

2016 Regular Session

HOUSE BILL NO. 1062

BY REPRESENTATIVE GARY CARTER

FISCAL CONTROLS: Requires certain contracting entities to submit information to the commissioner of administration prior to contracting with a state agency or receiving monies

1 AN ACT

2 To enact R.S. 39:366.7 and 366.8, relative to certain state contracts; to require certain
3 contracting entities to submit certain information to the commissioner of
4 administration; to provide for public access to such information; to provide for the
5 duties of the commissioner of administration relative to such submissions; to provide
6 for certain assistance by the legislative auditor relative thereto; to provide for certain
7 approval of the Joint Legislative Committee on the Budget relative thereto; to
8 provide for certain restrictions and contract prohibitions for failure to comply; and
9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 39:366.7 and 366.8 are hereby enacted to read as follows:

12 §366.7. Contracting entities; documentation; submission to the commissioner of
13 administration; contract eligibility

14 A. For purposes of this Section, the following terms shall have the following
15 meanings unless the context clearly indicates otherwise:

16 (1) "Contract" shall mean an agreement by two or more parties whereby
17 obligations are created, modified, or extinguished. "Contract" shall not include any
18 of the following:

1 (a) A waiver, agreement to suspend prescription, installment agreement,
2 settlement agreement, collateral agreement, offer in compromise, or any other
3 document filed, entered into, or executed for the assessment, collection,
4 administration, and enforcement of taxes, fees, licenses, penalties, interest, and other
5 charges due the state that have been delegated to the secretary of the Department of
6 Revenue.

7 (b) A contract entered into pursuant to R.S. 47:337.26.

8 (c) A nondisclosure agreement entered into pursuant to R.S. 44:22.

9 (d) A contract or agreement entered into by the Department of Economic
10 Development with the exception of the following:

11 (i) Contracts funded from the Louisiana Mega-Project Development Fund
12 pursuant to R.S. 51:2365.

13 (ii) Contracts funded from the Rapid Response Fund pursuant to R.S.
14 51:2361.

15 (iii) Agreements for the allocation of retention and modernization tax credits
16 pursuant to R.S. 51:2399.1 et seq.

17 (iv) Contracts for professional, personal, consulting, or social services.

18 (v) Contracts subject to the Louisiana Procurement Code.

19 (2) "Contracting entity" shall mean any person who enters or seeks to enter
20 into a contract with a state agency. "Contracting entity" shall not include any
21 governmental entity; public, private, or parochial school, college, or university; or
22 any electric power cooperative or provider or investor owned public utility that is
23 regulated by the Louisiana Public Service Commission or by the governing authority
24 of the city of New Orleans.

25 (3) "Governmental entity" shall mean the state or any political subdivision
26 of the state.

27 (4) "Person" means a natural person or legal entity other than a governmental
28 entity or an agency thereof.

1 (5) "State agency" shall have the same meaning as "agency" as defined in
2 R.S. 39:2.

3 B.(1) Prior to entering into or renewing a contract with a state agency, a
4 contracting entity shall submit information and documentation to the commissioner
5 of administration and be approved in the manner provided in this Section. The
6 contracting entity shall submit the following information to the commissioner of
7 administration:

8 (a)(i) If a legal entity, the official name and domicile address of the
9 contracting entity as reflected in documentation submitted to the secretary of state's
10 office.

11 (ii) If a natural person, the full name and physical address of the contracting
12 entity.

13 (b) If a legal entity, a complete and accurate listing of the owners of the
14 contracting entity, whether in title or beneficial, unless it is a publicly traded entity,
15 and a complete and accurate listing of the board of directors or equivalent governing
16 body, if any, and officers, if any, of the contracting entity.

17 (c) Documentation of the percentage of minority, women, veteran, and
18 Louisiana-based ownership of the contracting entity, unless it is a publicly traded
19 entity.

20 (d) Documentation certifying that all applicable federal, state, and payroll
21 taxes owed by the contracting entity have been paid and are current.

22 (e) If the contracting entity is a nonprofit organization, documentation
23 certifying that the contracting entity has filed a current Form 990, as required by the
24 Internal Revenue Code, along with a copy of its most recent Form 990.

25 (f) Information indicating the type or nature of the contract with the state
26 agency, including whether the contract was publicly bid, competitively bid,
27 competitively negotiated, or let through a noncompetitive process; the value of the
28 contract; and the name of each state agency which is or would be a party to the
29 contract.

1 (g) If the contracting entity is currently subject to the reporting requirements
2 of R.S. 24:513, documentation certifying that the contracting entity has submitted
3 the required reports to the legislative auditor.

