procurements so that a variety of goods and services produced by
8 different small businesses shall be set aside each year. The failure of the
9 commissioner to set aside particular procurements shall not be deemed to prohibit
10 or discourage small businesses from seeking the procurement award through the
11 normal solicitation and bidding processes.

12 B. Contract procedure. The commissioner shall establish a contract
13 procedure in accordance with law, for the awarding of a procurement contract under
14 the set aside program established in this Part. Surety bonds guaranteed by the federal
15 small business administration shall be acceptable security for a construction award
16 under this Part.

17 C. Responsibility of bidder or offerer. Before making a set aside award, the
18 commissioner shall evaluate whether the small business scheduled to receive the
19 award is able to perform the set aside contract. This determination shall include
20 consideration of production and financial capacity and technical competence.

21 D. Preference to disadvantaged persons. At least ten percent of the value of
22 the procurements designated for set aside awards shall be awarded, if possible to
23 businesses owned and operated by socially or economically disadvantaged persons.
24 In the event small businesses owned and operated by socially or economically
25 disadvantaged persons are unable to perform at least ten percent of the set aside
26 awards, then the commissioner shall award the balance of the set aside contracts to
27 other small businesses.

28 E. Preference to women. At least ten percent of the value of the
29 procurements designated for set aside awards shall be awarded, if possible, to

1 businesses owned and operated by women. In the event small businesses owned and
2 operated by women are unable to perform at least ten percent of the set aside awards,
3 then the commissioner shall award the balance of the set aside contracts to other
4 small businesses.

5 F. Award of contracts after unsuccessful set aside procedures. In the event
6 that the provisions of this Part do not operate to extend a contract award to a small
7 business, the award shall be placed pursuant to the existing solicitation and award
8 provisions established by law. The commissioner shall thereupon designate and set
9 aside for small businesses additional state procurements corresponding in
10 approximate value to the contract unable to be awarded pursuant to the provisions
11 of this Part.

12 G. Conflict with other code provisions. All laws and rules pertaining to
13 solicitations, bid evaluations, contract awards, and other procurement matters shall
14 apply as consistent to procurements set aside for small businesses. In the event of
15 conflict with other rules, the provisions of this Part shall govern.

16 §1734. Assistance to small businesses

17 The commissioner of administration and the executive director of the
18 Louisiana division of minority and women's business enterprise in the Department
19 of Economic Development shall publicize the provisions of the set-aside program,
20 attempt to locate small businesses able to perform set-aside procurement awards, and
21 encourage participation. When the commissioner of administration determines that
22 a small business is unable to perform under a set-aside contract, he shall so inform
23 the secretary of economic development, who shall assist the small business in
24 attempting to remedy the causes of the inability to perform a set-aside award. In
25 assisting the small business, the executive director of the Louisiana division of
26 minority and women's business enterprise, in cooperation with the commissioner of
27 administration, shall use any management or financial assistance programs that may
28 be available by or through the Louisiana division of minority and women's business
29 enterprise or other state or governmental agencies.

1 §1735. Determination of disadvantaged

2 The commissioner of administration shall promulgate regulations, rules,
3 standards, and procedures for certifying that small businesses and small businesses
4 owned and operated by socially or economically disadvantaged persons are eligible
5 to participate under the requirements of R.S. 39:1733 and 1734. The procedure for
6 determination of eligibility may include self certification by a business, provided that
7 the commissioner retains the ability to verify a self certification. The commissioner
8 shall promulgate other regulations and rules as may be necessary to carry out the
9 duties set forth in this Part.

10 §1736. Reports

11 The commissioner of administration shall submit an annual report to the
12 governor and the legislature, with a copy thereof going to the Louisiana division of
13 minority and women's business enterprise, indicating the progress being made
14 toward the objectives and goals of this Part during each fiscal year. This report shall
15 include the following information:

16 (1) The total dollar value and number of potential set-aside awards identified
17 during this period and the percentage of total state procurement this figure reflects.

18 (2) The number of small businesses identified by and responding to the
19 set-aside contracts actually awarded to small businesses, with appropriate
20 designation as to the total number and value of set-aside contracts awarded to each
21 small business, and the total number of small businesses that were awarded set-aside
22 contracts.

23 (3) The total dollar value and number of set-aside contracts awarded to small
24 businesses owned and operated by economically or socially disadvantaged persons,
25 with appropriate designation as to the total number and value of set-aside contracts
26 awarded to each small business, and the percentages of the total state procurements
27 the figures of total dollar value and the number of set asides reflect.

28 (4) The total dollar value and number of set-aside contracts awarded to small
29 businesses owned and operated by women, with appropriate designation as to the

1 total number and value of set-aside contracts awarded to each small business, and the
2 percentages of the total state procurements the figures of total dollar value and the
3 number of set asides reflect.

4 (5) The number of contracts which were designated and set aside but which
5 were not awarded to a small business, the estimated total dollar value of these
6 awards, the lowest offer or bid on each of these awards made by the small business,
7 and the price at which these contracts were awarded pursuant to the normal
8 procurement procedures.

