

2016 Regular Session

HOUSE BILL NO. 1009

BY REPRESENTATIVE HAVARD

PROCUREMENT: Requires certain public entities to provide a secure electronic interactive system for submission of competitive sealed bids and proposals as an alternative bidding option

1 AN ACT

2 To amend and reenact R.S. 39:1594(C)(5) and (D) through (I) and 1595(B)(4) and (6)  
3 through (12) and to enact R.S. 39:1594(J) and 1595(B)(13), relative to competitive  
4 sealed bids and proposals; to provide for electronic submission of bids under certain  
5 circumstances; to require a public entity to provide a secure electronic interactive  
6 system; to provide for exceptions; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 39:1594(C)(5) and (D) through (I) and 1595(B)(4) and (6) through  
9 (12) are hereby amended and reenacted and R.S. 39:1594(J) and 1595(B)(13) are hereby  
10 enacted to read as follows:

11 §1594. Competitive sealed bids

12 \* \* \*

13 C. Public notice.

14 \* \* \*

15 (5) All bids shall be advertised by a using agency through a centralized  
16 electronic interactive environment administered by the division of administration and  
17 on the electronic website accepting the electronic bids as provided in this Section.

18 The advertisement or written notice required by this Section shall contain the name

1 and address of the using agency and shall establish the specific date, time, and place  
2 by which the bids must be received.

3 D. Bid submission.

4 (1) Bids shall be submitted in writing in accordance with the requirements  
5 set forth in the invitation for bids or electronically through a uniform and secure  
6 electronic interactive environment.

7 (2) Public entities shall provide, as an additional bidding option, a uniform  
8 and secure electronic interactive system for the submission of competitive sealed  
9 bids as provided for in this Section. Any public entity providing a secure electronic  
10 interactive system shall follow the standards for the receipt of electronic bids  
11 adopted by the office of the governor, division of administration, and the office of  
12 information technology as provided for in LAC 4:XV.701. Any special condition or  
13 requirement for the submission shall be specified in the advertisement for bids  
14 required by this Section.

15 (3) The requirements of Paragraph (2) of this Subsection shall not apply to  
16 the following public entities:

17 (a) Public entities that are currently without high-speed Internet access, until  
18 high-speed Internet access becomes available.

19 (b) Any parish with a police jury form of government and a population of  
20 less than twenty thousand.

21 (c) Any city or municipality with a population of less than ten thousand.

22 (d) Any public entity that is unable to comply with the electronic bidding  
23 provisions of this Subsection without securing and expending additional funding.

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

27 E. F. Bid evaluation.

28 (1) Bids shall be evaluated based on the requirements set forth in the  
29 invitation for bids, which may include criteria to determine acceptability such as

1 inspection, testing, quality, workmanship, delivery, and suitability for a particular  
2 purpose, and criteria affecting price such as life cycle or total ownership costs. The  
3 invitation for bids shall set forth the evaluation criteria to be used. No criteria shall  
4 be used in bid evaluation that are not set forth in the invitation for bids.

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

8 (a) Location of the proposed space.

9 (b) Condition of the proposed space.

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

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

12 ~~F.~~ G. Correction or withdrawal of bids. Patent errors in bids or errors in bids  
13 supported by clear and convincing evidence may be corrected, or bids may be  
14 withdrawn, if such correction or withdrawal does not prejudice other bidders, and  
15 such actions may be taken only to the extent permitted under regulations.

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

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

24 ~~I.~~ J. Exemption.

25 (1) Purchases of goods manufactured by or services performed by  
26 individuals with severe disabilities in state-operated and state-supported sheltered  
27 workshops as defined in R.S. 39:1604.4 shall be exempt from the provisions of this  
28 Section. This exemption shall also apply to goods and services procured by purchase  
29 order directly from a central nonprofit agency contracting under R.S. 39:1604.4 to

1 assist qualified sheltered workshops; any purchase order shall be issued directly to  
2 the central nonprofit agency for all goods and services within the exemption  
3 provided under this Subsection.

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

9 §1595. Competitive sealed proposals

10 \* \* \*

11 B. Requests for proposals

12 \* \* \*

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

19 \* \* \*

20 (6)(a) Proposals shall be submitted in writing in accordance with the  
21 requirements set forth in the request for proposals or electronically through a  
22 uniform and secure electronic interactive environment.

23 (b) Public entities shall provide, as an additional option for submission of  
24 proposals, a uniform and secure electronic interactive system for the submission of  
25 competitive sealed proposals as provided for in this Section. Any public entity  
26 providing a secure electronic interactive system shall follow the standards for the  
27 receipt of electronic bids adopted by the office of the governor, division of  
28 administration, and the office of information technology as provided for in LAC

1        4:XV.701. Any special condition or requirement for the submission shall be  
2        specified in the advertisement of the request for proposals required by this Section.