4 (2) Notwithstanding the provisions of the introductory paragraph of
5 Paragraph (1) of this Subsection, for contracts entered into by the Department of
6 Economic Development regarding specific economic development projects, the
7 contracting entity shall submit the information required by Paragraph (1) of this
8 Subsection no later than thirty days after the execution of the contract.

9 (3) The commissioner of administration shall post all requirements of this
10 Section on the website established pursuant to R.S. 39:6.

11 C.(1) The commissioner of administration shall compile the information
12 submitted pursuant to this Section and make a determination regarding whether the
13 information is complete. The commissioner of administration shall consult with the
14 legislative auditor to ensure that the contracting entity is not on the non-compliance
15 list posted on the website of the legislative auditor. If the commissioner of
16 administration determines that the information submitted by the contracting entity
17 is complete and the contracting entity is not on the legislative auditor's non-
18 compliance list, he shall immediately place the name of the contracting entity on a
19 list of approved contracting entities that have complied with the requirements of
20 Subsection B of this Section and shall post and keep an updated list of approved
21 contracting entities on the website established pursuant to R.S. 39:6.

22 (2) The commissioner of administration shall develop recommended criteria
23 to remove a contracting entity from the list of approved contracting entities and shall
24 submit those recommendations to the Joint Legislative Committee on the Budget for
25 approval. If the recommended criteria are approved by the Joint Legislative
26 Committee on the Budget, the commissioner of administration shall utilize and post
27 the criteria on the website established pursuant to R.S. 39:6.

28 D. A contracting entity that appears on the list of approved contracting
29 entities on the website established pursuant to R.S. 39:6 shall be eligible, pursuant

1 to this Section, to request and receive state monies pursuant to a contract, subject to
2 compliance with any other applicable regulations and laws. Any contracting entity
3 which does not appear on the list of approved contracting entities on the website
4 established pursuant to R.S. 39:6 shall be ineligible to request or receive state monies
5 pursuant to a contract.

6 E.(1) All submissions of information by a contracting entity as required by
7 this Section shall be made in an electronic format designated by the commissioner
8 of administration.

9 (2) The commissioner of administration shall maintain the information
10 submitted pursuant to this Section on the website established pursuant to R.S. 39:6
11 and shall provide for the ability for the public to easily obtain information regarding
12 each contracting entity, including links to any relevant appropriation or capital outlay
13 information and other relevant contract information maintained by the commissioner
14 of administration pursuant to R.S. 39:6.

15 (3) The commissioner of administration shall work with the legislative
16 auditor as necessary to ensure compliance with this Section and R.S. 39:366.8.

17 F. Nothing in this Section shall be construed or interpreted as a limitation on
18 any power or authority granted to the attorney general pursuant to Article IV, Section
19 8 of the Constitution of Louisiana.

20 §366.8. Contracting entities requesting or receiving state monies; documentation
21 and approval; contract prohibition

22 A. No contracting entity as defined in R.S. 39:366.7 shall receive or have
23 transferred to it any monies pursuant to a contract from any agency unless the
24 contracting entity is on the list of approved contracting entities on the website
25 established pursuant to R.S. 39:6 as provided in R.S. 39:366.7.

26 B.(1) No agency shall pay monies pursuant to a contract to a contracting
27 entity as defined in R.S. 39:366.7 unless the contracting entity is on the list of
28 approved contracting entities on the website established pursuant to R.S. 39:6 as
29 provided in R.S. 39:366.7.

1 (2) Except as otherwise provided by R.S. 39:366.7(B)(2), no agency shall
 2 contract with a contracting entity as defined in R.S. 39:366.7 unless the contracting
 3 entity is on the list of approved contracting entities on the website established
 4 pursuant to R.S. 39:6 as provided in R.S. 39:366.7.

5 Section 2.(A) The requirements for contracting entities contained in Section 1 of this
 6 Act shall become effective on January 1, 2017, and shall apply to contracts and renewals of
 7 contracts executed on or after January 1, 2017. The prohibitions on contracting entities and
 8 state agencies contained in Section 1 and Section 2 of this Act shall become effective on July
 9 1, 2017. The commissioner of administration, the Joint Legislative Committee on the
 10 Budget, and the legislative auditor shall take all actions necessary to provide for the orderly
 11 implementation of this Act prior to January 1, 2017, including but not limited to notice of
 12 the requirements of this Act to each state agency.

13 (B) Except as otherwise provided in Subsection A of this Section, this Act shall
 14 become effective on July 1, 2016.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 1062 Original

2016 Regular Session

Gary Carter

Abstract: Requires a contracting entity to submit information and documents to the commissioner of administration prior to entering into a contract with a state agency. Prohibits contracting entities from receiving monies and prohibits state agencies paying monies to or entering into contracts with contracting entities unless requirements are met.