9 PART IX. TELECOMMUNICATIONS PROCUREMENT

10 §1751. Application

11 A. The provisions of this Part shall be applicable to any agency, as defined
12 in R.S. 36:3(1), within the executive branch of state government with respect to the
13 procurement of all telecommunications systems and telecommunications services.
14 However, nothing provided in this Part shall be construed to preempt the authorities
15 granted to the higher education boards in Article VIII of the Constitution of
16 Louisiana.

17 B. The office of telecommunications management shall, subject to the
18 provisions of this Part, have sole authority and responsibility for defining the specific
19 telecommunications systems and telecommunications services to which the
20 provisions of this Part shall be applicable. Rules and regulations shall be
21 promulgated as may be necessary to carry out the provisions of this Part.

22 §1752. Definitions

23 For the purposes of this Part, the following words and phrases shall be
24 defined as follows:

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

27 (2) "Competitive sealed bidding" means a method of procurement which
28 strictly follows the requirements set forth in this Chapter except for such variations
29 as are specifically established in this Part.

1 (3) "Local area network" means a limited distance data processing/
2 communications network or system used to link computers and peripheral devices.

3 (4) "Multi-year contracts" are contracts for a term of more than one year, not
4 to exceed ten years.

5 (5) "Procurement" means the selling, buying, purchasing, renting, leasing,
6 or otherwise obtaining telecommunications systems, telecommunications services,
7 or their related software as well as all activities engaged in, resulting in, or expected
8 to result in the selling, buying, purchasing, renting, leasing, or otherwise obtaining
9 telecommunications systems, telecommunications services, or their related software
10 by the state or its agencies.

11 (6) "Software" means computer programs and documentation essential to
12 and necessary for a telecommunications system or telecommunications service to
13 perform productive operations.

14 (7) "Telecommunications service contract" means a contract for the
15 procurement of telecommunications services to include but not be limited to long
16 distance, pay telephone, radio paging, and utility-type services such as local dial
17 tone.

18 (8) "Telecommunications systems", which shall include telecommunications
19 equipment and related services, and "telecommunications services" are limited to the
20 equipment and services and means to provide:

- 21 (a) Telecommunications transmission facilities and services.
22 (b) Voice telecommunications systems and services.
23 (c) Local area network systems and services.
24 (d) Wide area network systems and services.
25 (e) Video systems and services, except those video systems and services
26 specifically reserved to the Louisiana Educational Television Authority pursuant to
27 R.S. 17:2501.

28 (f) Wireless systems and services to include but not be limited to cellular and
29 personal communications systems.

1 (g) Radio systems, to include but not be limited to two-way radio systems;
2 however, the operational abilities and priorities of two-way communications of the
3 departments in the executive branch shall not be impeded.

4 (h) Intercom and electro-mechanical paging systems.

5 (i) Any and all systems and services based on emerging and future
6 telecommunications technologies relating to Subparagraphs (a) through (h) of this
7 Paragraph.

8 (9) "Telecommunications systems contract" means a contract for the
9 procurement of telecommunications systems including equipment and related
10 services to include but not be limited to installation and maintenance.

11 (10) "Telecommunications systems lease contract" means a contract between
12 a supplier of telecommunications systems and the division of administration, office
13 of telecommunications management, or the procuring agency, through which
14 telecommunications systems may be procured for a term which shall not exceed ten
15 years. The contract may be either an operating lease, installment purchase, or a
16 financed lease without a balloon payment.

17 (11) "Telecommunications transmission facility" means any transmission
18 medium, switch, instrument, wiring system, or other facility which is used, in whole
19 or in part, to provide any transmission.

20 (12) "Utility" means any telecommunications service provided by the office
21 of telecommunications management and used in the essential operations of a state
22 agency, such as local dial tone, wide area network, and local area network.

23 (13) "Wide area network" means a data processing/communications network
24 or system generally utilizing common carrier facilities to link geographically
25 dispersed local area networks to other local area networks or computer systems.

26 §1753. Types of contracts permitted

27 A. The types of contracts permitted in the procurement of
28 telecommunications systems and telecommunications services are defined in this
29 Part, and the provisions of this Part supplement the provisions of R.S. 39:1551

1 through 1736.

2 B. The office of telecommunications management, through the state
3 purchasing office, may, on behalf of any state agency, enter into telecommunications
4 systems contracts in accordance with the following provisions:

5 (1) Contracts of this type shall be entered into through a request for proposals
6 as defined in this Part. An invitation to bid format may be utilized with written
7 approval from the director of the office of telecommunications management.

8 (2) The term of such contracts shall not exceed five years.

9 C. The office of telecommunications management, through the state
10 purchasing office, may on behalf of any state agency, enter into telecommunications
11 services contracts in accordance with the following provisions:

12 (1) Contracts of this type shall be entered into through a request for proposals
13 as defined in this Part. An invitation to bid format may be utilized with written
14 approval from the director of the office of telecommunications management.

