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## Title 34

### GOVERNMENT CONTRACTS, PROCUREMENT, AND PROPERTY CONTROL

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# Title 34 GOVERNMENT CONTRACTS, PROCUREMENT, AND PROPERTY CONTROL

## Part I. Purchasing

### Subpart 1. Central Purchasing Procedures

(Editor's Note: Part I, Subpart 1, Chapters 3-33 have been moved to Part V, Chapters 3-33.)

### Subpart 3. Equipment-Lease-Purchase Program

## Chapter 51. General Provisions

### §5101. Authority

A. The Division of Administration is hereby enacting the following rules and regulations in accordance with Act 758 of the 1985 Regular Session (R.S. 39:1761-1771).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 12:231 (April 1986).

### §5103. Definitions

*Applicable Purchasing Agency*—the Division of Administration except as provided in R.S. 39:1572.

*Equipment Lease Purchase Contract*—the lease purchase contract in the form approved by the State Bond Commission and the Commissioner of Administration between the state and nonprofit lessor.

*Exempt Agency*—those agencies set out at R.S. 39:1572 which are not required to procure goods and services through the Division of Administration, Office of State Purchasing.

*Lessee*—the state of Louisiana through the Division of Administration.

*Nonexempt Agency*—those agencies which are mandated by law to procure their goods and services through the Division of Administration, Office of State Purchasing.

*Nonprofit Lessor or Lessor*—public corporation or public trust organized pursuant to state law having for its beneficiary the state.

*Procurement Period*—that period of time as established by the equipment lease purchase contract in which the state may procure selected equipment under the state equipment-lease-purchase program. Any equipment not purchased within this time period will be removed from said program.

*Program*—the equipment-lease-purchase program of the state of Louisiana wherein a nonprofit lessor purchases and finances equipment to lease to the state with funds belonging to the nonprofit lessor, and upon the completion of payment of lease amounts the title of the selected equipment shall vest in the state.

*Purchase Order*—a written agreement confirming all terms, conditions, delivery date and price acquired by bids received by state purchasing or exempt agency for item(s) on the selected equipment list.

*Purchase Requisition*—a written request to procure equipment in accordance with law, rules and regulations from the selected equipment list by exempt or nonexempt agencies.

*Release Order*—a written agreement wherein a using agency purchases an item on the selected equipment list from a state contract conforming with all terms, conditions, delivery date, and prices, which shall be issued by exempt or nonexempt agencies.

*Selected Equipment*—equipment, as determined by the applicable purchasing agency, and approved by the Division of Administration, which shall be the subject of a lease-purchase contract.

*Selected Vendor*—a supplier, manufacturer, retailer, wholesaler, dealer, or other source for selected equipment which has been selected by the applicable purchasing agency pursuant to state law.

*Trustee Bank*—the bank which the nonprofit lessor selects to administer the funds, make payments to selected vendors, accept payment from the state on the equipment-lease-purchase contract and which performs all the necessary and required functions for the administration of this program.

*Using Agency*—that agency which will receive the selected equipment after it is procured and will be ultimately responsible for the lease payment under the equipment-lease-purchase contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 12:231 (April 1986).

## Chapter 53. Procurement of Equipment

### §5301. Appropriation Bills

A. An agency wishing to participate in the state equipment-lease-purchase program must provide the Division of Administration, Budget Office a list of equipment being requested. The equipment listing shall be on the standard budget request forms. These forms are to be

submitted with the agency's budget request on December 5 each year. The Budget Office will review the request and make a funding recommendation. The Budget Office shall have the sole responsibility of determining which pieces of equipment will be recommended for this program and will notify the agency in the "Notification of Appropriation Letter" if such equipment is recommended for funding through this program.

B. Equipment purchased through this program shall not be included in the agency's appropriation but shall be accounted for separately. Acquisition cost of the equipment shall be reflected in future appropriations as lease purchase payments as set forth in §5315.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 12:231 (April 1986).

**§5303. Capital Outlay Bill**

A. An agency wishing to participate in the program for Capital Outlay equipment shall provide the Division of Administration, Budget Office a list of equipment being requested. The equipment listing shall be on the standard Capital Outlay request forms. These forms are to be submitted with the agency's Capital Outlay request by November 1 of each year. The Office of the Commissioner, Office of Facility Planning and Control and the Budget Office shall review the request and recommend funding. The Office of Facility Planning and Control shall notify the using agency of the equipment funded through this program. Acquisition cost of the equipment shall be reflected in future appropriations as lease-purchase payments as set forth in §5315.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:231 (April 1986).

**§5305. Generation of Selected Equipment List**

A. The Division of Administration shall compile a list of the equipment selected for acquisition under this program. This list is to be compiled from the items of equipment recommended by the Budget Office to appear in the agency's appropriation, in either the General Appropriation Bill, Ancillary Appropriation Bill and/or the Capital Outlay Bill. The list with the approximate purchase price shall be submitted to the nonprofit lessor selected to purchase the equipment. Upon approval by the legislature, the nonprofit lessor shall take the necessary steps to generate the revenue to procure the equipment contained on said list.

B. The Division of Administration, State Budget Office, shall notify the using agency in writing when funds are available for procurement of equipment under the program when the procurement for the items were from the Appropriation Bill, or the Ancillary Appropriation Bill. For those items which were contained in the Capital Outlay Bill, the Office of Facility Planning and Control shall notify the using agency of the availability of funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:232 (April 1986).

**§5307. Substitutions to the Equipment List**

A. The Division of Administration within the procurement period, with the prior written approval of the Joint Legislative Committee on the Budget, may elect to substitute one or more other items of equipment for such selected items on the equipment list, provided the inclusion thereof shall not cause the estimated aggregate purchase price to exceed the original estimated aggregate purchase price, and any substitution made must be for equipment in the same category group.

B. The using agency requesting such a substitution shall make such request in writing to the Division of Administration prior to the termination of the procurement period stating the item, estimated cost, and economic life of the item to be substituted and the item being substituted, and the reason such substitution is being requested. The Division of Administration shall notify the using agency of its decision in writing, in a timely manner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:232 (April 1986).

**§5309. Procurement of the Selected Equipment**

A. The using agency shall be responsible for procurement of the equipment acquired under the program. Such procurement shall take place only after the using agency is notified in writing by the Division of Administration of funding by the nonprofit lessor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:232 (April 1986).

**§5311. Processing Procurement Request**

A. In procuring equipment for the program, using agencies shall adhere to all laws, executive orders, rules, regulations, policies and procedures governing the purchase of goods and services by the using agency. The procurement of equipment by the using agency shall not be construed to change, affect, increase, or in any fashion relieve the agency of the requirements of any laws, rules, executive orders, regulations, policies or procedures relative to the procurement of goods and services by the respective agency except as follows.

1. Release Order. The using agency shall issue release orders for items on applicable state contracts and comply with all requirements except as follows.

a. Include the following statement in the description portion of the release order: THIS ORDER WILL BE PAID BY LPFA FUNDS. All invoices shall be remitted to the user agency's invoice address.

b. Invoice To—shall be made out to the Louisiana Public Facility Authority, Four United Plaza, Suite 100, 8555 United Plaza, Baton Rouge, Louisiana 70809.

c. Coding Block—Delete all coding and insert in the coding block the following:

NON-FACS- (General Appropriations Act Number, and year, Capital Outlay Act Number \_\_\_\_\_, and year, or Ancillary Appropriations Act Number, and year). LPFA LEASE PURCHASE PROGRAM.

d. Distribute photo copies of number 1 white page of release order as follows:

i. State Accounting Office—Agency Services; and

ii. Office of Risk Management.

2. Purchase Requisition. Using agencies exempt from centralized purchasing through the Office of State Purchasing under R.S. 39:1572(a) or (b), shall conduct the bidding for applicable equipment under the program. Such bidding shall be in accordance with all laws, executive orders, rules, regulations, policies and procedures, including the requirements contained herein. All nonexempt using agencies must submit to the Office of State Purchasing an applicable purchase requisition which includes complete specifications for the item of equipment which complies with all purchase requisition requirements and procedures with the exception and addition of:

a. bid proposals must include a requirement that the bidder specify the manufacturer's maintenance requirements and the warranty period offered;

b. include the following statement in the description portion of the release order, THIS ORDER WILL BE PAID BY LPFA FUNDS. All invoices shall be remitted to the user agency's invoice address;

c. Invoice To—shall be made out to the Louisiana Public Facility Authority, Four United Plaza, Suite 100, 8555 United Plaza, Baton Rouge, Louisiana 70809;

d. Coding Block—delete all coding and insert in the coding block the following:

NON-FACS- \_\_\_\_\_ (General Appropriations Act Number, and year, Capital Outlay Act Number \_\_\_\_\_, and year, or Ancillary Appropriations Act Number \_\_\_\_\_, and year). LPFA LEASE PURCHASE PROGRAM.

3. Purchase Orders. The Office of State Purchasing, or the exempt agency shall only issue purchase orders after bids are opened and evaluated and it has been determined that the lowest responsive and responsible bid is not in excess of the amount approved for procurement of said equipment as reflected on the selected equipment list. In the event all bids are in excess of the estimated cost reflected on the selected equipment list an award shall not be made unless written approval is received from the Division of Administration, State Budget Office. If the expenditure of additional funds is not approved, written cancellation of the solicitation shall be processed. Such cancellation notice shall contain the reason for cancellation.

a. Purchase orders used to procure equipment under the program must comply with all purchase order requirements and procedures with the exception and addition of:

i. include the following statement in the description portion of the release order, THIS ORDER WILL BE PAID BY LPFA FUNDS. All invoices shall be remitted to the user agency's invoice address;

ii. Invoice To—shall be made out to the Louisiana Public Facility Authority, Four United Plaza, Suite 100, 8555 United Plaza, Baton Rouge, Louisiana 70809;

iii. Coding Block—Delete all coding and insert in the coding block the following:

NON-FACS- \_\_\_\_ (General Appropriations Act Number \_\_\_\_\_, and year, Capital Outlay Act Number \_\_\_\_\_, and year, or Ancillary Appropriations Act Number \_\_\_\_\_, and year). LPFA LEASE PURCHASE PROGRAM;

iv. distribute the photo copies of number 1 white page of purchase order as follows:

(a). State Accounting Office—Agency Services;

(b). Office of Risk Management.

b. All purchase orders and release orders for procurement of equipment under the program shall be remitted to the Division of Administration, Office of State Budget, except for Capital Outlay items which shall be submitted to the Office of Facility Planning and Control, by the appropriate purchasing unit of the user agency. The Division of Administration, Office of the State Budget, or the Office of Facility Planning and Control when applicable, shall complete Section 1 of the Certificate of Approval and Acceptance, evidencing approval thereof, and attach said certificate to the applicable purchase or release order.

B. The using agency shall complete Section 2 of the Certificate of Approval and Acceptance and remit said certificate to the trustee bank as required in §5313.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:232 (April 1986).

**§5313. Delivery and Acceptance of Equipment**

A. The using agency shall be responsible for accepting delivery of the equipment from the vendor and inspecting the equipment to determine if the equipment complies with the specifications and is in satisfactory condition. If an acceptance period is involved a certificate of acceptance shall not be transmitted to the trustee bank until such time that a successful acceptance period has been concluded.

B. Upon acceptance, the using agency shall transmit to the trustee bank the following.

1. Original Invoice. The original invoice must always be submitted unless it has been lost. In this case, a copy will be accepted only if it has been signed and dated and "A True Certified Copy of the Original Invoice" appears on the face of the invoice.

2. Pink Copy of Purchase or Release Order. When submitting a complete payment request (when all items on the purchase order are being paid for at one time), the number 2 pink copy must be attached. When submitting a partial payment request, a photocopy of the number 2 pink copy of the purchase order must be attached to the invoice. Submit the original number 2 pink copy when the final payment is requested.

3. Receiving Report. The receiving report must be completely filled out indicating the item(s) received, quantity of each item, date received, and the authorized receiving agent's signature. When a purchase order is paid in partials, the final payment request must show where all the merchandise has been received, highlighting the item(s) submitted for payment at that time.

4. Equipment List. Submit a copy of the page of the selected equipment list for which the item(s) apply. Highlight on the page the item(s) and amount for which payment is requested.

5. Certificate of Approval and Acceptance. The certificate must adhere to the format as set out in Attachment A to these rules and regulations. Section 1 of the certificate shall be approved by the Division of Administration, Office of the State Budget, or Office of Facility Planning and Control, whichever is applicable, and Section 2 of the certificate shall be completed by a duly authorized official of the using agency prior to being remitted to the trustee bank.

6. Title Document. When applicable, include documents to place legal title of the item or piece of equipment with the Louisiana Public Facility Authority.

C. Payment will not be processed by the trustee bank unless each of the above described documents are remitted with the invoice. All incomplete packages shall be returned to the using agency by the trustee bank.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

**§5315. Payment for Selected Equipment**

A. The trustee bank for the nonprofit lessor shall disburse the necessary funds for the purchase of the equipment. Thereafter, the Division of Administration as lessee, shall be responsible for remitting the required lease payments to the trustee bank.

B. The lease payments for items of equipment which were scheduled to be purchased by General Fund—Direct will be appropriated directly to the Division of Administration in a special supplemental appropriation.

C. The lease payments for items of equipment which were scheduled to be purchased with federal funds, dedicated funds, or self-generated funds will be appropriated to the respective using agency to be transferred to the Division of Administration for the required payments to the trustee bank.

D. The lease payments for items of equipment which were scheduled to be purchased through the Capital Outlay Bill will be appropriated directly to the special appropriation under the Division of Administration.

E. The trustee bank will provide to the Division of Administration prior to January 1 of each year, a schedule listing the amount of lease payments required for each item of equipment. The Division of Administration shall invoice the using agencies for lease payments funded by means other than the State General Fund—Direct no later than 30 days prior to the actual lease payment. For lease payments funded by the State General Fund—Direct, the Division of Administration shall issue a memo invoice to the respective using agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

**§5316. Insurance on Equipment**

A. During the term of the lease purchase contract applicable to the individual pieces of equipment, the using agency shall maintain at its expense property insurance on the equipment for the replacement value of the equipment or the remaining outstanding lease payments owed by the using agency for said equipment, whichever is greater. The policy shall contain a loss payable clause as to make losses payable to the Division of Administration as lessee, the Louisiana Public Facility Authority as owner, or such other nonprofit corporation owner as may be applicable, the letter of credit bank, and the trustee bank, as their respective interest may appear. Using agency shall contact the Division of Administration prior to insuring said equipment to ascertain the names of said beneficiaries and their respective interest.

B. The policy shall also contain any and all additional requirements of the applicable equipment lease-purchase contract, by and between the Division of Administration and the nonprofit lessor. Insurance coverage shall be requested through the Office of Risk Management and such request shall be made no later than 90 days prior to the estimated date of receiving the equipment.

C. The using agency shall furnish the Division of Administration, State Accounting Office, Accounting Services, duplicate certificates of insurance evidencing the required insurance coverage. The Division of Administration, State Accounting Office, Accounting Services, shall send the certificate of insurance to the nonprofit lessor and the trustee bank as required by the applicable lease-purchase contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

**§5318. Maintenance on Equipment**

A. The using agency shall at all times during the lease, at using agency's expense, maintain, preserve and keep the equipment in good repair and working order in full and

complete accordance with the selected vendor's specifications. The using agency shall furnish proof that the equipment is being maintained in such a fashion, upon request, to the Division of Administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

**§5320. Title to the Selected Equipment**

A. Title to the selected equipment shall be retained by the nonprofit lessor until such time as the equipment is paid for in accordance with the equipment lease-purchase contract, at which time title shall be transferred to the using agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:233 (April 1986).