3                (c) The requirements of Subparagraph (b) of this Paragraph shall not apply  
4        to the following public entities:

5                (i) Public entities that are currently without high-speed Internet access, until  
6        high-speed Internet access becomes available.

7                (ii) Any parish with a police jury form of government and a population of  
8        less than twenty thousand.

9                (iii) Any city or municipality with a population of less than ten thousand.

10               (iv) Any public entity that is unable to comply with the electronic proposal  
11        submission provisions of this Subsection without securing and expending additional  
12        funding.

13               (7) Written or oral discussions shall be conducted with all responsible  
14        proposers who submit proposals determined in writing to be reasonably susceptible  
15        of being selected for award. Discussions shall not disclose any information derived  
16        from proposals submitted by competing proposers. Discussions need not be  
17        conducted:

18               (a) If prices are fixed by law or regulation, except that consideration shall be  
19        given to competitive terms and conditions.

20               (b) If time of delivery or performance will not permit discussions.

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

26               ~~(7)(a)~~ (8)(a) Award shall be made to the responsible proposer whose proposal  
27        is determined in writing by the using agency to be the most advantageous to the state,  
28        taking into consideration review of price and the evaluation factors set forth in the  
29        request for proposals.

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

4 ~~(8)~~ (9) A request for proposals or other solicitation may be cancelled or all  
5 proposals may be rejected only if it is determined, based on reasons provided in  
6 writing, that such action is taken in the best interest of the state.

7 ~~(9)~~ (10) Each contract entered into pursuant to this Subsection shall contain  
8 as a minimum:

9 (a) Description of the work to be performed or objectives to be met, when  
10 applicable.

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

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

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

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

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

18 (g) Remedies for default.

19 (h) A statement giving the legislative auditor the authority to audit records  
20 of the individual or firm.

21 (i) Performance measurements.

22 (j) Monitoring plan.

23 ~~(10)~~(a) (11)(a) Upon entering into a contract, the using agency shall have full  
24 responsibility for the diligent administration and monitoring of the contract. The  
25 state chief procurement officer may require the using agency to report at any time  
26 on the status of any such outstanding contracts to which the using agency is a party.  
27 After completion of performance under a contract, the using agency shall evaluate  
28 contract performance and the utility of the final product. This evaluation shall be  
29 delivered to the state chief procurement officer or his designee or the director of

1 purchasing at a college or university, as applicable, within one hundred twenty days  
2 after completion of performance and shall be retained in the official contract file.

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

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

12 ~~(11)~~ (12) Requests for proposals shall not be required for "interagency  
13 contracts" as defined in R.S. 39:1556(29).

14 ~~(12)~~ (13) Notwithstanding the provisions of this Chapter, all relevant federal  
15 statutes and regulations shall be followed by the using agency in procuring services.  
16 The burden of complying with these federal statutes and regulations shall rest with  
17 the using agency and shall be documented in the contract record submitted to the  
18 office of state procurement.

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#### 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)]

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HB 1009 Engrossed

2016 Regular Session

Havard

**Abstract:** Requires the electronic submission of competitive sealed bids and proposals on a secure electronic interactive system as an alternative bidding option.

Present law requires certain public entity contracts exceeding an amount provided for in present law to be awarded through competitive sealed bidding. Further requires public notice of an invitation for bids and requires all bids to be opened publicly. Present law establishes criteria for evaluating bids and for awarding contracts.

Present law authorizes a competitive request for proposals process for procurement of certain items when the commissioner of administration approves and the state chief procurement officer determines it is in the best interest of the state. Further requires public notice of the request for proposals and establishes criteria for evaluating proposals and for awarding contracts.

Proposed law retains present law, but additionally requires a public entity to provide a secure electronic interactive system for submission of competitive sealed bids and proposals. Further requires that the system be established using the same standards adopted for secure electronic interactive systems used for receiving bids for public works, as provided for in present law.

Proposed law provides for exceptions to the requirement that a public entity provide a secure electronic interactive system for the following public entities:

- (1) Public entities that are currently without high-speed Internet access, until high-speed Internet access becomes available.
- (2) Any parish with a police jury form of government and a population of less than 20,000.
- (3) Any city or municipality with a population of less than 10,000.
- (4) Any public entity that is unable to comply with the electronic proposal submission provisions of proposed law without securing and expending additional funding.

(Amends R.S. 39:1594(C)(5) and (D)-(I) and 1595(B)(4) and (6)-(12); Adds R.S. 39:1594(J) and 1595(B)(13))