15 (2) The term of such contracts shall not exceed ten years.

16 D. The office of telecommunications management, through the state
17 purchasing office, may on behalf of any state agency, enter into a
18 telecommunications systems lease contract for an operating lease, installment
19 purchase, or financed lease for telecommunications systems in accordance with the
20 following provisions:

21 (1) All contracts of this type shall be entered into through a request for
22 proposals as defined in this Part.

23 (2) The justification of such contracts must be approved by the office of
24 telecommunications management prior to issuance of a request for proposals. Such
25 justification shall identify and consider all cost factors relevant to that contract.

26 (3) The term of such contracts shall not exceed ten years, except financed
27 contracts shall be for a term not to exceed the economic life of the system or ten
28 years, whichever is less.

29 (4) Upon the advance written approval of the office of telecommunications

1 management, state agencies may extend operating leases of telecommunications
2 systems on a month-to-month basis for a period not to exceed one calendar year for
3 the stated lease prices.

4 E. Notwithstanding the provisions of R.S. 39:1615 to the contrary, the use
5 of a multi-year contract for telecommunications systems and telecommunications
6 services shall be in accordance with rules and regulations and under the following
7 conditions:

8 (1) The director of the office of telecommunications management shall
9 approve in writing the use of a multi-year contract over one year, not to exceed three
10 years.

11 (2) The ~~director of the state purchasing office~~ **state chief procurement**
12 **officer** shall approve in writing the use of a multi-year contract over three years, not
13 to exceed five years.

14 (3) The commissioner of administration, or his designee, shall approve in
15 writing the use of a multi-year contract over five years.

16 §1754. Methods of procurement

17 A. The office of telecommunications management, through the state
18 purchasing office, may procure telecommunications systems and
19 telecommunications services by a request for proposals to conform with the
20 following requirements:

21 (1) Public notice of the request for proposals shall be the same as for an
22 invitation to bid as provided in R.S. 39:1594(C).

23 (2)(a) The request for proposals shall indicate the relative importance of all
24 evaluation factors and shall clearly define the work, service, or solution to be
25 provided under the contract, the functional specifications, the criteria to be used in
26 evaluating the proposals, and the time frames within which the work must be
27 completed or the service provided.

28 (b) For telecommunications systems lease contracts, the request for
29 proposals shall require that proposals contain a declaration as to the maximum price

1 for which the system may be purchased following the termination of the lease
2 contract. No other basis of evaluation shall be used except that set out in the request
3 for proposals.

4 (3) The office of telecommunications management shall evaluate all
5 proposals to determine the proposal most advantageous to the state, taking into
6 consideration all evaluation criteria set forth in the request for proposals, and shall
7 make a recommendation of award to the state purchasing office.

8 (4) The office of telecommunications management may request that the state
9 purchasing office reject all proposals when it is deemed that such action is in the best
10 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.

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 office of telecommunications management and
22 the state purchasing office, in addition to any other approvals required by law.

23 (3) Where written proposals or bids are submitted by vendors, the proposal
24 or bid of the successful vendor shall be incorporated into the final contract
25 consummated with that vendor.

26 (4) All contracts must contain the following annual appropriation
27 dependency clause: "The continuation of this contract is contingent upon the
28 continuation of an appropriation of funds by the Legislature to fulfill the
29 requirements of the contract. If the Legislature fails to appropriate sufficient monies

1 to provide for the continuation of a contract or if such appropriation is reduced by
2 the veto of the governor or by any means provided in the appropriations act to
3 prevent the total appropriations for the year from exceeding revenues for that year
4 or for any other lawful purpose and the effect of such reduction is to provide
5 insufficient monies for the continuation of the contract, the contract shall terminate
6 on the last day of the fiscal year for which funds were appropriated."

7 (5) The provisions of this Part shall, with respect to the procurement of
8 telecommunications systems or telecommunications services, supersede
9 specifications of any contradictory or conflicting provisions of the following statutes:
10 R.S. 38:2211 et seq. with respect to awarding of public contracts, and R.S. 39:1551
11 through 1736. ~~The provisions of this Part do not relate to the procurement of~~
12 ~~services covered by R.S. 39:1481 through 1526.~~

13 Section 2. Chapter 16 of Subtitle III of Title 39 of the Louisiana Revised Statutes
14 of 1950, comprised of R.S. 39:1481 through 1526, is hereby repealed.

15 Section 3. The Louisiana State Law Institute is hereby authorized and requested to
16 review all statutes which contain the name of the office of contractual review and the office
17 of state purchasing, changed in this Act, and in all locations it deems appropriate change said
18 references to the office of state procurement.

19 Section 4. The Louisiana State Law Institute is hereby authorized and requested to
20 review all statutes which refer to Chapter 16 of Subtitle III of Title 39 of the Louisiana
21 Revised Statutes of 1950 or Chapter 16 of Title 39 of the Louisiana Revised Statutes of
22 1950, changed in this Act, and in all locations it deems appropriate change said references
23 to Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950.