**§5322. State Master Listing of Inventory**

A. The using agency through its bonded property manager shall enter and maintain the equipment on the State Master Listing of Inventory (AM014) with an acquisition code of 6 (loan) and the classification code of 5262550 (LPFA Equip.—D of A) in the Classification Code column during the term of the lease. The using agency shall use its agency number assigned for property control and shall assign the respective tag number, if applicable. The acquisition date shall be the date the using agency receives the equipment. The acquisition cost shall be the actual cost of the equipment when purchased by the trustee bank. The item of property shall be fully and properly described in the Make and Model columns so as to facilitate identification during each annual inventory of movable property by the using agency.

B. Upon transfer of title of the equipment to the state, at termination of the lease term or at any time an option to purchase is elected, the acquisition code shall be revised to 0 and the identification code of 526255 shall be changed to the proper classification code for the piece of equipment in question. All other requirements of entering and maintaining the equipment on the State Master Listing of Inventory shall be as set forth in the State Property Control rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:234 (April 1986).

**§5324. Taxes**

A. The purchase of the selected equipment by the nonprofit lessor are exempt from state and local sales tax to the same extent as the state would be if the state was making the actual procurement, all in accordance with R.S. 39:1765.B.

Attachment "A"

American Bank and Trust Company  
Four United Plaza  
8555 United Plaza Boulevard, Suite 302  
Baton Rouge, Louisiana 70809

Attention: J. Michael Brouillette  
Vice President and Trust Officer

RE: Louisiana Public Facilities Authority Revenue  
Bonds (State of Louisiana Equipment Leasing Program)  
Series 1985

Gentlemen:

**§1. TO BE COMPLETED BY THE DIVISION OF ADMINISTRATION:**

This is to advise you as Trustee for the above referenced issue of bonds that the equipment described in purchase/release order number \_\_\_\_\_, attached hereto, has been received and accepted by the applicable purchasing agency and approval is hereby given for payment of the purchase price of said equipment.

**APPROVAL:**

\_\_\_\_\_  
Authorized State Representative Date

**§2. TO BE COMPLETED BY USING AGENCY:**

Also be advised that the using agency certifies the following applicable information:

The equipment is being insured under the state's self-insurance program, or if under commercial coverage a copy of the binder is attached.

The equipment shall be located in the parish of \_\_\_\_\_  
The serial number (if available) is  
No. \_\_\_\_\_ The state's inventory control number (if  
applicable) assigned by the using agency is \_\_\_\_\_

Also attached are the title documents necessary to place legal title in the Louisiana Public Facilities Authority to the Item of Equipment which is to be purchased upon payment to the vendor of the purchase price thereof.

Agency Comments \_\_\_\_\_

**ACCEPTANCE:**

\_\_\_\_\_  
Authorized Using Agency Official Date

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 12:234 (April 1986).

**Chapter 55. Procedures for  
Information Technology Hardware,  
Software, Software Maintenance and  
Support Services, and Hardware  
Maintenance**

**§5501. General**

A. This Chapter describes the procedures that all agencies in the Executive Branch must follow for the procurement of Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance. Situations not covered by these rules may be found in the general statutes and rules and regulations of the Procurement Code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 29:2378 (November 2003).

**§5503. Procedures for Procurement of Information Technology Hardware**

A. This Section describes the information that all agencies in the Executive Branch must furnish when seeking approval of the Office of State Purchasing for the procurement of information technology hardware including installation with a cost exceeding the agency's delegated purchasing authority. Information technology hardware, for the purpose of this Section, is defined as any electronic data processing device including but not limited to central processing units, memory, peripheral devices, unit record equipment, data communications equipment, mini-computers and peripherals, graphics equipment including digitizers and plotters, optical scanning equipment, and shared logic word processing equipment, printers, multifunctional devices, and scanners. Equipment that does not fit into any of the above categories will be handled on a case-by-case basis and the agency must contact the Office of State Purchasing for a ruling on the justification required.

B. This Section does not apply to acquisitions from State Brand Name Contracts. Terms and conditions for Brand Name Contracts may contain additional procedures that an agency must follow. However, an approved IT-10 is needed for all IT procurements in excess of \$100,000.

C.1. For requests not covered by an existing contract, the following should be provided to the Office of State Purchasing to avoid delays in approval:

- a. a general description of the mission to be accomplished using the requested equipment;
- b. a detailed list of the proposed equipment, including quantities and estimated costs for lease, purchase, rental, maintenance, etc.;
- c. an approved IT-10 form with all requests for procurements in excess of \$100,000.

2. The Office of State Purchasing may require additional information or justification, as it deems appropriate for any particular procurement request.

D. Each agency contemplating a procurement greater than the agency's delegated purchasing authority shall, upon definition of the preliminary functional requirements, submit a draft solicitation to the Office of State Purchasing. If the procurement exceeds \$100,000, the Office of State Purchasing shall schedule a Procurement Support Team (PST) meeting. The procurement support team participation may include assistance in finalizing the solicitation. The procurement support team participation must include, as a minimum, assistance in evaluation of bids or proposals and negotiations of contract terms (if applicable).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2378 (November 2003).

**§5505. Procedures for the Procurement of Information Technology Software**

A. This Section will describe the procedures that all agencies in the executive branch must follow when seeking to acquire information technology software.

B. Information technology software, for the purpose of this Section is defined as any program or series of programs offered commercially to computer installations.

C. If the cost of the information technology software including modifications, installation integration, training for the total project plus maintenance and support services, for a 12 month period to be acquired is under \$100,000, it is deemed to have the advance approval of the Office of State Purchasing and shall not be for a price greater than the vendor's published price.

1. The agency must include in the procurement file a list of all known information technology software packages investigated which claim to accomplish the required task. Name each investigated, its total cost, and the rationale for selection or rejection.

2. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology software (including modifications, installation integration, training, etc.), with a total cost greater than \$100,000 whenever possible.

1. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology software with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

2. Information technology software procurements of \$100,000 or greater will be competitively obtained through and ITB, RFP or through an OIT pricing agreement administered by the Office of State Purchasing.

3. Information technology software procurements of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

4. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

E. For the purposes of this Section, software includes software as a service (SaaS). Software as a service means access to a computer software program that is owned, delivered, and managed remotely by an external service provider on a pay-per-use basis whereby the software is a business application based on a single set of common code



and data definitions and the application data is owned and updated by the state or state entity. A formally signed service level agreement (SLA) is required as part of every SaaS engagement with use of pre-printed external service provider SLA's being prohibited.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:199(C) and (D).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2378 (November 2003), LR 39:32710 (December 2013).

#### **§5507. Procedures for the Procurement of Information Technology Hardware Maintenance**

A. This Section will describe the procedures that all agencies in the executive branch must follow when seeking to acquire information technology hardware maintenance.

B. For purposes of this Section, information technology hardware maintenance consists of remedial maintenance, preventative maintenance, replacement parts, labor and engineering changes necessary to keep information technology hardware in good working condition.

C. Procurements for information technology hardware maintenance under \$100,000 may be handled non-competitively and are deemed to have the advance approval from the Office of State Purchasing and shall not be for a price greater than the vendor's published price. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology hardware maintenance with a total cost greater than \$100,000 whenever possible.

1. Information technology hardware maintenance over \$100,000 may be procured non-competitively from the original equipment manufacturer (OEM) if the maintenance is for mission critical equipment (such as mainframes, mainframe peripherals, enterprise servers, or network backbone components). The agency must submit a letter of justification signed by the head of the agency or his designee to the Office of State Purchasing.

2. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology hardware maintenance with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

3. Information technology hardware maintenance not covered in Paragraph D.1 must be competitively procured through the Consulting and Support Services Agreement (CSSA), Invitation to Bid (ITB), or request for proposal (RFP) process.

4. Information technology hardware maintenance of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

5. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:199.C and D.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2379 (November 2003).

#### **§5509. Procedures for the Procurement of Information Technology Software Maintenance**

A. This Section will describe the procedures that all agencies in the Executive Branch must follow when seeking to acquire information technology software maintenance.

B. For the purposes of this Section, information technology software maintenance includes on-site, telephone and/or on-line troubleshooting, installation assistance, basic usability assistance, etc. Information technology software products and technologies to be covered include operating systems, application software and systems, application software, and systems and network management software, tools and utilities.

C. Procurements for information technology software maintenance under \$100,000 may be handled non-competitively and are deemed to have the advance approval from the Office of State Purchasing and shall not be for a price greater than the vendor's published price. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. It is the state's intent to compete information technology software maintenance with a total cost greater than \$100,000 whenever possible.

1. Any agency or entity that does not use the competitive process or an established standard or statewide agreement for procurement of information technology software maintenance with a total cost in excess of \$100,000 must fully justify its request to the Office of Information Technology and obtain concurrence prior to submission to the Office of State Purchasing for further processing.

2. Information technology software maintenance in which the software vendor is the only authorized entity to provide product fixes, patches, updates, or upgrades can continue to be handled non-competitively in accordance with R.S. 39:199.D. A letter from the information technology software vendor substantiating the above information is required.

3. Any other type of information technology software maintenance not covered in Paragraphs D.1 or D.2 must be competitively procured through the Consulting and Support Services Agreement (CSSA), Invitation to Bid (ITB) or request for proposal (RFP) process.

4. Information technology software maintenance with a cost of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

5. Procurements shall not be artificially divided to circumvent the \$100,000 threshold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2379 (November 2003).

**§5511. Procedures for the Procurement of Information Technology Software Support Services**

A. This Section will describe the procedures that all agencies in the executive branch must follow when seeking to acquire information technology software support services.

B. For purposes of this Section, information technology software support services include capacity planning, performance analysis, on-site troubleshooting, custom modifications, etc.

C. Procurements for information technology software support services under \$50,000 may be handled non-competitively and are deemed to have the advance approval of the Office of State Purchasing. The Office of State Purchasing will assist any agency in the negotiation of contract agreements and any other procurement related functions.

D. Procurements shall not be artificially divided to circumvent the \$50,000 threshold.

E. Information technology software support services of \$50,000 or greater must be procured using the Consulting and Support Services Agreement (CSSA) or the request for proposal (RFP) process in accordance with R.S. 39:1481 et seq. (Office of Contractual Review).

F. Information technology software support services of \$100,000 or greater must have been included in an approved IT-10 from the Office of Information Technology.

G. It is the state's intent to compete information technology software support services with a total cost of \$50,000 or greater whenever possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2379 (November 2003).

**§5513. Procurement Support Team Operations**

**A. Procurement Support Team Composition**

1. A procurement support team (PST) shall be formed in accordance with the procedures defined herein for every information technology contract in an amount \$100,000 or greater for the procurement of information technology

hardware, hardware maintenance, software, software maintenance, and software support services. All contracts shall be subject to the review and approval of other agencies as required by statute or regulations. Purchase release orders issued pursuant to a direct order contract or a brand name contract shall not constitute a contract for purposes of these procedures. The formation of a procurement support team shall be accomplished by the Office of State Purchasing and shall include one or more representatives from each of the following: the Office of State Purchasing; the Legislative Legal Staff; the using agency initiating the procurement action; and the Legislative Fiscal Office. The Office of Information Technology will provide technical staff to assist the Office of State Purchasing and the procurement support team.

2. At least two members of each procurement support team shall have formal training in contract negotiations. The Legislative Fiscal Officer, the speaker of the House of Representatives and the president of the Senate (jointly), and the head of the Purchasing Agency (or his designee), shall each designate in writing to the Office of State Purchasing the names of a primary and an alternate team member. It shall be the responsibility of each named agency to keep the Office of State Purchasing advised of any changes in designated individuals.

3. The individual agencies represented on procurement support teams will have the following primary responsibilities. These responsibilities may be enlarged or modified as appropriate to each given situation by the procurement support team leader with the concurrence of the Office of State Purchasing.

a. Legislative Fiscal Office. The Legislative Fiscal Office shall have the primary responsibility for the analysis of solicitations and review of funding procedures and certification of specific appropriation for the purpose prior to the final contract award.

b. Legislative Legal Staff. The Legislative Legal Staff shall have the primary responsibility for developing the legal terms and conditions of draft contracts, evaluating the legal impact of substantive terms and conditions, review to ensure compliance with statutes and regulations, and legal negotiations.

c. Office of State Purchasing. The Office of State Purchasing shall have primary responsibility for insuring compliance with procurement procedures and regulations, the drafting of solicitations, and the evaluation of bids and proposals.

d. The Procuring Agency. The procuring agency shall have primary responsibility for the determination of compliance of bids or proposals with the functional requirements, and for all management decisions at each phase of the procurement process.

4. The Office of Information Technology shall provide technical staff to assist the Office of State Purchasing and the procurement support team. They shall provide advice and support in the area of information technology

techniques, negotiation techniques, developing the structure and content of solicitations, and evaluation of bids or proposals, as requested by the Office of State Purchasing.

B. Procurement Support Team Involvement. The procurement support team participation may include assistance in finalizing the solicitation. Procurement support team participation must include, as a minimum, assistance in evaluation of bids and proposals, and negotiations of contract terms (if applicable). Assistance shall consist of reviewing the evaluation process and recommendation of award. Procurements requiring this level of support will involve the active participation of all of the members of the procurement support team as a unit.

1. The Office of State Purchasing, pursuant to the guidelines established therein, shall be responsible for convening a procurement support team if the procurement is \$100,000 or greater. The Office of State Purchasing will designate the team leader.

2. At least four members, one from each office designated, must be present to constitute a quorum.

3. There will be at least one meeting during the procurement process. Each member of the procurement support team must assist in the evaluation of bids or proposals, and negotiation of contracts (if applicable). The procurement support team will make written evaluations and recommendations as a group; these will not supplant written individual agency approvals as required by statute or regulations. This review must be indicated by the signature of each team member on the procurement support team review form, which is maintained by the Office of State Purchasing. In the event a team member indicates acceptance or concurrence of any activity, and the team member's agency subsequently refuses to approve the process pursuant to its statutorily required review, the reviewing agency and the individual team member must submit to the team leader written reasons for their actions. The team leader shall file these documents in the final activity file.

4. In situations where formal negotiations with prospective vendors or a successful bidder or proposer are appropriate, such negotiations will be conducted by a negotiation team appointed by the procurement support team leader. One member of the negotiating team will be designated as lead negotiator. The results of such negotiations will, of course, be subject to all statutorily required reviews. The lead negotiator and at least one other member of the negotiating team should have formal training in contract negotiations.

5. After the procurement process has been completed, one copy of the documentation related to the procurement will be retained on file by the Office of State Purchasing.

6. The Office of State Purchasing shall have final statutory approval.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:199.C and D.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 10:77 (February 1984), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), LR 29:2380 (November 2003).

**§5515. Pre-Printed Contract Forms; Clauses; Approval**

A. In accordance with the provisions of R.S. 39:200(F) the director of purchasing may approve a vendor's pre-printed contract form in accordance with the following requirements.

