
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.