24 Section 5. This Act shall become effective on January 1, 2015; if vetoed by the
25 governor and subsequently approved by the legislature, this Act shall become effective on
26 January 1, 2015, or on the day following such approval by the legislature, whichever is later.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Martha S. Hess.

DIGEST

Walsworth (SB 480)

Present law provides for procurement by public bodies, including provisions for a central purchasing agency, for procurement regulations, source selection for items to be purchased and methods for such purchases, for bid procedures, for types of contracts, for specifications, for contract modification, termination and contract clauses, for legal and contractual remedies and for administrative appeals, and for cooperative purchasing.

Present law sets forth the underlying purposes and policies of the procurement code, as well as the rules of construction and application to be used in interpreting the provisions of the code. Proposed law retains present law. Proposed law repeals certain exclusions regarding the procurement of professional, personal, consulting and social services. Proposed law further provides that contracts awarded by an agency for the benefit of an industry, payment of which comes from self-generated funds received from that industry, are exempt from the requirements of the procurement code provided that any such contract is awarded through a competitive process. Proposed law retains present law.

Present law provides that procurement provisions shall not apply to professional services for engineering design contracts, construction contracts, or contracts for surveying for certain maintenance and construction projects entered into by the Department of Transportation and Development. Proposed law further provides that procurement provisions shall not apply to consulting contracts with appraisers, foresters, economists, right-of-way agents, title abstractors, asbestos abatement inspectors, negotiators, accountants and cost consultants relating to acquisition of rights-of-way for maintenance and construction projects entered into by the Department of Transportation and Development. Proposed law retains present law.

Present law further provides that procurement provisions shall not apply to grants or contracts or nonsocial service contracts or like business agreements between the state and its political subdivision or other governmental entities, or between higher education boards and institutions under their jurisdictions. Proposed law retains present law.

Proposed law changes the "director of the office of contractual review" to the "state chief procurement officer" in regards to delegation of authority to procure services with private grant funds or federal funds specifically provided for contracts of an institution of higher education.

Present law provides numerous definitions for purposes of the procurement code. Proposed law adds definitions for the following terms and phrases: "central purchasing agency", "complex procurement", "electronic", "information technology", "operating service", "services", "signature", and "state chief procurement officer".

Present law provides for public access to procurement information. Proposed law retains present law.

Present law provides for contract change orders and recording of such changes by the recorder of mortgages at the parish level. Proposed law retains present law, but changes "purchasing" to "procurement".

Present law provides for written determinations to be retained in an official contract file in the central purchasing agency, other purchasing agencies, or by the governmental body administering the contract. Proposed law retains present law.

Present law authorizes the commissioner of administration to promulgate regulations governing the procurement, management, and control of any and all supplies, services, and major repairs required to be procured by the state. Proposed law retains these provisions.

Present law provides for the central purchasing agency within the division of administration, to be headed by a director. Proposed law retains provisions of present law but provides that it is to be headed by the state chief procurement officer. Further provides for his qualifications, appointment, and authority, including the appointment of assistants and other employees, and adds to the present law the duty to ensure compliance with the procurement code and implementing regulations by reviewing and monitoring procurements.

Present law provides that the chief legal adviser to the state director of purchasing shall be the attorney general. Proposed law retains present law.

Present law provides for appointment of assistants and delegation of authority by the state director of purchasing. Proposed law retains present law, but changes "director of purchasing" to "state chief procurement officer".

Present law provides for reporting requirements for any reports deemed necessary by the commissioner of administration. Proposed law retains present law.

Present law provides for mandatory information requirements for contracts let without competition under the authority of an executive order related to Hurricanes Katrina or Rita. Proposed law retains present law, but changes "purchasing" to "procurement".

Present law provides for use of other types of contracts, such as brand name contracts and multiple award contracts. Proposed law retains present law.

Present law provides for reporting on certain contract payments, subcontractors, and performance related to the Road Home Program. Proposed law retains present law, but specifies the reporting shall be for professional, personal, consulting, and social services contracts.

Present law provides for reports of procurement actions. Proposed law retains present law but specifies such reports are for procurement actions related to professional, personal, consulting, and social services contracts.

Present law provides for contract administration, including monitoring and reporting. Proposed law retains present law. Proposed law further provides that no contract for professional, personal, consulting, or social services shall be entered into by a using agency with any contractor for which a delinquent final evaluation report remains outstanding for a contract with such using agency.

Present law provides for centralization of procurement authority and for certain exemptions. Proposed law retains present law.

Present law provides for exemptions to procurement regulations and provides certain exceptions for the Department of Transportation and Development and Department of Education. Proposed law retains present law and further specifies that exemptions from central purchasing do not apply to professional services, personal services, consulting services, social services, information technology or vehicle acquisition.