B. All pre-printed contract forms submitted for approval shall, at a minimum, contain the following provisions:

1. the contract shall be governed by the laws of the state of Louisiana;

2. 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;

3. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance;

4. variations between estimated quantities of work in a contract and actual quantities;

5. termination of the contract for vendor's default;

6. termination of the contract in whole or in part for the convenience of the state;

7. the vendor agrees continuation of contracts in effect during more than one fiscal year is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

C. If applicable, the following provisions may be included as negotiated by the parties and approved by the director of purchasing:

1. liquidated damages as appropriate;

2. specified excuses for delay or nonperformance;

3. the vendor shall agree to indemnify the state and hold the state harmless

4. the vendor shall agree to secure and maintain insurance;

D. The director of purchasing may approve a vendor's pre-printed contract form with the participation of the procurement support team.

E. A pre-printed contract form that has been approved shall display the following language adjacent to its title: "This contract form has been approved by the director of state purchasing."

F. The pre-printed contract form shall also display in the form footer the contract approval date and the contract version number as provided by the director of state purchasing.

G. In the event any contractor fails to fulfill or comply with the terms of any contract, the director of purchasing may rescind approval of the vendor's pre-printed contract form.

H. Only those terms and conditions contained in the pre-printed form approved by the director of purchasing shall have any effect between the parties and any reference to or inclusion of other terms and conditions contained in other documents or websites is prohibited.

I. Any alterations or changes to the terms and conditions of the approved pre-printed form are prohibited and will automatically void the approval of the pre-printed form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 39:1280 (May 2013).

**§5517. Master Agreements; Clauses; Approval**

A. R.S. 39:198(E) authorizes the state director of purchasing to enter into master agreements with vendors with which the state conducts substantial business over a period of time and sets forth the uses to which such master agreements may be put. Master agreements may be approved in accordance with the following requirements.

B. Master agreements submitted for approval shall, at a minimum, contain the following provisions:

1. any contract based on the master agreement shall be governed by the laws of the state of Louisiana;

2. 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;

3. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance;

4. variations between estimated quantities of work in a contract and actual quantities;

5. liquidated damages as appropriate;

6. specified excuses for delay or nonperformance;

7. termination of the contract for vendor's default;

8. termination of the contract in whole or in part for the convenience of the state;

9. the vendor shall agree to indemnify the state and hold the state harmless without limitation of liability;

10. the vendor shall agree to secure and maintain insurance in such types and amounts as approved by the director of state purchasing;

11. the vendor agrees continuation of contracts in effect during more than one fiscal year is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract or if such appropriation is reduced by the veto of the governor or by any means provided in the appropriations act or Title 39 of the *Louisiana Revised Statutes* of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated;

12. any changes mandated by state or federal law, whether legislative or judicial, will be incorporated into the master agreement; however, if such a change is not acceptable to either party, the affected term or terms of the contract shall be renegotiated and, if agreement cannot be reached, shall be stricken from the contract.

C. The director of purchasing may approve a master agreement only after the agreement has been negotiated with the vendor by the procurement support team.

D. In the event any vendor fails to fulfill or comply with the terms of any contract, the director of purchasing may rescind approval of the vendor's master agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 39:309 (February 2013).

**§5519. Procurement of Consulting Services as Related Services**

A. R.S. 39:197(1) allows for the procurement of consulting services, as otherwise subject to the provisions of chapter 16 of title 39 of the *Louisiana Revised Statutes*, which services are ancillary to the procurement of data processing hardware or software. Such ancillary consulting services are to be considered as "related services" authorized to be procured in accordance with the provisions of chapter 17 of title 39 of the *Louisiana Revised Statutes* only when

the services are included as a part of the acquisition of the data processing hardware or software.

B. For purposes of this Section, such related services are limited to the lesser of 20 percent of the overall procurement amount or \$250,000.

C. Inclusion of consulting services as related services should include, at a minimum:

1. a scope of work that clearly and completely identifies the services to be performed;

2. a written plan to monitor the performance of the services that, at a minimum, includes the specific objectives or deliverables associated with the proposed service and monitoring plan; methods to be used to measure and determine service performance; a periodic review of interim reports or other indicia of performance performed to date and, the assignment of specific using agency personnel to a monitoring and liaison function;

3. the maximum amount of compensation to be paid for the services;

4. a provision that payment for the services will only be made upon successful completion of the scope of work for the services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:197(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 39:310 (February 2013).

**§5521. Procurement of Information Technology Consulting Services, Information Consulting Systems, Information Technology Services, Information Technology Equipment Using Multiple Awards**

A. A multiple award is an award of an indefinite quantity contract for one or more information technology (IT) consulting services, IT systems, IT services, IT equipment or similar service to more than one contractor through the request for proposals or invitation to bid process. A multiple award may be in the state's best interest when award to two or more contractors is needed for adequate delivery, service, or availability. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the state's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business or avoiding the resolution of tie proposals. Any such awards shall be limited to the least number of IT consultants, IT systems, IT services, or IT equipment necessary to meet the valid requirements of the Office of Technology Services. It shall be mandatory that the requirements of the Office of Technology Services that can be met under the contract be obtained in accordance with the contract, provided, that:

1. the state shall reserve the right to take solicitations separately if a particular service requirement arises which exceeds the scope specified in the contract;

2. the state shall reserve the right to take solicitations separately if the contract will not meet a nonrecurring or special need of the state;

3. the state reserves the right to use its own personnel to provide similar services when such services are available and satisfy the Office of Technology Services need.

B. Where multiple award contracts exist for IT consulting services, IT systems, IT services, IT equipment or similar service, the Office of Technology Services may utilize any of the following procedures prior to issuing task orders.

1. The Office of Technology Services may prepare a request for response that may include, if applicable, the following (A request for response is an informal process used to seek additional information to assist the state chief information officer (CIO) make a best value determination.):

a. a performance-based statement of work that includes such things as:

i. the work to be performed;

ii. location of the work;

iii. period of performance;

iv. deliverable schedule;

v. applicable performance standards;

vi. acceptance criteria;

vii. any special requirements (e.g. security clearances, special knowledge, etc.);

viii. the products or services required using generic description of products or services whenever possible;

b. if necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks;

c. a request for submittal of a firm-fixed total price for the product and/or service which are no higher than prices in the multiple award contract;

d. submit the request for response to at least three multiple award contract holders, whenever available, offering functionally equivalent products and/or services that will meet the Office of Technology Services' needs.

2. The CIO may issue task orders by allowing selected awardees to give oral presentations in lieu of written response to a request for response.

3. The CIO need not contact awardees prior to issuing an order if the CIO has information, such as price sheets or catalogs available to determine the best value for the state.

C. Evaluation and Selection of the Contractor to Receive the Task Order

1. In making a best value determination, the CIO shall place the task order(s) with the contractor(s) that meet(s) the Office of Technology Services' needs. The Office of

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Technology Services should give preference (where allowable) to small entrepreneurship or small and emerging businesses when two or more contractors can provide the products and/or services at the same firm-fixed total price.

2. A best value determination is one that considers, in addition to underlying contract pricing, such factors as:

- a. probable life of the product selected;
- b. technical qualifications;
- c. delivery terms;
- d. warranty;
- e. maintenance availability;
- f. administrative costs;
- g. compatibility of a product within the user's environment;
- h. user's familiarity with the item or service; and
- i. qualifications and experience of proposed staff.

3. The Office of Technology Services shall document in the procurement file the evaluation of the contractors' response that formed the basis for the selection. The documentation shall identify the contractor from which the product and/or services were purchased, the products and/or services purchased, and the cost of the resulting order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:869 (June 2016).

**§5523. Intent to Use**

A. If a multiple award is anticipated prior to issuing a solicitation, the method of award should be stated in the solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:870 (June 2016).

**§5525. Determination Required**

A. The chief information officer shall make a written determination setting forth the reasons for a multiple award, which shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:870 (June 2016).

## Title 34

# GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

## Part III. Facility Planning and Control

### Chapter 1. Capital Improvement Projects

#### Subchapter A. Designer Contracts

##### §101. Condition of the Contract

A. The following rules shall be a part and condition of the contract between owner and designer, herein referred to as the "contract."

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1410.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006), LR 46:1566 (November 2020).

##### §103. Definitions

*Available Funds for Construction (AFC)*—the budgeted amount of funds, established by the owner prior to bidding, available for awarding the construction contract(s).

*Consultants*—individuals or organizations engaged by the owner or the designer to provide professional consultant services complementing or supplementing the designer's services. As applicable, consultants shall be licensed to practice in accordance with laws of the state of Louisiana. The owner shall engage or have the designer furnish as part of the designer's services the services of consultants, which are deemed necessary for the project. Typical consultants are architects, landscape architects, civil, structural, mechanical, and electrical engineers, and others required to provide the services required or implied by the scope of the project, compensation for which is included in designer's fee for basic services. Special consultants are those, other than the above, which the owner may approve to perform special services and for which compensation will be in accordance with §109.C.

*Designer*—a person or organization professionally qualified and licensed to practice architecture, engineering, or landscape architecture in accordance with the laws of the state of Louisiana, who is to perform basic services for the project, as named in the contract.

*Owner*—the State of Louisiana, Office of the Governor, Division of Administration, the responsibilities of which shall be exercised by the Commissioner of Administration or the designated representative, the Office of Facility Planning and Control (FP and C).

*Project*—a Capital Outlay Project for which funds have been appropriated or other public government project for which funds are available, as specifically defined in the

program attached to and stated in the contract between owner and designer.

*Standard of Care*—the designer and their professional consultants shall perform their services consistent with the skill and care ordinarily provided by similar professionals practicing in the same or similar locality under the same or similar circumstances.

*User Agency*—the agency, department, division, board or institution which will be the principal user of and for which the facility is being designed and constructed, as named in the contract. Where reference is made hereinafter to the *user agency*, it will refer to both the "umbrella" and "local" entities of the department, board, agency, division, etc. (Examples: The LSU Board of Supervisors and the Department of Health are "umbrella" using agencies and "local" using agencies such as LSU-Alexandria and Pinecrest Support and Services Center are under their respective jurisdiction and administration).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1410.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:473 (September 1982), amended LR 11:849 (September 1985), LR 31:1076 (May 2005), LR 46:1567 (November 2020).

##### §107. Available Funds for Construction (AFC)

A. The AFC, as defined by §103, shall be stated in the contract between owner and designer.

B. The designer shall be responsible for designing the project so that the base bid does not exceed the AFC. The use of any alternate bids must be pre-approved by the owner. The owner will take into consideration abnormal escalation in construction costs that can be substantiated prior to bid.

C.1. At the completion of the program completion phase the designer shall make recommendations regarding whether the AFC is realistic for the project when compared with the completed program. At this point, or at any other submissions of the project's statement of probable cost (construction cost estimate) by the designer, if such statement of probable cost is in excess of the AFC, the owner shall have the option to:

a. instruct the user agency to collaborate with the designer to revise the program so that the anticipated base bid will be within the AFC; such program revisions shall be done without additional compensation to the designer, except for extensive program revisions authorized in writing by the owner;

b. provide additional funds to increase the AFC; or

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c. abandon or suspend the project.

2. Any adjustment in the AFC, approved in writing by the owner during design shall include an appropriate adjustment in the fee. The fee shall not be modified at any time after advertising for bids, except as allowed per §109.A.1.d and §109.A.3.

D.1. When the lowest bona fide base bid exceeds the AFC, the owner shall have the option to:

a. have the designer, without additional compensation, modify the construction documents as required in order to rebid the project to be within the AFC;

b. provide additional funds to award the construction contract without adjustment of the fee if the project scope remains the same; or

c. abandon the project.

2. The lowest bona fide base bid is defined as the lowest base bid submitted by a responsible and responsive bidder, not withdrawn in accordance with R.S. 38:2214, and which complies in every respect with the bidding requirements of the contract documents.

E. When the lowest bona fide base bid is less than 90 percent of the AFC and the designer has reduced the original program scope to reduce costs, the owner shall have the option to have the designer, without additional compensation, modify the construction documents to restore elements of the program that were eliminated to reduce cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:1076 (May 2005), LR 32:2047 (November 2006), LR 46:1567 (November 2020).

**§109. Compensation**

A. The fee for basic services to be paid to the designer shall be as follows.

1. The fee for basic services, shall be calculated as the product of the fee percentage, adjusted for inflation, and the Available Funds for Construction (AFC), adjusted for inflation. The fee percentage shall be computed by the formula.

$$\text{FEE PERCENTAGE} = \frac{46.10}{\text{Log (AFC (1975 BCI/Current BCI))}}$$

The fee shall be computed by the following formula:

$$\text{FEE} = \text{FEE PERCENTAGE (AFC(1975 BCI/Current BCI)(Current CPI/1975 CPI)}$$

Where "BCI" = Building Cost Index as published by Engineering News Record and "CPI" = Consumer Price Index as published by U.S. Department of Labor, Bureau of Labor Statistics. Since the annual averages computed in December of the BCI and CPI are used, fee calculations are based upon the most current calendar year average of both indices.

a. Should fee modifications occur during the course of the project, the BCI and CPI index factors used to calculate the original fee shall be used.

b. If a project, through no fault of the designer, is inactive for more than 24 months, the current BCI and CPI index factors shall be applied to the project's remaining phases once re-activated, unless the new index factors reduce the fee. In that case, the index factors shall not be revised.

c. Multiple construction contracts. If the owner determines that the best interest of the project is served by bidding and constructing the project under two or more separate construction contracts, the design fee shall be established for each portion by application of the formula and modification factors herein.

d. Fee adjustments for alternates are as follows.

i. If an alternate, pre-approved by the owner, has a cost estimate within the AFC, the designer's compensation for said alternate is already included within the designer's base fee.

ii. If an alternate, pre-approved by the owner, has a cost estimate in excess of the AFC, the designer shall receive compensation for the value above the AFC for that portion of the phase completed as described in §111.A.1.a. (by increasing the AFC for designer fee purposes). If an alternate is based on a substitute system requiring additional design effort, then the total estimated cost shall be used in determining the AFC for design fee purposes for phases completed. If the scope contained in that alternate is not awarded at bid, but later included as a change order and the designer compensated per §111.A.1.a, the compensation shall be adjusted such that the designer shall not be compensated twice for the same work.

iii. If the lowest bona fide base bid, is less than 90 percent of the AFC, refer to §107.E regarding any additional compensation for alternates and change orders.