Present law (R.S. 39:6) requires the commissioner of administration to establish and maintain a website to post reports of state spending including the nature and amount of appropriations for the executive branch and each budget unit, annual salaries and total compensation of statewide elected officials and cabinet-level positions in the executive branch, and the total number in the table of organization for each budget unit. Also, requires the website to include the following information regarding state contracts: contract amount; a brief description of the purpose of the contract; the beginning and ending dates of the contract; the name of the contracting agency; the name of the contractor; and the city and state of the contractor.

Proposed law retains present law and additionally requires each contracting entity, prior to entering into or renewing a contract with a state agency, to submit the following information to the commissioner of administration in an electronic format designated by the commissioner of administration:

- (1) If a legal entity, the official name and domicile address of the contracting entity as reflected in documentation submitted to the secretary of state's office. If a natural person, the full name and address of the contracting entity.
- (2) If a legal entity, a complete and accurate listing of the owners of the contracting entity, whether in title or beneficial (unless it is publicly traded), and a complete and accurate listing of the board of directors or equivalent governing body, if any, and officers, if any, of the contracting entity.
- (3) Documentation of the percentage of minority, women, veteran, and Louisiana-based ownership of the contracting entity (unless it is publicly traded).
- (4) Documentation certifying that all applicable federal, state, and payroll taxes owed by the contracting entity have been paid and are current.
- (5) If the contracting entity is a nonprofit organization, documentation certifying that the contracting entity has filed a current Form 990 as required by the Internal Revenue Code along with a copy of its most recent Form 990.
- (6) Information indicating the type or nature of the contract with the state agency, including how the contract was let, the value of the contract, and the name of each state agency which is a party to the contract.
- (7) If the contracting entity is currently subject to the audit requirements of present law (R.S. 24:513), documentation certifying the contracting entity has submitted the required reports to the legislative auditor.

Proposed law requires the commissioner of administration to compile the information submitted and determine whether the information submitted by a contracting entity is complete. Requires the commissioner to consult with the legislative auditor to ensure that the contracting entity is not on the auditor's non-compliance list. Provides that the submission is complete and the contracting entity is not on the non-compliance list, the commissioner shall immediately place the name of the entity on the list of approved contracting entities and shall post and keep an updated list on his website. Proposed law further requires the commissioner of administration to develop recommended criteria to remove a contracting entity from the list of approved contracting entities and submit such to the Joint Legislative Committee on the Budget, and if approved, to utilize it and post it on his website.

Proposed law provides that a contracting entity which appears on the list of approved contracting entities on the commissioner of administration's website shall be eligible to request and receive state monies if in compliance with all other applicable regulations and laws and any entity which is not on the list is ineligible. Proposed law prohibits an agency from paying monies pursuant to a contract to a contracting entity unless the contracting entity is on the list of approved contracting entities on the commissioner of administration's website. Further prohibits an agency from contracting with a contracting entity, unless the entity is on the list of approved contracting entities on the commissioner of administration's website (provides a limited exception for certain contracts with the Dept. of Economic Development).

Proposed law defines "state agency", "contract", "contracting entity", "governmental entity", and "person" for its purposes. Specifically excludes governmental entities; any public, private, or parochial school, college, or university; and any electric power cooperative or provider or investor owned public utility that is regulated by the Public Service Commission (PSC) or by the governing authority of the city of New Orleans from the term "contracting entity". Specifically excludes from the term "contract" specified contracts entered into by the Dept. of Revenue and the Dept. of Economic Development.

Proposed law requires the commissioner of administration to maintain the information submitted pursuant to proposed law on his website and to provide for the ability for the public to easily obtain information regarding each contracting entity, including links to any relevant appropriation or capital outlay information and relevant contract information maintained by the commissioner of administration's website pursuant to present law (R.S. 39:6). Further requires the commissioner of administration to work with the legislative auditor as necessary to ensure compliance with proposed law. Specifies nothing in proposed law (R.S. 39:366.7) shall be construed or interpreted as a limitation on any power or authority granted to the attorney general pursuant to present constitution (Article IV, Section 8 of the Constitution of Louisiana).

Effective July 1, 2016; except provides that the requirements on contracting entities contained in proposed law shall become effective on Jan. 1, 2017, and shall apply to contracts and renewals of contracts executed on or after Jan. 1, 2017; the prohibitions on contracting entities and state agencies contained in proposed law shall become effective on July 1, 2017. Provides that the commissioner of administration, Joint Legislative Committee on the Budget, and the legislative auditor shall take all actions necessary to provide for the orderly implementation of proposed law prior to Jan. 1, 2017.

(Adds R.S. 39:366.7 and 366.8)