Present law exempts the Board of Trustees of State Colleges and Universities from central purchasing requirements. Proposed law changes "Board of Trustees of State Colleges and Universities" to "University of Louisiana System".

Present law provides for state procurement regulations to be promulgated by the commissioner of administration for all procurements except those regulations promulgated

by the secretary of the Department of Transportation and Development, the State Superintendent of Education, certain exempted departments. Present law further specifies the promulgatory power of the commissioner shall not be delegated, that regulations shall not change existing contract rights, and that required clauses in contracts shall be incorporated only with consent of both parties. Proposed law retains present law.

Present law requires the commissioner of administration to maintain a close and cooperative relationship with the using agencies. Further provides for the Procurement Advisory Council and other advisory groups, including the Drug Procurement Advisory Council. Proposed law retains present law.

Present law provides that all state contracts shall be awarded by competitive sealed bidding unless otherwise authorized by law. Proposed law provides for the following methods of source selection:

- (1) Competitive sealed bids.
- (2) Competitive sealed proposals.
- (3) Small purchases.
- (4) Sole source.
- (5) Emergency procurements.
- (6) Other procurement methods.
 - (a) Unstable market conditions.
 - (b) Group purchasing organizations.
 - (c) Used equipment.
 - (d) Reverse auctions.
 - (e) Negotiation of noncompetitive contracts.

Present law provides that contracts exceeding the amount established by executive order for small purchases shall be awarded by competitive sealed bidding. Proposed law retains present law. Proposed law includes "purchasing agencies of" the state of Louisiana along with the division of administration as locations where evidence of agency, corporate, or partnership authority shall be required for submission of a bid. Proposed law specifies the bidder submits or provides on request one of several official documents acceptable to the public entity, including registration on an electronic Internet database maintained by the public entity.

Present law provides for certain circumstances whereby a competitive request for proposal may be used. Proposed law retains present law and specifies that approval and written determination requirements for such requests for proposal shall not apply to requests for proposal for professional, personal, consulting, or social services.

Present law provides for requirements for requests for proposals. Proposed law retains present law and specifies that consulting, social, and some professional services shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the contract, the criteria to be used in evaluating the proposals, and the time frames within which the work must be completed. Proposed law further specifies that all other requests for proposals shall clearly state the technological or other outcome desired from the procurement of the technological or complex systems or services,

if applicable, and shall indicate the relative importance of price and other evaluation factors, the criteria to be used in evaluating the proposals, and the time frames within which the work must be completed. Proposed law further delineates certain conditions whereby written or oral discussions need not be conducted with responsible offerers who submit proposals.

Present law describes the minimum types of information needed to submit in requests for proposal. Proposed law retains present law and adds "performance measurements" and "monitoring plan" to those types of information.

Present law provides for the validity of professional, personal, consulting, and social services contracts. Proposed law retains present law but changes approval from the director of the office of contractual review to the director of the office of state procurement.

Present law provides for small purchases not exceeding the amounts established by executive order of the governor may be made in accordance with small purchase procedures prescribed by such executive order. Proposed law retains present law.

Present law provides for sole source procurements. Proposed law retains present law.

Present law provides for emergency procurements. Proposed law retains present law.

Present law provides for other procurement methods, including unstable market conditions, group purchasing, used equipment, reverse auction, and negotiation, and provides for rules and regulations of each method. Proposed law retains present law.

Present law provides for multisource generic drug contracts. Proposed law retains present law.

Present law provides for the right to reject bids from Communist countries. Proposed law retains present law.

Present law provides for limitations on consultants competing for contracts. Proposed law retains present law.

Present law provides for preference in awarding contracts for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana, with certain exceptions. Proposed law retains present law.

Present law provides for preference in awarding contracts to in-state vendors. Proposed law retains present law.

Present law provides for preference in letting contracts for public work to contractors domiciled in the state of Louisiana. Proposed law retains present law.

Present law provides for preference in awarding contracts for certain services where state-owned facilities will be used for rodeos and livestock shows, with preference for in-state vendors. Proposed law retains present law.

Present law provides for preference for goods manufactured, or services performed, by severely handicapped individuals in sheltered workshops. Proposed law retains present law.

Present law provides for preference for items purchased from Louisiana retailers. Proposed law retains present law.

Present law provides for preference for steel rolled in Louisiana. Proposed law retains present law.

Present law provides for preference for items manufactured in the United States. Proposed

law retains present law.

Present law provides for cancellation of invitations for bids or requests for proposal, including qualifications and duties. Proposed law retains present law, but changes "offerors" to "proposers".

Proposed law further changes the "office of contractual review" to the "state central purchasing agency" in regards to disclosure rules.

Present law provides for prequalification of suppliers. Proposed law retains present law.

Present law provides for cost or pricing data as submitted by contractors. Proposed law retains present law.

Present law provides for preference for types of contracts. Present law provides that cost-plus-a-percentage-of-cost contracts shall not be used. Proposed law retains present law, but specifies that such contracts may be used in the case of a disaster or emergency declared by the governor.