2. Modification Factors. Prior to selection, the owner shall have the discretion to evaluate the scope, function, complexity, image, and context of the project and apply modification factors listed below to the designer's compensation for basic services.

a. Complexity factor shall be based upon the complexity of the project scope as determined by the owner.

i. Simple (0.85 of basic compensation), to be determined by owner—single use projects generally of utilitarian character without complication or detail, such as pre-engineered buildings. Buildings with a high degree of repetition may be included in this classification.

ii. Average (1.00 of basic compensation), to be determined by owner—projects of conventional character requiring normal attention to design and detail, including complete mechanical and electrical systems.

iii. Medium complex (1.1 of basic compensation), to be determined by owner—projects of special character



and/or function requiring an above average level of skill in design and containing more than ordinary requirements of scientific, mechanical and electrical equipment.

iv. Complex (1.15 of basic compensation), to be determined by owner—projects of highly specialized design character and function requiring a high degree of design skill and requiring extensive, or special scientific, electronic, mechanical and electrical equipment and design expertise.

b. A renovation factor of up to 1.25 of applied fees, to be established and set by the owner for each individual project, will be multiplied by the fee percentage to arrive at the fee for renovation projects, when determined by the owner to be justified. This fee shall include verifying existing conditions and/or any other additional work incidental to renovation projects. The renovation factor will be set in proportion to additional work anticipated by the owner. The renovation factor will not be applied to re-roofing projects, except in unusual circumstances.

c. An adjustment factor shall be applied, by the owner, based on the design phases required in relation to typical basic services as described in §111. If all design phases are required, the adjustment factor shall be 1.0. If design phases, based on those described in §111, are not required due to previous work, or for other reasons as determined by the owner, eliminated or reduced, then this factor may be reduced below 1.0, prior to designer selection, or negotiated with the designer if an existing contract is amended. If an adjustment factor less than 1.0 is applied, the reduction in total designer fee shall not be applied to each phase, but rather to reflect the phases reduced or eliminated, such that the designer earns the proper fee for work performed at each phase.

3. Change Orders. Preparation of documents required for change orders for any cause shall not be started without owner's written approval. Fee adjustments for change orders shall be as follows.

a. Routine change orders, which involve a small amount of effort, will not involve extra compensation. The designer shall notify and obtain the owner's prior written approval before preparing a change order for which he/she feels is due extra compensation for the extra effort involved. At the construction close-out phase, all such change orders will be reviewed by the owner and the designer's contract will be amended to reflect extra compensation for the change orders which the owner has determined merit additional fee. The fee will be computed by increasing the AFC (for designer fee purposes) by the amount of change orders that qualify for additional fee as described above and recalculating the fee.

b. Designer shall prepare change orders caused by errors or omissions of the designer without additional compensation. The designer shall be financially responsible for costs that result from errors. The owner shall participate in the cost of omissions to the extent of the value received by the owner. The designer will be notified of any claims of error or omission designations made to a change order prior to execution by the owner.

*Errors*—changes to the work caused by the designer for which the contractor is entitled to payment but for which the owner receives no value. Typically, these involve work that has been constructed and must be demolished and replaced. Therefore, where the owner receives no value, the designer is responsible for 100 percent of the cost.

*Omissions*—changes to the work caused by the designer for which the contractor is entitled to payment for which the owner receives value. Typically, these involve work that must be added to contract with little or no change to the work that has been constructed.

B. Payment to the designer for additional services shall be made on the basis of a detailed scope of work, a proposal from the designer, and negotiations between the owner and designer. All additional services must be pre-approved in writing by the owner prior to start.

*Direct Personnel Expense*—if referenced as part of the designer's proposal, the normal, straight-time direct salaries of all the designer's personnel engaged in the project (technical but not clerical). This shall also include the direct salaries of designer's consultants involved in the additional services.

C. Reimbursable expenses are in addition to the compensation for basic and additional services and include actual expenditures made by the designer, his/her employees or professional consultants in the interest of the project as directed and authorized by the owner in writing prior to their occurrence.

1. The owner shall reimburse the designer the direct cost for all geotechnical investigations, topographic surveys, and other related information, prior approved by the owner and necessary for the design of the project.

2. The designer shall pay for the cost of printing and distribution of construction documents for the owner's and user agency's use, for regulatory agencies' approvals, and as required for the designer and consultant's own use. The owner will reimburse the designer the direct cost of printing and distribution of all other sets of construction documents, over and above the amount of the deposits on same retained by the designer. This will include necessary sets for the contractor to construct the project. If the designer proposes and the owner agrees to an alternative form of document distribution, such as an electronic format, the designer will be reimbursed the direct cost of this method in lieu of the reimbursement described above. The intent remains the same for the designer to bear costs for internal and consultant use.

D. Designer will be paid for prolonged contract administration and observation of construction should the contract time, as may be extended, be exceeded due to no fault of the designer and liquidated damages are required per the contract documents. The amount of such payment shall be computed by dividing 20 percent of the basic total fee by the number of days' construction time, as extended, and multiplying by the number of days of liquidated damages as required by the contract documents.

E. When the designer exceeds the established time schedule, including any extensions of time approved by the owner, unless the extension is due to actions by the owner or user, then the amount of the fee shall be reduced by an amount, as liquidated damages, as stated in the advertisement for designer's selection, for each calendar day past the original or extended date that the designer has not delivered all construction documents to the owner sufficiently complete, coordinated and ready to bid. Completeness of the construction document phase will be determined by the owner as described in §111.A.2.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1410.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:850 (September 1985), LR 31:1077 (May 2005), LR 32:2047 (November 2006), LR 46:1568 (November 2020).

**§111. Payments to the Designer**

A. Payments on account of designer's services shall be made as follows.

1. Basic Services

a. Upon satisfactory completion of all basic services for each phase, submission of all documents to the owner and upon the owner's and user's approval of same, which approval shall not be arbitrarily withheld, payment for the following phases of the designer's services will be made in one lump sum (with the exception of the construction documents phase as described below in Paragraph 2); such payments shall be up to the following percentages of the designer's fixed fee, either interim or final, as applicable, which percentages are cumulative.

Program completion phase	5 percent
Schematic design phase	15 percent
Design development phase	35 percent
Construction documents phase	60 percent
Bidding and contract phase	65 percent

b. Monthly in proportion to the contractor's certificate for payment for the following phase: Construction phase—95 percent.

c. Upon satisfactory completion and furnishing required documents to the owner for the following phase: Construction close-out phase—100 percent.

i. One percent of the designer's fee up to \$2,000 maximum may be withheld from construction close-out payment until completion of the one-year warranty inspection period.

2. A partial payment for the construction documents phase shall be made when the designer has completed 100 percent of the construction documents and has submitted these to the owner, the user agency, and the other required statutory agencies and the owner determines by inventory check and conformity that all required documents have been submitted, and are sufficiently complete, coordinated and ready to bid, then the designer shall be entitled to a payment of 80 percent of the fee for the

construction documents phase. Should the owner's approval of the construction documents not be issued within 45 days of submittal due to no fault of the designer, then the designer shall be paid an additional payment of 10 percent of the fee for the construction documents phase. The balance of the fee for this phase will be due upon the completion of review by owner and user, when corrections have been made, and a complete set of bid documents are submitted to the owner. For projects with an AFC over \$10 million, interim payments up to 50 percent of the fee for the construction document phase may be made by agreement between the owner and the designer.

3. If any phase or phase payment is delayed through no fault of the designer, the owner and designer may negotiate a partial payment.

4. The designer shall promptly pay consultants. By signing the professional design services invoice, the designer agrees that all consultants will be promptly paid those amounts due them out of the amount paid to the designer within 45 days. Upon receipt of reasonable evidence of the designer's failure to pay consultants' amounts due them, the owner may withhold all or part of the designer's payment until the owner is satisfied that any amounts owed have been paid or otherwise settled.

B. Payments on account of designer's additional services and for reimbursable expenses shall be made on submission of designer's invoices with supporting data, and their written approval by owner and user agency and issuance of an amendment to the contract covering such services.

C. Payments to the designer on termination, abandonment or suspension shall be made in accordance with §§117 and 119, hereinafter.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1410.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:474 (September 1982), amended LR 11:851 (September 1985), LR 13:656 (November 1987), LR 31:1078 (May 2005), LR 46:1569 (November 2020).

**§115. Designer's Accounting Records**

A. Records of direct reimbursable expenses and expenses pertaining to additional services on the project, and for services performed on the basis of multiplier times direct personnel expense, shall be kept on the basis of generally accepted accounting principles and shall be furnished and/or made available to the owner or the owner's authorized representative on request.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1410.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:477 (September 1982), amended LR 11:854 (September 1985), LR 46:1569 (November 2020).

**§117. Termination of Contract**

A. The contract between owner and designer may be terminated by either party upon 30 days' written notice to the

other party, should said other party fail to perform in accordance with its terms, through no fault of the terminating party, or the contract may be terminated by mutual consent.

B. In the event of termination by the owner due to failure of the designer to perform satisfactorily, the designer shall receive no compensation beyond that already paid or due for the last satisfactorily completed phase. Any work done shall become the property of the owner to be used at the owner's discretion without additional compensation to the designer. No compensation shall be paid to the designer for any uncompleted phase, except by written agreement between owner and designer prior to termination. Such termination shall constitute the designer being held at fault under the terms of R.S. 38:2313(B)(5), which provides that problems with time delays, cost overruns or design inadequacies for which the designer is held to be at fault, shall be taken into account by the selection boards in considering past performance on public projects.

C. In the event the contract is terminated by mutual consent, the designer shall be paid for all work completed prior to termination, and all work done shall become the property of the owner to be used at the owner's discretion without additional compensation to the designer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:1569 (November 2020).

### **§119. Abandonment or Suspension**

A. If any work designed or specified by the designer is abandoned or suspended in whole or part by the owner, the designer is to be paid for the services rendered up to receipt of written notice from the owner, as follows.

1. If the abandonment or suspension occurs at the completion of a phase, the designer shall submit to the owner all required deliverables and shall be paid the full amount due on completion of such phase as described in §111.A.1.

2. If the abandonment or suspension occurs during a phase, the designer shall submit to the owner all documents prepared by him/her up to receipt of written notice from the owner, and the owner shall compensate the designer up to the percentage completion of that phase.

B. Should the project be reactivated, the new fee will be computed on the basis of the revised AFC and §109.A.1.b if inactive for more than 24 months. The designer's fee for the phases of work required to complete the project shall be the percentages for such phases stated in §111.A.1 applied to the new fee. Any required code update or scope change may merit additional services per §109.B, as the anticipated project design effort warrants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:1569 (November 2020).

### **§121. Ownership of Documents**

A. Per R.S. 38:2317, any and all plans, designs, specifications, or other construction documents resulting from professional services paid for by the owner shall remain the property of the owner whether the project for which they were prepared was constructed or not. If a project is terminated for any reason prior to completion of the project, electronic copies of the most current drawings and specifications shall be transmitted by the designer to the owner.

B. Upon completion of the project, record drawings (as-builts) shall be furnished to the owner and the user agency. The designer shall have the right to re-use the construction documents on other projects not constructed for the owner.

C. The right of ownership provided for above shall not be transferable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control in LR 8:478 (September 1982), amended LR 11:854 (September 1985), LR 46:1571 (November 2020).

### **§129. Other Conditions**

A. Insurance. Prior to the signing of the contract between owner and the designer, the designer shall furnish to the owner proof of coverage for the following.

1. Insurance. Professional liability insurance shall be required as per the owner's requirements on a project by project basis. Refer to Exhibit B of the contract for the extent of coverage required. Insurance will be required at the time of contract execution between the owner and the designer. Proof of coverage will be required at that time. No deductible shall be in excess of 5 percent of the amount of the policy.

2. Comprehensive general liability with minimum limits of \$500,000 per accident/occurrence.

3. Comprehensive automobile liability insurance with minimum limits of \$300,000 per accident/occurrence.

4. The designer shall provide a certificate of insurance as proof of workmen's compensation coverage.

B. Affidavit. The designer, on signing the contract, shall submit to the owner, on such form as the owner shall designate, a noncollusion affidavit.

C. When the time schedule has been established by the owner and designer, a completion date shall be set up for delivery of 100 percent completed, coordinated and ready to bid construction documents to the owner. If the designer is delayed through no fault of his/her own, then the completion date shall be extended accordingly, provided the designer makes such request in writing before starting the subsequent

phase and the owner approves such as justified. The designer shall continue to work during this process.

**D. Non-Binding Mediation**

1. In an effort to resolve any conflicts that arise during or following the completion of the project, the owner and the designer agree that all disputes between them arising out of or relating to this agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise. If non-binding mediation is not successful, then arbitration is the only remedy available to all parties of the contract. Arbitration, mediation and/or any legal action resulting from this contract shall take place in East Baton Rouge Parish.

2. The owner and designer further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants to likewise include providing for mediation as the primary method for dispute resolution between the parties to those agreements.

3. If this non-binding mediation fails to resolve any conflicts, then the following arbitration clause shall take effect. All claims, disputes and other matters arising from the contract shall, at the option of the owner, be decided by arbitration. To the extent possible, such arbitration proceedings shall be conducted in accordance with the construction industry association rules of the American Arbitration Association. Any such arbitration proceeding shall, at the option of the owner, be consolidated with or joined to other arbitration proceedings between the owner and other persons or entities under contract with the state for the construction, repair or alterations of the project in question.

**E. Fault.** Time delays, cost overruns, design inadequacies or other problems with performance of the designer may result in the designer being held "at fault." The owner shall determine if the designer is to be held at fault as provided in R.S. 38:2313.B.(5).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1410.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 8:478 (September 1982), amended LR 11:855 (September 1985), LR 13:656 (November 1987), LR 31:1081 (May 2005), LR 46:1571 (November 2020).

**§131. Louisiana Building Code**

A. R.S. 40:1722 establishes the Louisiana building code and directs that the following codes be established as the standards as minimum standards for this code. These codes shall be established as constituting the code in the editions indicated:

1. the *Life Safety Code*, standard 101, 2015 edition as published by the National Fire Protection Association;

2. the *International Plumbing Code*, 2021 edition as published by the International Code Council and amended by R.S. 40:1730.28.1;

3. the *International Building Code*, 2021 edition as published by the International Code Council, not including chapter 1, administration, chapter 11, accessibility, and chapter 27, electrical;

4. the *International Mechanical Code*, 2021 edition as published by the International Code Council;

5. the *National Electric Code* (NFPA no. 70), 2020 edition as published by the National Fire Protection Association.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1410.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Department of Facility Planning and Control, LR 8:473 (September 1982), amended by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 11:849 (September 1985), amended by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 33:2649 (December 2007), LR 37:3260 (November 2011), LR 39:86 (January 2013), LR 39:2493 (September 2013), effective on January 1, 2014, LR 43:1163 (June 2017), effective on July 1, 2017, LR 49:259 (February 2023), effective on March 1, 2023.

**Subchapter B. Historic Restoration**

**§151. Historic Restoration Projects**

A. This rule applies to the repair, renovation or reconstruction of any state-owned building that is listed on the National Register of Historic Places or any state-owned building which is eligible to be included on this register. When required, eligibility shall be determined by the State Office of Historic Preservation. For these projects, Facility Planning and Control may require the designer of the project to assess the structure and proposed scope of work and recommend if it will be in the best interest of the state to prequalify the bidders for the project. The items for consideration in this determination shall include but not be limited to the following:

1. historic significance of the structure;
2. extent of the work to be performed;
3. condition of the structure before renovation;
4. previous renovations;
5. program objectives of the owner and user;
6. effect of law, codes, regulations and ordinances;
7. environmental impact;
8. long and short-term economic impact.

B. Based on the results of this determination, the designer shall recommend to Facility Planning and Control whether or not the bidders for the specific project should be prequalified and justify his recommendation when required by Facility Planning and Control.

C. If Facility Planning and Control determines that it is in the best interests of the state to prequalify the bidders it shall instruct the designer of the project to prepare a contractor's qualification statement and make it available to

prospective bidders. The designer shall also be instructed to administer the prequalification process including receipt and evaluation of complete qualification forms and recommendations to Facility Planning and Control regarding which contractors are qualified to submit bids for the work. The contractor's qualification statement shall be prepared using AIA Document A305. The requirements of this document shall be supplemented by requirements that will require the bidders to demonstrate actual, verifiable experience with projects of similar type and scope and may require the demonstration of actual, verifiable experience in specific required trades.

D. The advertisement for bids for any project requiring prequalification shall state this requirement and the last date for the submittal of contractor's qualification statements. Any statements received after this date will not be considered.

E. With the approval of Facility Planning and Control the designer shall notify every applicant whether or not he or she has been determined to be qualified and allowed to bid. This notification shall be provided within a time specified in the advertisement for bids.

F. The designer shall be responsible for answering reasonable requests for justification of his or her determinations within a reasonable time and shall provide such a response at least five working days prior to the bid date provided the request for justification is received no later than three working days after the time the prospective bidder has been notified that he or she is not qualified. Unless these time requirements are met the designer shall not be responsible for providing justifications or changes of determination in time to allow prospective bidders to bid. The designer's decisions in these matters shall be final.

G. After the prequalification process is complete only prequalified bidders may submit bids on those designated projects and the contracts on those designated projects shall be awarded to the prequalified bidder submitting the lowest responsible bid.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:950 et seq., and R.S. 38:2212.4.4.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 19:488 (April 1993).

## **Subchapter C. Design-Build Method of Procuring Design and Construction Services**

### **§161. Name**

A. The name of this process shall be the "design-build selection process" also referred to hereinafter as "process."

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2121 (October 2008).

### **§163. Authority**

A. The process shall be established in accordance with RS 38:2225.2.1.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2121 (October 2008).

### **§165. Purpose**

A. The purpose of this Subchapter shall be to provide for the selection of entities to provide design/build construction services in which the design and construction phases are combined.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2121 (October 2008).

### **§167. Applicability**

A. The following public agencies may utilize the design-build method in the construction or repair of any public building or structure which has been destroyed or damaged by Hurricanes Katrina, Rita or both: the Division of Administration, the Recovery School District, the City of New Orleans and parish governments in Calcasieu, Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, and Vermilion Parishes and the Port of New Orleans.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2121 (October 2008).

### **§169. Definitions**

A. For the purposes of this Rule certain terms shall have the following meanings. All required licenses for each component shall be obtained prior to the award of the project to the selected entity.

*Architect*—the entity contractually responsible for delivering the project design and duly licensed and registered by the Louisiana State Board of Architectural Examiners as provided for in R.S. 37:141 et seq., and its rules and regulations.

*Contractor*—the entity contractually responsible for delivering the project construction and duly licensed and registered as a general contractor by the State Licensing Board for Contractors as provided for in R.S. 37:2150 et seq., and its current rules and regulations.

*Design-Build*—a construction process in which the design and construction phases are combined and the design-builder is selected by a qualifications-based process with an established schedule and price.

*Design-Builder*—the entity contractually responsible for delivering the project design and construction who shall be licensed as either a contractor, an architect or an engineer as

defined herein. For projects that are primarily architectural, the entity shall be a contractor or an architect. For projects that are primarily engineering, the entity shall be a contractor or an engineer.

*Engineer*—the entity contractually responsible for delivering the project design and duly licensed and registered by the Louisiana Professional Engineering and Land Surveying Board as provided for in R.S. 37:681 et seq., and its rules and regulations.

*Public Agency*—a state or local governmental unit. For the purposes of this rule these are limited to those defined in §167 of this Chapter.

B. All required licenses for each component shall be obtained prior to the award of the project to the selected entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

**§171. Rights and Powers of Each Design-Builder**

A. Each design-builder shall have the following rights and powers.

1. The design-builder may sublet responsibility for professional design services to an individual, firm, or corporation duly licensed and registered in the state of Louisiana to provide professional design services.

2. The design-builder may sublet responsibility for construction or other services requiring a contractor's or trade subcontractor's license to persons or entities duly registered, licensed, or otherwise qualified to provide those services as required by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

**§173. Process for Selection of Design-Builder**

A. A two stage process shall be used to select the design-builder. The two stages are:

1. request for qualifications stage;
2. technical proposals stage.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

**§175. Request for Qualifications—Letter of Interest**

A. A public announcement shall be made to solicit letters of interest for a design-build project. The announcement shall be distributed through advertisement in publications that will insure adequate competition and opportunities for qualified entities. These shall include at a minimum the Daily Journal of Commerce, the Baton Rouge Advocate, the

New Orleans Times-Picayune, the Shreveport Times, the Monroe News Star, the Lake Charles American Press. The announcement shall also appear on the internet home page of the public agency, if any, and by other means to ensure adequate response.

B. All such public announcements shall be advertised a minimum of 30 days prior to the deadline for receipt of responses and shall contain a brief description of the project, the required scope of services and sufficient information for a design-builder to determine its interest and to enable it to submit a letter of interest. The notice of intent may be re-advertised using additional media or publications in an attempt to solicit additional responses if the initial number of responses received is inadequate.

C. A brief description of the project shall be included in the letter. The description shall include but not limited to the following: The proposed function(s); approximate size or capacity in terms of square feet, number of occupants, beds, cars, books, etc.; level of quality; key factors in the public agency's program; a brief description of any existing buildings or structures; special systems; any specialized skill(s) required; preliminary budget based on the agencies best information and any other information that will allow potential design-builders to determine whether or not they are interested in the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

**§177. Request for Qualifications—Qualifications Package**

A. The public agency shall provide a request for a qualifications package to design-builders who submit a letter of interest. The qualifications package shall include the technical proposal as defined in §185 including the intention of awarding a stipend. All required information shall be identified in the request for qualifications package and in the standard response forms. The response to a request for qualifications package shall include statements of qualification by credentials and experience of design component members for the areas of expertise specific to the project and statements of qualification by experience and resources of the construction team component. The completed response form and any other required information shall be transmitted by the responding design-builder by the deadline to submit such forms and information as provided in the request for qualifications package. Any response failing to meet all of the requirements contained in the request for qualifications package shall not be considered by the public agency. False or misrepresented information furnished in response to a request for qualifications package shall be grounds for rejection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2122 (October 2008).

### **§179. Request for Qualifications—Evaluation Committee**

A. A qualifications evaluation committee shall evaluate the responses to the request for qualifications package received by the public agency. The qualifications evaluation committee shall consist of a minimum of three members designated by the Director of Facility Planning and Control for projects administered by that agency or the equivalent agency head for other agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

### **§181. Request for Qualifications—Evaluation Criteria**

A. The following general criteria used by the qualifications evaluation committee in evaluating responses to the request for qualifications package for design-build services shall apply to both the design and construction components of any responding entity.

1. Professional training and experience of both the design and construction entity components and of key personnel in general and as related to the project under consideration.

2. Past and current professional accomplishments, for which opinions of clients or former clients and information gathered by inspection of current or recent projects may be considered.

3. Capacity for timely completion of the work, taking into consideration the person's or firm's current and projected workload and professional and support manpower.

4. The nature, quantity, and value of agency work awarded to both the design and construction components the applicant entity, it being generally desirable to allocate such work among persons who are desirous and qualified to perform such work.

5. Past performance on public projects, including any problems with time delays, cost overruns, and design inadequacies for which the designer was held to be at fault.

6. Whether problems as indicated in Subclause (e) herein resulted in litigation between the public agency and the person performing professional services, particularly if the designer is currently involved in unsettled litigation with a public agency or has been involved in litigation with a public agency where the public agency prevailed.

7. Any project-specific criteria as may apply to project needs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

### **§183. Request for Qualifications—Short List Selection**

A. The qualifications evaluation committee shall select a short list of not fewer than three of the highest rated entities; however, if fewer than three responses are received, the head of the public agency may approve proceeding with the evaluation process. The qualifications evaluation committee may, at its discretion, be assisted by other agency personnel in its evaluation of an entity's qualifications. The qualifications evaluation committee shall present its short list to the Director of Facility Planning and Control for projects administered by that agency or the equivalent agency head for other agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

### **§185. Technical Proposal—Notification**

A. The entities included on the short list shall be notified of their selection and invited to submit a detailed technical proposal for the design-build project. The specific requirements of the technical proposal shall be identified by the agency to the entities included in the short list by means of a "scope of services package" which shall be provided to all entities invited to submit a technical proposal. The scope of services package may include enhancements, clarifications and modifications to the scope of services included with the request for qualifications only if they fall within the scope of the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

### **§187. Technical Proposal—Scope of Services Package**

A. Generally the scope of services package shall define the scope of work or architectural program. The scope of services package shall also define the response including the format and the required information including, but not limited to, the following:

1. statement of purpose;
2. definition of terms;
3. time factors;
4. point of contact;
5. requirements for submission;
6. design-builder responsibilities;
7. public agency responsibilities;
8. detailed evaluation criteria including scoring and weighting factors;
9. form of contract;
10. insurance, indemnification and limits of liability;
11. surety requirements;

12. payment terms;
13. termination;
14. audit requirements;
15. level of quality;
16. requirements of the scope which are critical to the public agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2123 (October 2008).

**§189. Technical Proposal—Submittal**

A. Generally, the technical proposal shall include, but not be limited to, the following:

1. discussion of the entity's understanding of the scope of services;
2. discussion of the entity's understanding of the scope of work or architectural program;
3. discussion of design strategy to implement the scope of work or architectural program;
4. proposed design approach;
5. materials and methods of construction;
6. construction techniques and sequencing;
7. schedule for commencement and completion of all phases of work;
8. lump sum cost for all services in fulfillment of the requirements and within the constraints of the "scope of services package."

B. The invitation to the short-listed entities shall specify a deadline for submission of such proposals.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2124 (October 2008).

**§191. Technical Proposal—Compensation for Proposals**

A. For more complex projects and projects with scopes which permit flexibility and innovation in the design approach, the agency shall compensate unsuccessful and responsive short-listed entities for the expense of preparing the technical proposal. The determination of whether or not compensation will be paid for the technical proposal and the amount shall be predetermined by the agency and shall be included in the scope of services package. The agency may use concepts submitted by any paid short-listed entity to construct the project. Compensation shall be appropriate for the scope and complexity of the project and for the opportunities for innovation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2124 (October 2008).

**§193. Technical Proposal—Evaluation Committee**

A. The Director of Facility Planning and Control for projects administered by that agency or the equivalent agency head for other agencies shall establish a technical review committee for evaluation of design-build proposals. The technical review committee shall consist of at least three but no more than five building construction professionals with expertise in diverse fields of the construction industry including at least one design professional and one contractor. At least one of the members shall be from the private sector and at least one shall be from the public sector.

B. The technical review committee may select additional agency engineering and technical experts, and nationally recognized design-build experts to serve as committee members to score each technical element of the project.

C. The technical review committee shall identify specific technical elements of the project, based on the specific requirements of the technical proposal and depending on the characteristics of the project, to be included in the technical score.

D. Members of the technical review committee shall not have served as members of the qualifications evaluation committee.

E. Each member of the technical review committee shall make his scoring of assigned elements available for public review. Such scores shall be considered public record. The public agency shall make all scores available to the public simultaneously.

F. The price shall not be opened until the appeal period defined in §195 is passed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2124 (October 2008).

**§195. Technical Proposal—Adjusted Score**

A. An adjusted score approach shall be used by the public agency in determining the winning proposal. An adjusted score shall be determined using the following components:

1. the technical score determined by the technical review committee. Weighing factors may be assigned to each element depending on its relative magnitude or significance to the overall project. Each technical review committee member shall rate his assigned element of the proposal from each of the design-builders on the short list and shall submit such scores to the chairman of the technical review committee. The schedule and price bid shall not be made known to the technical review committee during the scoring process. The chairman of the technical review committee shall adjust the scores for any applicable weighing factors and shall determine the total technical score for each



proposal. Prior to determining the adjusted score, the chairman of the technical review committee shall notify each design-builder, in writing, of each design-builder's final total technical score;

2. the time value, consisting of the product of the proposed contract time expressed in calendar days multiplied by the value-per-calendar-day expressed in dollars established by the public agency and included in the scope of services package;

3. the price proposal.

B. The winning proposal shall be the proposal with the lowest adjusted score. The adjusted score for each design-build proposal shall be determined by the following formula: Adjusted Score = (Price Bid + Time Value) divided by Technical Score. If the Time Value is not mandatory and if it is not used, the Adjusted Score shall be determined by the following formula: Adjusted Score = Price Bid divided by Technical Score.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2124 (October 2008).

#### **§197. Technical Proposal—Appeal**

A. Design-builders who have submitted bona fide proposals may, within seven days of the announcement of the technical scores, challenge the scores based on any of the foregoing reasons, and only those reasons, by submitting a letter to the head of the public agency describing in detail the reasons for the challenge. The head of the public agency shall have the authority to resolve any challenge concerning the award of a contract. A written decision shall be rendered within 14 days and shall be mailed or otherwise furnished immediately to the design-builder making the challenge. The decision shall be final and no appeal based on price will be allowed unless:

1. the decision is fraudulent; or

2. the appeal is timely:

a. if the public agency is a state entity, the person adversely affected by the decision has timely appealed to the court in accordance with R.S. 39:1691(A);

b. if the public agency is a non-state entity, the person adversely affected by the decision has timely appealed to the court of proper venue for the public agency.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2125 (October 2008).

#### **§199. Technical Proposal—Finality**

A. Once the design-builder has been chosen and a contract for a stipulated schedule and sum certain price executed, the price of the design-build contract shall not be increased other than for inflation as prescribed in the contract and for site or other conditions of which the design-

builder had no knowledge and should not have had knowledge as a reasonable possibility existing at the site or concerning the design and construction or for changes on the scope of work by the public agency.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:121 and RS 38:2225.2.1.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 34:2125 (October 2008).

## **Chapter 2. Capital Outlay Budget Request Forms**

### **§201. Instructions for Preparation of Capital Outlay Budget Request Forms**

A. When preparing a five-year capital outlay plan, a first year request should reflect only those projects which must be funded next year. If a project can wait, it should be shown in years 2-5 of the request.

B. For projects other than those funded from self-generated cash, federal funds or dedicated revenues, the only anticipated source of funding available is the sale of general obligation bonds. It is, therefore, necessary to limit capital outlay projects which do not have a cash source of funding to those which have an anticipated useful life of 20 years or more and a value or cost of at least \$50,000. Examples of projects that qualify for inclusion in the capital outlay bill are:

1. land acquisition;
  2. site development and improvement;
  3. acquisition or construction of buildings or other structures;
  4. additions of expansions to existing facilities;
  5. major repair or renovation of existing facilities;
  6. installation, extension or replacement of utility systems or major building system components;
  7. roof replacement;
  8. asbestos abatement;
  9. fixed equipment which is connected to building utility systems;
  10. initial equipment and furnishings for new buildings.
- However, depending on the useful life of equipment and furnishings, a decision may be made to fund these items through alternate sources.

C. Capital outlay requests should not include any of the following:

1. minor repair or renovation projects, such as painting, flooring, etc.;
2. minor roof repairs which do not extend the useful life of the roof;
3. movable equipment and furnishings, except that associated with new buildings;

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4. vehicles of any type;
5. materials and supplies;
6. repair or renovation of minor building components, such as plumbing fixtures, locks, etc.;
7. routine maintenance of existing equipment.