Present law provides for cost-reimbursement contracts. Proposed law retains present law.

Present law provides for reimbursement of costs. Proposed law retains present law and specifies reimbursement of costs for professional, personal, consulting, and social services contracts.

Present law provides for approval of the contractor's accounting system by the chief procurement officers. Proposed law retains present law.

Present law provides for multi-year contracts. Present law provides that any contract entered into for a period of not more than five years, but for more than three years shall be subject to prior approval of the Joint Legislative Committee on the Budget. Proposed law retains present law.

Present law provides for installment-purchase contracts. Proposed law retains present law.

Present law provides for professional service contracts without the necessity of competitive bidding or competitive negotiation. Proposed law retains present law.

Present law provides for contractual attorney's fees to be submitted by sworn affidavit. Proposed law retains present law.

Present law provides for contracts related to social services. Proposed law retains present law and specifies these contracts as "social services contracts". Proposed law further provides definitions for social services, changes "retarded" to "mentally disabled", and changes "director of contractual review" to "state chief procurement officer".

Present law provides for personal service contracts without the necessity of competitive bidding or competitive negotiation. Proposed law retains present law.

Present law provides for consulting service contracts without the necessity of competitive bidding or competitive negotiation. Proposed law retains present law but specifies such contracts have a maximum amount of compensation less than \$50,000 for a twelve month period. Proposed law further changes "contractual review" to "state procurement".

Present law provides for performance-based energy efficiency contracts. Proposed law retains present law.

Present law provides for certification by using agency before entering into a proposed

professional, personal, consulting, or social service contract in excess of \$5,000. Proposed law retains present law, but changes "director of the office of contractual review" to "chief procurement officer".

Present law provides for approval of contracts and penalties for submission of faulty information by corporations. Proposed law retains present law, but changes "director of the office of contractual review" to "chief procurement officer" and changes "contractual review" to "state procurement".

Present law provides for contract content, including minimum requirements and other specifications. Proposed law retains present law.

Present law provides for professional, personal, and consulting contracts with state employees. Proposed law retains present law, but changes "contractual review" to "state procurement" and "office of contractual review" to "office of chief procurement officer".

Present law provides for contract modifications and termination. Present law provides for modification of professional, personal, consulting, and social services contracts. Proposed law retains present law, but changes "contractual review" to "state procurement."

Present law provides for termination of professional, personal, consulting, and social services contracts for default of the contractor. Proposed law retains present law, but changes "contractual review" to "state procurement".

Present law provides for inspection of plant and audit of records. Present law provides for the right to inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the state. Proposed law retains present law. Present law provides for the audit by the state of persons submitting cost or pricing data and also for contract audits. Proposed law retains present law.

Present law provides for determinations and reports. Present law provides for finality of determinations unless they are clearly erroneous, arbitrary, capricious, or contrary to law. Proposed law retains present law. Present law provides for record of certain procurement actions for a minimum of six years. Proposed law retains present law.

Present law provides for purchase of insurance. Present law provides for direct purchase of insurance policies by the state covering any property or insurable interests or activities of the state directly from insurers or underwriters, without the necessity for signature or countersignature of such policies and in lieu thereof such policy shall be signed by an official or designated representative of the company issuing the policy. Proposed law retains present law, but removes provision referring to R.S. 22:1171, which was repealed in 1996.

Present law prohibits splitting of insurance commissions derived from the sale of insurance to the state by insurance agents, unless written authorization is provided by the commission of administration. Proposed law retains present law. Present law provides that the written authorization provided by the commissioner of administration on certain split insurance commissions constitutes public record. Proposed law retains present law.

Present law provides for acquisition of housing space by state agencies. Present law provides all contracts and agreements for the lease or rental of space for the housing of state agencies, their personnel, operations, equipment, or activities shall be made in the name of and by the authorized representative or representative body of the state agency but shall be made and entered into only with the approval of the commissioner of administration. The cost of such housing shall be provided for in and defrayed from the budgets of the using agencies. Proposed law retains present law.

Present law provides for uniform space standards for state agencies, including inventory and

evaluation of budget unit space utilization, to be prepared by the division of administration. Proposed law retains present law.

Present law provides for the advertisement and award of every lease bid for the use of five thousand square feet or more of space in a privately owned building entered into by a state agency as lessee. Present law provides no such lease shall extend beyond a period of ten years. Proposed law retains present law.

Present law provides for the amendment of existing leases for office or warehouse space by renegotiation with the present lessor, only after the division of administration has entered into a competitive negotiation process involving discussions with offerors who submit written proposals. Present law provides for other conditions pertaining to the renegotiation of an existing lease for office or warehouse space. Proposed law retains present law.

Present law provides for the acquisition of motor vehicles by state agencies. Present law provides for purchase or lease of motor vehicles by state agencies and further provides for minimum requirements for fuel efficiency and exceptions for law enforcement personnel, first responders and emergency personnel, and military vehicles, and other exceptions. Proposed law retains present law.