D. All requests are due to Facility Planning and Control by November 1, and must be submitted through and prioritized by the appropriate governing authority. Each department should attach a summary sheet listing all requested projects in priority order by department. Project funding previously requested and appropriated in a prior year capital outlay act, but for which bonds were not sold in that prior year, must be requested again if the project funding is not reauthorized in the current outlay act.

E. Submit six hard copies of the budget request document and the completed diskette(s) (soft copy) along with a transmittal to: Division of Administration, Facility Planning and Control, State Capitol Annex, Room B-31, Post Office Box 94095, Baton Rouge, Louisiana 70804-9095. In addition, one duplicate hard copy set must be submitted at the same time to both the: Joint Legislative Capital Outlay Committee, 21st Floor, State Capitol, Post Office Box 94062, Baton Rouge, Louisiana 70804-9062; and Legislative Fiscal Office, 18th Floor, State Capitol, Post Office Box 94097, Baton Rouge, Louisiana 70804-9097.

1. For years 2-5 requests, the agency will need to complete only the "Recap Sheet" and the section entitled "Demonstration of Need" (Screens 1-8 in the CORTS program).

2. If assistance is needed in completing the forms or using the CORTS software, contact Facility Planning and Control at (225) 342-0820 or LINC 421-0820.

### F. Terms Used in Capital Outlay Requests

1. Schedule Number Department plus FACS agency number. For nonstate entities, search for a schedule number that applies. If one cannot be found, use schedule number 00-0000.

2. Class A Project Emergency. A capitol project can be classified as emergency if it is essential to alleviate conditions hazardous to life or property. Examples include extensive roof leaks, structural defects, accreditation or code violations, asbestos/hazardous material abatement, and extensive breakdown of HVAC systems.

3. Class B Project. Current Program Requirements—needs that would allow an agency to bring its facilities up to program standards set by national or regional accrediting associations. Also, changes necessary to improve the functioning of a program belong in this classification. This would include measures to rectify inadequacies or the non-existence of facilities stipulated by accrediting associations required for program achievement. It would also include provisions for major alterations to meet or maintain current program requirements. Examples include

addition of a new program, changes or relocation of an existing program.

4. Class C Project. Anticipated Program Needs—projects anticipated on the basis of increased enrollments, additional service, obsolescence of existing facilities, and changing an agency's role, scope or mission. Examples include addition of a new program, changes or relocation of an existing program.

5. Project Title. Give the project a concise, descriptive title. This title should be used on all correspondence, etc.

6. Project Priority Number. Assign a priority number to each new project request in keeping with the relative importance to the achievement of overall department goals. The priority number given a project must reflect the overall department priorities, not the priorities of a single institution.

7. State Funds. Include cash from the State General Fund.

8. General Obligation Bonds. Bonds or other evidences of indebtedness whose debt service is payable from the Bond Security and Redemption Fund.

9. Reimbursement Bonds. Special bonds whose debt service is payable by revenues derived from operation of the bond funded facility, e.g., a parking facility, toll bridge, laundry, etc.

10. Self-Generated Funds. Represents self-generated revenue from agency operations, e.g., license fees, admission fees, etc., or from statutory dedications.

11. Federal Funds. Any federal grant, loan, etc., that has been applied for, awarded, or received for the project.

12. Local and Other Funds. Any other type of financing not covered above, including interagency transfers, donations, etc. For nonstate entities, indicate any local matching of funds here; this should include any local bond issue proceeds, millages, or other forms of local participation.

13. Land Acquisition. Cost of purchasing real property, including closing costs.

14. Planning Cost. Fee for professional services for planning. This figure should be 10 percent of construction cost.

15. Construction Cost. Cost of construction, renovation, repair, demolition or other work, excluding land acquisition, professional fees, and other costs. This should include the cost of all fixed equipment, such as bathroom fixtures, laboratory and kitchen equipment, etc.

16. Miscellaneous. Incidental expenses not listed above, including insurance, legal and testing. This figure should be 10 percent of the construction cost.

17. Movable Equipment. Furnishings and equipment which are not fixed to the building or facility. If funds for movable equipment are being requested for the current year, a detailed, itemized listing must be provided. It should include a brief description of the equipment, the quantity of

identical pieces, the estimated unit cost of each item, the estimated cost (sum of quantity times estimated unit cost), and the source from which the estimate was obtained.

18. Net Area/Person. Net area per person required to satisfy the function of the space type.

19. Net Area Required. Net area required for each functional space type (number of people times the net area per person required).

20. Burden Factor. Apply a percentage to the net area which reflects architectural burden for the facility; namely, circulation areas (corridors, elevators, stairs), janitorial and equipment rooms, public restrooms, interior and exterior walls and partitions, etc.

21. Total Gross Area. This is the product of the total net area times the burden factor percentage.

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PROJECT

Title Description
Programs Served Site Location

DEMONSTRATION OF NEED

Purpose or Objectives of Proposed Project (Check as many as apply)	
<input type="checkbox"/> Expand Existing Program	<input type="checkbox"/> Changes in Population Served
<input type="checkbox"/> Relocate Existing Program	<input type="checkbox"/> To Address Code Violations, Court Orders, Accreditation
<input type="checkbox"/> Add New Program	<input type="checkbox"/> To Address Actual or Threatened Prop. Damage
<input type="checkbox"/> Changes in Existing Program	<input type="checkbox"/> Changes in Accepted Standards/Guidelines
<input type="checkbox"/> Changes in Mission, Goals, Objectives	<input type="checkbox"/> Other
Describe	
Program Service Description	
Number of Employees Present _____	Citizens Served _____
Future _____	Daily Users _____
Describe strategic long range plan for program (5 Yr?)	
APPLICABLE GUIDELINES/STANDARDS	
List publications, regulatory agencies guidelines for the program.	
Minimum or mandatory requirements of above listed for program.	
What alternatives were considered?	
<input type="checkbox"/> Maintaining Status Quo	<input type="checkbox"/> Lease Space
<input type="checkbox"/> Use Existing Space	<input type="checkbox"/> Renovation of Existing Space
<input type="checkbox"/> New Space	<input type="checkbox"/> Expansions of Similar Program Elsewhere
How use best option determined (Studies, Etc.)?	
Were any feasibility studies or needs assessment reports prepared? <input type="checkbox"/>	
If so, please name contact person. _____ Phone _____	
List socioeconomic and environmental affects of project.	
Identify and describe other similar facilities in your area and evaluate their capabilities to meet needs.	

**PROJECT RECAP SHEET  
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<b>PROJECT</b>	<b>REQUEST NUMBER</b>
Title _____	
Department Priority Number ___ of ___	Location _____
A. Emergency Project { }	Parish _____
B. Current Project Requirements { }	Senate District _____
C. Anticipated Program Needs { }	House District _____

<b>APPLICANT</b>	
Schedule No. _____	Site Code _____
Department / Umbrella User _____	State ID _____
Agency / Management Board _____	Dept. Contact _____ Phone _____
Local User Facility _____	Local Contact _____ Phone _____

**FINANCIAL**

Total Project Cost Estimate	Local User Estimate:	Agency Estimate	Department Estimate	F. P. & C Estimate
Land / Building Acquisition	_____	_____	_____	_____
Planning Costs (10%)	_____	_____	_____	_____
Construction Costs	_____	_____	_____	_____
Hazardous Materials Abatement	_____	_____	_____	_____
<b>Subtotal</b>	_____	_____	_____	_____
Misc./Contingency Costs (10%)	_____	_____	_____	_____
Equipment Costs	_____	_____	_____	_____
<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>Time Needed: Planning</b>				
<b>Construction</b>				

If planning has begun, when will it be complete?

**PRIOR FUNDING:**

Authorized Source	Amount	Year	Act Number	Priority Level	Were Bonds Sold or Lines of Credit Granted?
	_____			_____	Bonds ( )      Credit ( )
<b>Total (A)</b>	<b>0</b>				

**Proposed New Funding:**

	First Year	Years 2-5	Source of Funding
<b>State Funds</b>	_____	_____	Cash ( )      Rev.Bonds ( )
<b>Gen.Obl. Bonds</b>	_____	_____	
<b>Reimb. Bonds</b>	_____	_____	
<b>Self-Gen. Funds</b>	_____	_____	
<b>Federal Funds</b>	_____	_____	
<b>Other</b>	_____	_____	
<b>Total</b>	<b>(B) 0</b>	<b>(C) 0</b>	

Total Project Funding (A=B+C) \_\_\_\_\_ (Should Equal Total Project Cost Estimate)

Annual Operation & Maintenance Cost Increase (Decrease) \_\_\_\_\_ 0

**AGENCY IMPACT STATEMENT**

I hereby certify that this project/program has been reviewed, approved and integrated into our department's long range strategic plan and five year budget. The impact of this project/program's operating budget on our budget has been approved by  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

**DOA REVIEW**

Review Architect/Engineer :	Review Date: ____/____/____
FPC Director :	Review Date: ____/____/____
Review Budget Analyst :	Review Date: ____/____/____
OPB Director :	Review Date: ____/____/____

**DOA COMMENTS**

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ARCHITECTURAL PROGRAM

Preparer	Date Prepared ___/___/___			
Type of Space	#	Occupants	Net Area / Person	Net Area Required
			<b>Net Area Required</b>	<b>0</b>

Net Area \_\_\_\_\_ X Burden Factor \_\_\_\_\_ = Total Gross Area Required \_\_\_\_\_

Totals  
 \_\_\_\_\_ Employees  
 \_\_\_\_\_ Visitors / Clients  
 \_\_\_\_\_ Contract Employees  
 \_\_\_\_\_ Temporary Employees  
 \_\_\_\_\_ Student / Assistant  
 \_\_\_\_\_ Other

Additional program requirements (Parking, Utilities Tie-In, Location, Shipping & Receiving, Public Access, Site Amenities, etc.) Describe below.

What is the length of time needed for planning ?  
 Construction ?

**NEW CONSTRUCTION**

What will happen to existing facility? (Demolition, Renovation, Expansion of other programs)

How funded?

Has site been surveyed for underground storage tanks? ( )  
 When ?

**RENOVATION /ADDITION**

Describe history and condition of building, extent and date of previous major renovations.

Describe the extent of the proposed renovation /addition.

Where will the occupants be housed during construction ?

How funded ?

What portion of the const. Budget addresses modifications required to meet The Americans with Disabilities Act Guidelines (ADAG) ?

What hazardous materials are addressed in the construction budget?  
 ( ) Underground Storage Tanks ( ) PCB's ( ) Asbestos  
 ( ) Lead Paint ( ) Other

Has the facility's asbestos management plan been consulted for abatement requirements? ( )  
 Contact person

What is the current age, condition and type of the existing roof and estimated date of replacement?

Describe roof penetrations, equipment, etc.

For roofing projects, what is current condition of rooftop equipment & estimated date of replacement?

**NEW PROJECT REQUEST  
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**CONSTRUCTION COSTS**

Source of Data \_\_\_\_\_

Date Prepared \_\_\_\_/\_\_\_\_/\_\_\_\_

List special cost affecting factors considered (Unfinished Warehouse Space, Extraordinary HVAC, etc.)

**COST OF CONSTRUCTION CALCULATION; (Provided Roof S.F. if Roofing Project)**

Type of Space	Total Gross Area	Cost /S.F.	Total Cost
Subtotal/Average	0	0.00	0

**ADDITIONAL LINE ITEM EXPENSES (Parking, Utility Tie-In, Security System, etc.)**

Item	Unit Cost	Total Cost
Subtotal		<b>0</b>
<b>Total Construction Cost</b>		<b>0</b>

**EQUIPMENT COSTS**

Source of Data _____	Date Prepared ____/____/____
SUMMARY OF EQUIPMENT AND ESTIMATED COSTS:	
	0
	0
	0
	0
	0
Total	0
If this project is a current year request, attach an itemized breakdown with unit costs, estimated useful life of the equipment.	
If this project is for renovation or relocation for an existing program, will existing equipment continue to be used ? ( )	
If not, why?	

**PROPOSED PROJECT FUNDING**

	96-97	97-98	98-99	99-00	00-01	Total
G. O. Bonds	_____	_____	_____	_____	_____	_____
State Funds	_____	_____	_____	_____	_____	_____
Reimb. Bonds	_____	_____	_____	_____	_____	_____
Self-Gen Revenue	_____	_____	_____	_____	_____	_____
Federal Funds	_____	_____	_____	_____	_____	_____
Local & Other Funds	_____	_____	_____	_____	_____	_____
<b>Total</b>	0	0	0	0	0	0

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**NEW PROJECT REQUEST  
CAPITAL OUTLAY REQUEST FOR FY 1996-97  
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**PROGRAM OPERATING 7 MAINTENANCE COSTS**

**BUDGET REQUEST SUMMARY**

(Should match submittals BR-1 and BR-2 to  
Office of Planning & Budget)

	Current Year Budgeted	Annual Projected Increase (Decrease) After Project Completion
Expenditures:		
Salaries	_____	_____
Other Compensation	_____	_____
Related Benefits	_____	_____
Travel	_____	_____
Operating Services	_____	_____
Supplies	_____	_____
Professional Services	_____	_____
Other Charges	_____	_____
Debt Services	_____	_____
Interagency Funds	_____	_____
Acquisitions	_____	_____
Major Repairs	_____	_____
Unallotted	_____	_____
<b>Total Expenditures</b>	<b>0</b>	<b>0</b>
Means of Financing:		
State General Fund (Direct)	_____	_____
State Gen. Fund By::		
Interagency Transfers	_____	_____
Fees & Self-Gen. Revenues	_____	_____
Statutory Dedications	_____	_____
Interim Emergency Board	_____	_____
Federal Funds	_____	_____
<b>Total Means of Financing</b>	<b>0</b>	<b>0</b>
Excess or (Deficiency) of Expenditures over Financing	0 (Should Equal 0)	0 (Should Equal 0)

	96-97	97-98	98-99	99-00	00-01
Total Expenditures	0	0	0	0	0
Means of Financing:					
State Gen. Fund (Direct)	_____	_____	_____	_____	_____
State Gen. Fund By:					
Interagency Transfers	_____	_____	_____	_____	_____
Fees & Self-Gen. Revenues	_____	_____	_____	_____	_____
Statutory Dedications	_____	_____	_____	_____	_____
Interim Emergency Board	_____	_____	_____	_____	_____
Federal Funds	_____	_____	_____	_____	_____
<b>Total Means of Financing</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

**MAILING ADDRESSES**

Applicant (Local User) Mailing Address

Facility Physical Address

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:102.C.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control Section, LR 7:6 (January 1981), amended LR 20:185 (February 1994).

### Chapter 3. Louisiana Uniform Public Work Bid Form

**§301. Name**

A. The name of this document shall be the "Louisiana Uniform Public Work Bid Form" also referred to hereinafter as "Bid Form."



**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:2212.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

### §303. Authority

A. This form is prepared and issued in accordance with Acts 726 and 727 of the 2008 Regular Legislative Session.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:2212.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

### §305. Purpose

A. The purpose of this rule shall be to provide for the more effective and efficient letting of public works contracts and to establish a uniform standardized bid form to facilitate this.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:2212.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

### §307. Applicability

A. This rule shall apply to all state agencies and political subdivisions. The bid form shall require only the information necessary to determine the lowest bidder. With the exception of unit prices, all items on the Louisiana Uniform Public Works bid form shall be included for public works projects. No other information may be required from the bidder. Other documentation required shall be furnished by the low bidder at a later date, in accordance with the bidding documents.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:2212.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

### §309. Definitions

A. For the purposes of the Louisiana Uniform Public Works bid form the following terms shall have the stated meanings.

*Alternate*—a specified item of construction that is set apart by a separate sum. An alternate may or may not be incorporated into the contract sum at the discretion of the owner at the time of contract award.