Present law provides for specifications for supplies, services, and major repairs required by the state and further provides for the duties of the commissioner of administration in promulgating rules and regulations governing such supplies, services and major repairs. Proposed law retains present law.

Present law provides for shrimp specifications by the commissioner of administration, specifically in reference to count size. Proposed law retains present law.

Present law provides for the duties of the chief procurement officer, who is charged with preparing, issuing, revising, and monitoring the use of specifications for required supplies services, and major repairs. Proposed law retains present law.

Present law provides for the chief procurement officer to establish a relationship with using agencies in the determination of needs and development of specifications and further provides he may delegate in writing to a using agency the authority to prepare and utilize its own specifications, subject to regulations. Proposed law retains present law.

Present law provides for maximum practicable competition for all specifications, that they promote overall economy for the purposes intended and encourage competition in satisfying the needs of the state, and shall not be unduly restrictive. Proposed law retains present law.

Present law specifies that bid specifications may contain an escalation clause. Proposed law retains present law, and specifies such escalation or de-escalation shall be in accordance with a recognized price index, including but not limited to the United States Bureau of Labor Statistics, Consumer Price Index and Wholesale Price Index.

Present law provides for specifications prepared by architects, engineers, designers, and draftsmen for public contracts. Proposed law retains present law.

Present law provides for purchase of prostheses, orthoses, prosthetic services, and orthotic services by a state agency from an accredited facility, provided there are no prohibitions on a licensed occupational therapist or a licensed physical therapist from practicing within his scope of practice. Present law exempts licensed optometrists, ophthalmologists, podiatrists, or orthopedists from these provisions. Proposed law retains present law.

Present law provides for the modification and termination of contracts for supplies, services, and major repairs. Present law provides for contract clauses providing for equitable adjustments in prices, time for performance, or other contract provisions including but not

limited to:

- (1) The unilateral right of the state to order in writing changes in the work within the general scope of the contract in any one or more of the following:
 - (a) Drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the state in accordance therewith;
 - (b) Method of shipment or packing; or
 - (c) Place of delivery.
- (2) The unilateral right of the state to order in writing temporary stopping of the work or delaying of performance; and
- (3) Variations between estimated quantities of work in a contract and actual quantities.

Proposed law retains present law.

Present law provides for additional contract clauses, including but not limited to the following subjects:

- (1) Liquidated damages as appropriate.
- (2) Specified excuses for delay or nonperformance.
- (3) Termination of the contract for default.
- (4) Termination of the contract in whole or in part for the convenience of the state.
- (5) Manufacturers' design drawings shall be supplied in duplicate for all state buildings, to the appropriate state agency at the conclusion of contract.

Proposed law adds the following contract clauses:

- (6) Security for contract performance.
- (7) Insurance requirements including as appropriate, but not limited to general liability, automobile coverage, workers compensation, and errors and omissions.
- (8) Beginning and ending dates of the contract.
- (9) Maximum compensation to be paid the contractor.

Present law provides for cost principles rules and regulations required. Proposed law retains present law and changes the "office of contractual review" to the "office of state purchasing".

Present law provides for legal and contractual remedies, including pre-litigation resolution of controversies. Present law provides that the chief procurement officer has the right to resolve protests. Proposed law retains present law and specifies that contracts "issued by the office of state purchasing" for the grievance process under the right to protest.

Present law provides for resolution of disputes between the director of the office of contractual review and using agencies. Proposed law retains present law and changes "contractual review" to "state procurement".

Present law provides for the authority to debar or suspend, including applicability, authority, causes for debarment, decision, notice of decision, and finality of decision. Proposed law

retains present law.

Proposed law provides for legal and contractual remedies for professional, personal, consulting, and social services contracts, combining present law which includes applicability, authority of the commissioner of administration, action on contract claims, and any other application to a claim by or controversy between the state and a contractor arising out of a contract for professional, personal, consulting, or social services.

Proposed law provides for legal and contractual remedies for other than professional, personal, consulting, and social services contracts, combining present law which includes authority to resolve contract and breach of contract controversies, applicability, authority, decision, notice of decision, finality of decision, and failure to render a timely decision.

Present law provides for solicitations or awards in violation of law, including applicability, remedies prior to an award, remedies after an award, and damages. Proposed law retains present law.

Present law provides for violations and penalties for violating the Louisiana Procurement Code or any rule or regulation promulgated by the commissioner of administration with respect to purchasing. Proposed law retains present law.

Present law provides for administrative appeals procedures, including authority of the commissioner of administration. Proposed law retains present law and changes "director of purchasing" to "chief procurement officer".

Present law provides for the secretaries of exempted departments to have the same authority and responsibilities to review and determine appeals of decisions of the chief procurement officer of his department as are vested in the commissioner of administration. Proposed law retains present law.

Present law provides for protest of solicitations or awards, including scope, time limitation on filing an appeal, decision, notice of decision, and finality of decision. Proposed law retains present law.

Present law provides for suspension or debarment proceedings, including scope, time limitation on filing an appeal, decision, notice of decision, and finality of decision. Proposed law retains present law.

Present law provides for contract and breach of contract controversies, including scope, time limitation on filing an appeal, decision, notice of decision, and finality of decision. Proposed law retains present law, but changes "director" to "state chief procurement officer".

Present law provides for actions by or against the state in connection with contracts, including solicitation and award of contracts with the Nineteenth Judicial District Court having exclusive venue over an action between the state and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. Present law further provides for debarment or suspension, actions under contracts or for breach of contract, limited finality for administrative determinations, writs or appeals and district court decisions. Proposed law retains present law.

Present law provides for commencement of actions, including protested solicitations and awards, debarments and suspension for cause, and actions under contracts or for breach of contract controversies. Proposed law retains present law.

Present law provides for delinquent payment penalties. Present law further provides for late payments to business and penalties paid by state agency. Proposed law retains present law and provides for interest on the amount due based on the judicial interest rate referenced in

R.S. 13:4202(B).

Present law provides for reporting requirements whenever a state agency is required to pay a penalty, including submission to the Joint Legislative Committee on the Budget at its next regular meeting following the payment of such a penalty a report on the actions taken to correct the problem. Proposed law retains present law.

Present law provides for disputed claims where a state agency states that payment is late due to reasonable cause, and said claim is disputed by the business owed payment, upon the request of a representative of the business the Joint Legislative Committee on the Budget shall determine whether or not the circumstances constitute "reasonable cause" as used in R.S. 39:1695. Proposed law retains present law.

Present law provides for cooperative purchasing and participation in federal General Services Administration vendor list. Proposed law retains present law and changes "purchasing" to "procurement".

Present law provides for the sale, acquisition, or use of supplies by a public procurement unit. Proposed law retains present law.

Present law provides for cooperative use of supplies or services. Proposed law retains present law.

Present law provides for joint use of facilities. Proposed law retains present law.

Present law provides for supply of personnel, information, and technical services. Proposed law retains present law.

Present law provides for use of payments received by a supplying public procurement unit. Proposed law retains present law.

Present law provides for public procurement units to be in compliance with code requirements. Proposed law retains present law.

Present law provides for the chief procurement officer to review procurement requirements. Proposed law retains present law.

Present law provides for local governing authorities purchasing from local vendors and payment of certain costs, such as shipping, preparation, and delivery of the item. Present law provides that these costs shall not exceed the state bid price by seven percent on purchases up to \$10,000; five percent on purchases over \$10,000 and up to \$20,000; and three percent on purchases over \$20,000. Proposed law retains present law.

Present law provides for contract controversies and resolutions under cooperative purchasing agreements. Proposed law retains present law.

Present law provides for assistance to small and disadvantaged businesses and women owned business; provides for definitions; procurement from small businesses, including set aside, contract procedure, responsibility of bidder or offeror, preference to disadvantaged persons, preference to women, award of contracts after unsuccessful set aside procedures, and conflict with other code provisions. Present law also provides for assistance to small businesses. Present law further provides for determination of disadvantaged businesses and annual reports submitted to the governor and the legislature by the commissioner of administration, among other services. Proposed law retains present law.

Present law provides for telecommunications procurement, including application, definitions, types of contracts permitted, and methods of procurement. Proposed law retains present law.

Directs the La. Law Institute to review all statutes which contain the name of the office of contractual review and the office of state purchasing and make all changes it deems necessary to such references.

Directs the La. Law Institute to review all statutes which refer to Chapter 16 of Subtitle III of Title 39 of the La. Revised Statutes of 1950 and make all changes it deems necessary to such references.

Effective January 1, 2015.

(Amends R.S. 39:1551-1554.1, 1556-1558, 1561-1569.1, 1571-1572, 1581, 1586-1587, 1593-1598, 1600-1608, 1611-1633, 1641-1644, 1646, 1651-1658, 1661-1662, 1671-1673, 1676-1679, 1681-1685, 1691-1692, 1695-1697, 1702-1710, 1716, 1731-1736, and 1751-1755; repeals R.S. 39:1481-1526)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Finance to the original bill

1. Technical amendments.
2. Retains definitions of "consulting service" and "contract" as found in present law.
3. Removes provision providing that procurement code shall not apply to procurements conducted by a higher education entity operating under a pilot procurement code under the LA GRAD act.
4. Retains provision in present law that contracts entered into for a period of more than three years but not more than five years shall be subject to the prior approval of the Joint Legislative Committee on the Budget.
5. Directs the La. Law Institute to review all statutes which contain the name of the office of contractual review and the office of state purchasing and make all changes it deems necessary to such references.
6. Directs the La. Law Institute to review all statutes which refer to Chapter 16 of Subtitle III of Title 39 of the La. Revised Statutes of 1950 and make all changes it deems necessary to such references.