*Base Bid*—the amount of money stated in the bid as the sum for which the bidder offers to perform the work described in the bidding documents, prior to the adjustments for alternate bids but including any unit prices.

*Bid*—a complete signed proposal to perform work or a designated portion for a stipulated sum. A bid is submitted in accordance with the bidding documents, is evaluated on price alone and is not subject to qualification.

*Bidder*—an entity or person who submits a bid for a prime contract with the owner. A bidder is not a contractor

on a specific project until a contract is signed between the bidder and the owner.

*Bid Form*—a form provided to the bidder on which to submit his bid.

*Bid Security*—a bid bond or deposit submitted with a bid to guarantee to the owner that the bidder, if awarded the contract, will execute the contract within a specified period of time and will furnish any bonds or other requirements of the bidding documents.

*Bidding Documents*—documents usually including advertisement, bid notice or invitation to bidders, instructions to bidders, bid form, form of contract, forms of bonds, conditions of contract, drawings, specifications addenda, special provisions, and all other written instruments prepared by or on behalf of a public entity for use by prospective bidders on a public contract.

*Owner*—the public entity issuing the bid.

*Public Entity*—means and includes the state of Louisiana, or any agency, board, commission, department, or public corporation of the state, created by the constitution or statute or pursuant thereto, or any political subdivision of the state, including but not limited to any political subdivision as defined in Article VI Section 44 of the Constitution of Louisiana, and any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision. "Public entity" shall not include a public body or officer where the particular transaction of the public body or officer is governed by the provisions of the model procurement code.

*Public Work*—the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

*Unit Price*—the amount stated in a project bid representing the price per unit of materials and/or services.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:2212.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1521 (August 2009).

### §311. Alternates

A. Provide space for, give descriptive title to and arrange for alternates in the order of priority. A maximum of three alternates are allowed by state law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 38:2212.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1522 (August 2009).

### §313. Unit Price Form

A. The Unit Price Form shall be used if the contract includes unit prices. Otherwise it is not required and need not be included with the form. The number of unit prices that may be included is not limited and additional sheets may be included if needed.

LOUISIANA UNIFORM PUBLIC WORK BID FORM

TO: \_\_\_\_\_

BID FOR: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(Owner to provide name and address of owner)

(Owner to provide name of project and other identifying information)

The undersigned bidder hereby declares and represents that she/he: a) has carefully examined and understands the Bidding Documents, b) has not received, relied on, or based his bid on any verbal instructions contrary to the Bidding Documents or any addenda, c) has personally inspected and is familiar with the project site, and hereby proposes to provide all labor, materials, tools, appliances and facilities as required to perform, in a workmanlike manner, all work and services for the construction and completion of the referenced project, all in strict accordance with the Bidding Documents prepared by: \_\_\_\_\_ and dated: \_\_\_\_\_

(Owner to provide name of entity preparing bidding documents.)

Bidders must acknowledge all addenda. The Bidder acknowledges receipt of the following **ADDENDA:** (Enter the number the Designer has assigned to each of the addenda that the Bidder is acknowledging) \_\_\_\_\_

**TOTAL BASE BID:** For all work required by the Bidding Documents (including any and all unit prices designated "Base Bid" \* but not alternates) the sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**ALTERNATES:** For any and all work required by the Bidding Documents for Alternates including any and all unit prices designated as alternates in the unit price description.

**Alternate No. 1** (Owner to provide description of alternate and state whether add or deduct) for the lump sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**Alternate No. 2** (Owner to provide description of alternate and state whether add or deduct) for the lump sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**Alternate No. 3** (Owner to provide description of alternate and state whether add or deduct) for the lump sum of:

\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

**NAME OF BIDDER:** \_\_\_\_\_

**ADDRESS OF BIDDER:** \_\_\_\_\_

**LOUISIANA CONTRACTOR'S LICENSE NUMBER:** \_\_\_\_\_

**NAME OF AUTHORIZED SIGNATORY OF BIDDER:** \_\_\_\_\_

**TITLE OF AUTHORIZED SIGNATORY OF BIDDER:** \_\_\_\_\_

**SIGNATURE OF AUTHORIZED SIGNATORY OF BIDDER \*\*:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**THE FOLLOWING ITEMS ARE TO BE INCLUDED WITH THE SUBMISSION OF THIS LOUISIANA UNIFORM PUBLIC WORK BID FORM:**

\* The Unit Price Form shall be used if the contract includes unit prices. Otherwise it is not required and need not be included with the form. The number of unit prices that may be included is not limited and additional sheets may be included if needed.

\*\* **A CORPORATE RESOLUTION OR WRITTEN EVIDENCE** of the authority of the person signing the bid for the public work as prescribed by LA R.S. 38:2212(B)(5).

**BID SECURITY** in the form of a bid bond, certified check or cashier's check as prescribed by LA R.S. 38:2218(A) attached to and made a part of this bid.

**LOUISIANA UNIFORM PUBLIC WORK BID FORM  
UNIT PRICE FORM**

**TO:** \_\_\_\_\_

**BID FOR:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

*(Owner to provide name and address of owner)*

*(Owner to provide name of project and other identifying information)*

UNIT PRICES: This form shall be used for any and all work required by the Bidding Documents and described as unit prices. Amounts shall be stated in figures and only in figures.

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ____			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION ( <i>Quantity times Unit Price</i> )

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ____			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION ( <i>Quantity times Unit Price</i> )

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ____			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION ( <i>Quantity times Unit Price</i> )

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ____			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION ( <i>Quantity times Unit Price</i> )

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ____			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION ( <i>Quantity times Unit Price</i> )

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ____			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION ( <i>Quantity times Unit Price</i> )

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ____			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION ( <i>Quantity times Unit Price</i> )

DESCRIPTION:	<input type="checkbox"/> Base Bid or <input type="checkbox"/> Alt.# ____			
REF. NO.	QUANTITY:	UNIT OF MEASURE:	UNIT PRICE	UNIT PRICE EXTENSION ( <i>Quantity times Unit Price</i> )

**Wording for "DESCRIPTION" is to be provided by the Owner.  
All quantities are estimated. The contractor will be paid based upon actual quantities as verified by the Owner.**

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2212.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 35:1522 (August 2009), amended LR 41:336 (February 2015), LR 44:577 (March 2018).

## Subchapter B. Universal Design

### §321. Name

A. The name of this document shall be the "Percent for Universal Design Program" also referred to hereinafter as "Universal Design."

AUTHORITY NOTE: Promulgated in accordance with Act 368 of the 2009 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 36:1542 (July 2010).

### §323. Purpose

A. The purpose of this program is to provide for the implementation of the principles of universal design in or on state buildings and grounds to move beyond minimum accessibility requirements, maximize accessibility for all users regardless of their functional capabilities and bring to the attention of architects, builders, and the public at large the vast benefits that can be realized by implementing universal design principles in the construction and renovation of all buildings, including those privately owned and personal residences.

AUTHORITY NOTE: Promulgated in accordance with Act 368 of the 2009 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 36:1543 (July 2010).

### §325. Applicability

A. This Chapter shall apply to all state agencies and the construction or renovation of all state buildings for which the estimated construction cost exceeds two million dollars.

AUTHORITY NOTE: Promulgated in accordance with Act 368 of the 2009 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 36:1543 (July 2010).

### §327. Definitions

A. For the purposes of this Chapter, the following terms shall have the indicated meanings.

*Construction*—the process of adding structure to real property by acquiring and assembling the components of buildings or other physical improvements.

*Renovation*—construction to modify, alter or change an existing building for the purpose of adaptive reuse, reconstruction or restoration and may include modification of any or all building systems. It does not, however, include a project the principal purpose of which is the rehabilitation of plumbing, heating, ventilating, air conditioning, electrical or other systems whose purpose is strictly utilitarian.

*State Building*—any building, facility, structure, or park built or renovated using state funds that will be owned by a department or agency in the executive, judicial, or legislative branch of state government, including any state-owned lands or space surrounding or integral to the building. "State building" does not include vehicular bridges and tunnels, or other non integral structures whose purpose is strictly utilitarian.

*State Funds or State Money*—shall not include federal funds or insurance proceeds for the construction, replacement, renovation, or improvement of a state building damaged by a natural catastrophe when conditions governing the expenditure of such monies specifically preclude their use for the utilization and implementation of universal design features, nor shall it include state monies

used as a match for such federal funds or insurance proceeds.

*Universal Design*—as more fully defined in the attached list of Principles of Universal Design, means certain design features that are not currently required by the Americans with Disabilities Act of 1990.

AUTHORITY NOTE: Promulgated in accordance with Act 368 of the 2009 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 36:1543 (July 2010).

### §329. Process

A. In order to allow for the highest level of flexibility, innovation and imagination to be applied to the implementation of the Principles of Universal Design, these rules establish the philosophical concepts that are to be utilized in the design, construction or renovation of state buildings.

1. The requirement to incorporate principles of universal design into the design will be made part of the architectural program for all applicable projects.

2. The universal design requirement will be stated in any advertisements or other solicitations for the procurement of design services for building construction or building renovation.

3. The architectural program, including the requirement to incorporate principles of universal design will be made part of the design contract for all applicable projects.

4. Features following the principles of universal design will be determined by the designer and confirmed by the owner.

a. During the development of the design of the project and no later than the beginning of the production of construction documents, the designer will review the principles of universal design, existing examples of universal design and other information and use this information to identify and develop features that utilize universal design principles as well as conforming to the mission of the project.

b. The designer will translate these principles into design features the cost of which will make up at least two percent of the estimated construction cost.

c. The designer will provide a report in a format defined by the owner including the following:

i. an itemized list of each feature that adheres to the principles of universal design;

ii. a dollar value for each feature;

iii. a description of each feature and an explanation of why each feature is above and beyond standard practice for the occupancy and quality level of the project.

d. The owner will review this report and verify that the features follow the principles of universal design and that the cost allocation is reasonable.

e. Approval of this report will authorize the designer to incorporate the features in the project design. Once approved this report will be final and will serve as the documentation of compliance with the provisions of R.S. 38:2318.2 unless the project scope is changed in such a way that the estimated construction cost is increased by more than two percent. If this situation obtains, the designer shall modify his/her report by including additional features or expanding existing ones to maintain the minimum two percent.

f. Questions about the validity of proposed universal design features between the designer and the owner that cannot be resolved may be referred to an advisory group established by AIA Louisiana (Louisiana Chapter of the American Institute of Architects) in accordance with RS 38:2318.2(F)(1). Features determined to be invalid will not be included in the approved list and the designer will modify his/her report to include additional features or expand existing ones to maintain the minimum two percent.

g. If the construction contract award amount varies from the estimated construction cost it will be assumed that all costs vary on a proportional basis and therefore the cost of the universal design features will continue to represent two percent of the total cost.

AUTHORITY NOTE: Promulgated in accordance with Act 368 of the 2009 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 36:1543 (July 2010).

### §331. Principles of Universal Design

A. Universal design is a principle of design guiding a wide range of design disciplines including environments, products, and communications including all of the following.

1. Principle 1: Equitable Use. The design is useful and marketable to people with diverse abilities.

a. Guidelines. Provides the same means of use for all users: identical whenever possible; equivalent when not. Avoids segregating or stigmatizing any users. Incorporates provisions for privacy, security, and safety that should be equally available to all users. Makes the design appealing to all users.

2. Principle 2: Flexibility in Use. The design accommodates a wide range of individual preferences and abilities.

a. Guidelines. Provides choice in methods of use. Accommodates right or left handed access and use. Provides adaptability to the user's pace.

3. Principle 3: Simple and Intuitive Use. Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level.

a. Guidelines. Eliminates unnecessary complexity. Consistent with user expectations and intuition. Accommodates a wide range of literacy and language skills. Arranges information consistent with its importance. Provides effective prompting and feedback during and after task completion.

4. Principle 4: Perceptible Information. The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.

a. Guidelines. Uses different modes (pictorial, verbal, tactile) for redundant presentation of essential information. Provides adequate contrast between essential information and its surroundings. Maximizes "legibility" of essential information. Differentiates elements in ways that can be described which includes making it easy to give instructions or directions. Provides compatibility with a variety of techniques or devices used by people with sensory limitations.

5. Principle 5: Tolerance for Error. The design minimizes hazards and the adverse consequences of accidental or unintended actions.

a. Guidelines. Arranges elements to minimize hazards and errors: most used elements, most accessible; hazardous elements eliminated, isolated, or shielded. Provides warnings of hazards and errors. Provides fail-safe features. Discourages unconscious action in tasks that require vigilance.

6. Principle 6: Low Physical Effort. The design can be used efficiently and comfortably and with a minimum of fatigue.

a. Guidelines. Allows user to maintain a neutral body position. Uses reasonable operating forces. Minimizes repetitive actions. Minimizes sustained physical effort.

7. Principle 7: Size and Space for Approach and Use. Appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture, or mobility.

a. Guidelines. Provides a clear line of sight to important elements for any seated or standing user. Makes reach to all components comfortable for any seated or standing user. Accommodates variations in hand and grip size. Provides adequate space for the use of assistive devices or personal assistance.

AUTHORITY NOTE: Promulgated in accordance with Act 368 of the 2009 Regular Legislative Session.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 36:1544 (July 2010).

## Chapter 4. Third-Party Projects

### §401. Preface

A. R.S. 17:3361 provides for the following.

1. Each higher education management board may grant leases of any portion or portions of grounds or campus of any college or university or other immovable property under its supervision and management. These leases may be granted for a term not to exceed 99 years for each lease.

2. Said leases may be granted to any of the following:

- a. an organized national or local college or university fraternity or sorority;
- b. a religious, quasi-religious, or benevolent organization or other nonprofit corporation or association;
- c. a military organization under the supervision of the state of Louisiana or of the United States of America;
- d. a public body;
- e. a private entity, provided such private entity shall be obligated under the terms of the lease agreement to construct improvements on the leased premises which will further the educational, scientific, research, or public service functions of the board and provided further that the private entity has been selected pursuant to a competitive bid or competitive proposal process.

3. Each board may permit the lessees to erect, construct, and maintain thereon fraternity or sorority houses or homes, student centers, facilities for religious worship and instruction, armories, storehouses, and other structures. Contracts entered into by private lessee for the performance of work on the leased premises or the erection, construction, or maintenance of improvements on the leased premises shall not constitute public works contracts.

4. The land leased to any fraternity, sorority, religious or quasi-religious organization shall not exceed 1 acre.

5. The architectural plans for each house or other structure shall be approved by the board prior to any construction taking place on the leased grounds.

6. The provisions of R.S. 39:1643 and R.S. 41:1211-1225 shall not be applicable to agreements authorized by R.S. 17:3361.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1724.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 39:3270 (December 2013).

**§403. Oversight**

A. Any construction in conjunction with a lease to a nonprofit corporation or association in accordance with R.S. 17:3361 resulting in the construction of improvements on or after January 1, 2007, on college or university property shall be considered a third-party project and shall be subject to design and construction oversight by the Division of Administration, Office of Facility Planning and Control.

B. Design and construction oversight:

1. the right to review and approve plans and specifications prior to the commencement of construction and to require such changes as may be necessary to comply

with applicable building codes, space standards, where appropriate, and standards ensuring quality of construction; and

2. the right to conduct periodic inspections during construction to ensure that work is being performed in compliance with the approved plans and specifications.

C. The Division of Administration, Office of Facility Planning and Control will not serve as the project manager for third-party projects.

D. R.S. 17:3361 requires that each higher education management board adopt, subject to approval of the Division of Administration, Office of Facility Planning and Control and in consultation with the Board of Regents, proposed space standards and quality standards and exceptions thereto on or before January 1, 2007. These adopted space and construction quality standards are made part of this Rule.

E. Buildings constructed or renovated as third-party projects, being located on property under the jurisdiction of the state of Louisiana, shall be subject to the Louisiana building code (LAC 34:III.131).

F. Any third-party project involving a building having a state ID number, or anticipated being assigned a state ID number in the future, shall be subject to the requirements of the commercial building energy conservation code in accordance with R.S. 40:1730.41-49.

AUTHORITY NOTE: Promulgated in accordance with R.S. 40:1724.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 39:3270 (December 2013).

**§405. Role During Design Phases**

A. A university or college shall notify the director of the Office of Facility Planning and Control in writing of any new third-party project, prior to beginning design of the project. A preliminary program indicating the scope and budget of the project shall be submitted to the Division of Administration, Office of Facility Planning and Control.

B. At a minimum, plans and specifications, along with a complete building code analysis, shall be submitted to the Office of Facility Planning and Control at the program completion phase and at the final construction documents or bid documents phase. However, submittal of plans and specifications to the Office of Facility Planning and Control may be required at schematic design and design development phases, based on a schedule to be established at the beginning of the project as required in fulfilling the Office of Facility Planning and Control's right to design oversight. Prior to the issuance of any contract for construction or any authorization to proceed with construction, final construction documents shall be submitted to and be found to meet the requirements of the Department of Public Safety and Corrections, Office of State Fire Marshal, the Department of Health and Hospitals and the Division of Administration, Office of Facility Planning and Control, as well as complying with the laws and

regulations of any other regulatory authorities having jurisdiction.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1724.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 39:3270 (December 2013).

#### **§407. Role During Construction Phase**

A. The Office of Facility Planning and Control shall be advised of date, time and location of pre-design conference and monthly progress meetings for all third-party projects.

B. The Office of Facility Planning and Control reserves the right to conduct periodic inspections during construction of all third-party projects.

C. Copies of all change orders shall be submitted to the Office of Facility Planning and Control. Change orders will be reviewed pursuant to LAC 34:III.403.

D. Upon certification by the designer of record that the construction has been completed in accordance with the plans and specifications and is in compliance with the Louisiana building code (LAC 34:III.131) and upon receipt of documentation of the final inspection and approval for occupancy by the Office of State Fire Marshal, the Office of Facility Planning and Control will issue a finding of no objection to the building being occupied for its intended purpose.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 40:1724.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 39:3271 (December 2013).

## **Chapter 5. Rental and Lease Procedure**

### **§501. Authority, Policy, Purpose, and Application**

A. Authority. Louisiana Revised Statutes provide that all agreements for the lease or rental of space shall be made by the agency whose offices and/or activities are to be housed, but shall be made and entered into only with the approval of the Commissioner of Administration. (Louisiana Procurement Code, Louisiana Revised Statutes, Chapter 17 of Title 39 R.S. 39:1551 et seq. with particular reference to R.S. 39:1641-1644). The commissioner has designated the Office of Facility Planning and Control, Real Estate Leasing Section, to administer this function (R.S. 39:1641).

B. Policy. It is the policy of the Division of Administration to acquire the best available rental space for state agencies with the greatest amount of competition among lessors of privately owned facilities (R.S. 39:1594.G, R.S. 39:1594.E as amended, R.S. 39:1643.A as amended).

C. Purpose. The purpose of these procedures and regulations is to simplify and clarify the procurement practices for renting and leasing of space for state agencies, to provide increased economy and efficiency in procurement activities, to foster more effective competition for bid space, ensure fair and equitable treatment of all persons involved,

to enable greater public confidence in the lease procurement process, and to maintain a procurement system of quality and integrity.

D. Application. The definition of *agency* stated in R.S. 39:2(A)(2) shall be the sole definition of the term *state agency* employed herein in connection with the acquisition of housing space and the fact that an agency is supported by fees or taxes collected by, or dedicated to, the agency or which otherwise receives its operating funds through means other than direct appropriations, shall not be a test as to whether these rules shall be applicable to an agency of the state. (R.S. 39:1641(C)).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1551-1736.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:902 (November 1984), amended LR 26:1019 (May 2000).

### **§503. Space Acquisition Method**

#### **A. In General**

1. The Office of Facility Planning and Control, Real Estate Leasing Section, will retain an original of each lease and will notify a user agency when its lease is about to expire.

2. All standard forms mentioned herein are available on request from the Office of Facility Planning and Control, Real Estate Leasing Section.

3. Every lease for the use of 5,000 square feet or more, with the exception of emergency and sole source procurements as set forth in §§513 and 514 and cooperative use agreements between public procurement units, as set forth in R.S. 39:1701 and 1704, must be procured in accordance with R.S. 39:1594.

4. All leases and lease amendments, including amendments both for space of less than 5,000 square feet (which can be negotiated) and for 5,000 square feet or more, which must be bid, must be preceded by a request for approval form RL-2A (negotiable and amended leases) and RL-2B (leases competitively bid) on which the request for space, location and terms of lease are detailed.

5. The Office of Facility Planning and Control, Real Estate Leasing Section, will examine the request in relation to authorized programs, funds, and personnel, and will approve, take under advisement, or disapprove the user agency request, taking into consideration, including but not limited to, the price per square foot of rental space, space allocation, availability of housing in state-owned space, location of the requested space, number of locations considered, timeliness of the availability of the requested space.

#### **B. Procedure for Space Less Than 5,000 Square Feet**

1. An agency seeking to acquire a lease for less than 5,000 square feet or to amend an existing lease which will result in total leased space of less than 5,000 square feet, shall attempt to obtain at least three written proposals. Upon

receipt of these proposals, the user agency shall enter into a negotiation process to obtain the best price and terms possible under the circumstances subject to approval by the Division of Administration.

2. Once the agency has completed this negotiation process and has selected a prospective lessor, it submits an RL-2A form to the Office of Facility Planning and Control, Real Estate Leasing Section, for approval of the proposed lease.

3. If an RL-2A request is not approved, the agency is notified in writing of the reasons for disapproval. Facility Planning and Control, Real Estate Leasing Section, may request additional information for further consideration.

4. Upon approval of the RL-2A request, the Real Estate Leasing Section will prepare the lease and extract of lease/amendment. The lease, extract of lease/amendment, and accompanying affidavit are executed, first by the lessor, then by the lessee, who is the user agency or department, and then given final approval by the Division of Administration. The extract of lease and the affidavit become a part of the lease. All leases and amendments shall be executed as four originals and distributed as follows: two leases shall be distributed to the user agency, one distributed to the lessor, and one retained by the Office of Facility Planning and Control, Real Estate Leasing Section. The lessor shall record the extract of lease/amendment, lease or amendment in the public records of the parish in which the leased premises are located, and provide the Real Estate Leasing Section with a certified copy showing such recordation.

#### C. Space 5,000 Square Feet or Greater

##### 1. The Bid Specifications and Solicitation

a. The Office of Facility Planning and Control, Real Estate Leasing Section, receives the RL-2B from the user agency. If an RL-2B is not approved, the agency is notified in writing of the reasons for disapproval. Additional information may be requested for further consideration. If the RL-2B is approved, the Office of Facility Planning and Control, Real Estate Leasing Section, prepares the bid specifications. The bid specifications shall include the bid proposal form, affidavit attesting to control of the offered property and parking area, evidence of agency, corporate, or partnership authority (if applicable), space specifications and requirements, criteria for evaluation of the bids and a sample lease. Criteria for evaluation of bids shall include location of the proposed space, conditions of the proposed space, suitability of the proposed space for the user agency's needs, and timeliness of availability of the proposed space. (Act 635 of 1995 amending R.S. 39:1594.E and Act 121 of 1997 adding R.S. 39:1594.C(4).

b. The Real Estate Leasing Section forwards the bid specifications to the user agency for final review and comment prior to advertisement.

2. Advertisement and Notice. As required by R.S. 39:1643, leases for the use of 5,000 square feet or more of space are to be awarded pursuant to R.S. 39:1594 (unless exempt under R.S. 39:1593) which requires adequate public

notice of the invitation for bids to be given at least 20 days prior to bid opening date. This notice is given by advertising in the official journal of the state and in the official parish journal of the parish where the property is to be leased. The advertisement shall be published twice in the state and parish journals, with one publication on a Saturday, if available. The bid specifications are then made available and distributed to bidders who request a copy. Bidders receiving a copy of the bid specifications, become a "Bidder of Record" for that solicitation.

3. Pre-Bid Conference. A pre-bid conference may be held upon the request of the user agency to answer questions from prospective bidders. The date and time of the pre-bid conference shall be included in the advertisement, which shall state if attendance at the pre-bid conference is a prerequisite to submission of a bid.

##### 4. Addenda to Bid Specifications

a. A potential bidder or the user agency can request changes/alterations to the advertised bid specifications, but only in writing to the Office of Facility Planning and Control, Real Estate Lease Section. The written request is reviewed by the Real Estate Leasing Section and by the user agency. If approved, an addendum to the bid specifications is issued and provided to all "Bidders of Record."

b. Addenda modifying the bid specifications must be issued no later than three working days prior to the advertised time for the opening of bids, excluding Saturdays, Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying the bid specifications within the three-day period prior to the advertised time for the opening of bids, the opening of bids shall be extended exactly 14 days, without the requirement of re-advertising. Addenda shall be sent to all "Bidders of Record."

c. If any changes/alterations to the advertised bid specifications are a substantial deviation from the advertised bid specifications, the solicitation must be re-advertised with a new bid opening date established. The bid opening is rescheduled for at least 20 days after the re-advertisement. Any alterations or changes to advertised geographic boundaries may be grounds for re-advertisement of the solicitation.

##### 5. Bid Opening

a. Bids are opened by the Real Estate Leasing Section at the specified date, time and place. The Real Estate Leasing Section evaluates the bids and arranges them on a bid tabulation sheet. If deemed necessary by the Real Estate Leasing Section, additional information and documentation evidencing control of the offered property and parking areas can be requested of the apparent low bidder.

b. The Real Estate Leasing Section sends the bid tabulation to the user agency with a request that the user agency verify availability of funds for rental payments to the apparent low bidder and compliance of the property offered by the apparent low bidder with the specified geographic boundaries.



## 6. Determination of Lowest Bidder

a. Upon receipt from the user agency of verification of availability of rental payments to the apparent low bidder and verification of compliance of the property offered by the apparent low bidder within the specified geographic boundaries, the Real Estate Leasing Section sends written notice to the apparent low bidder requesting schematic floor plans, site plans, and outline specifications of the proposed lease space. The apparent low bidder is allowed 20 days in which to provide the required documents. The user agency shall then review the documents as to adjacencies and layout of the space. If they meet the agency's requirements, the agency shall then submit the schematic plans, site plans, and outline specifications to the Real Estate Leasing Section for review. Once the Real Estate Leasing Section determines they are in compliance with the advertised bid specifications, it will proceed with the issuance of the lease documents.

b. If the schematic plans, site plans, and outline specifications are not approved by the Real Estate Leasing Section, the apparent low bidder is allowed 10 days in which to correct any deficiencies or discrepancies between the submitted plans and the advertised bid specifications. Upon receipt of the revised plans, the Real Estate Leasing Section reviews for compliance with the advertised bid specifications. If the documents are then approved by the Real Estate Leasing Section, the lease documents are then issued. Should the schematic plans, site plans, and outline specifications still not comply with the advertised bid specifications, the bid may be rejected for non-compliance with the advertised bid specifications. The next apparent low bidder can then be considered by following the same procedures.

c. Should all bidders be considered non-responsive or not in compliance with the advertised bid specifications, the bid solicitation is canceled. The bid specifications can be reviewed for possible revisions in order that a new solicitation can be issued.

7. Execution of the Lease. The Real Estate Leasing Section will prepare the lease and extract of lease. The lease and extract of lease and accompanying affidavit are executed, first by the lessor, who must return the signed lease and the affidavit within 10 days after receipt. The lease is then executed by the lessee, who is the user agency or department, and then given final approval by the Division of Administration. The affidavit and extract of lease become a part of the lease. All leases shall be executed as four originals and are distributed as follows: two leases to the user agency, two to the lessor, and one retained by the Office of Facility Planning and Control, Real Estate Leasing Section. The lessor shall record an extract of lease or lease in the public records of the parish in which the leased premises are located and provide the Real Estate Leasing Section with a certified copy showing such recordation.

8. Notice to Other Bidders. When the lease documents are mailed to the lowest, responsible bidder for execution, all other bidders are notified via certified mail of the contract award.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1551-1736.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:902 (November 1984), amended LR 26:1020 (May 2000).

### §505. Space Offered

A. A bidder may offer space consisting of any of the following: owned or leased space ready for occupancy, owned or leased space to be renovated for occupancy, owned or leased new construction.

B. Space may not be offered for lease in response to a solicitation if the same space has been offered/bid for another solicitation within the last 60 days and has not been withdrawn for that solicitation.

C. A bidder must control the offered property and parking areas as of the date of the bid opening and throughout the term of the lease and option period. He shall submit an affidavit with his bid indicating how the property and parking areas are controlled. The Real Estate Leasing section shall ask the apparent low bidder to provide schematic plans, outline specifications, and site plans and will evaluate those plans and specifications to determine compliance of the offered space with the advertised bid specifications.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1551-1736.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:902 (November 1984), amended LR 26:1021 (May 2000).

### §506. Rejection of Bids and Cancellation of Invitations for Bids or Requests for Proposals

A. The Chief Procurement Officer or designee has the right to reject any or all bids, and to cancel an invitation for bids, a Request for Approval Form RL-2, or other solicitation when it has been deemed to be in the best interest of the state of Louisiana. Such determination must be made in writing.

B. If the solicitation is cancelled prior to bid opening, all bidders of record (those bidders who obtain from the Real Estate Leasing Section a copy of the bid specifications) are notified. If the solicitation is cancelled after the bid opening, all bidders are notified.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1551-1736.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1022 (May 2000).

### §508. Correction and Withdrawal of Bids

A. Prior to Bid Opening. Prior to the bid opening, a written request for the withdrawal of a bid will be granted if the request is received prior to the specified time of the bid opening. If a bidder withdraws a bid, all bid documents shall remain the property of the state.

B. After Bid Opening. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders. Such bid may be corrected or withdrawn after bid opening only with the approval of the Office of Facility Planning and Control, Real Estate Leasing Section. A bidder who wishes to correct or withdraw a bid, must request approval for such action in writing. The request must specify the justification for the proposed correction or withdrawal. If a bidder is allowed to withdraw a bid, he may be required to withdraw all other bids he has submitted for that solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1022 (May 2000).

**§509. Determination of Responsibility**

A. The Real Estate Leasing Section may request that an apparent low bidder submit suitable evidence that he is a responsible bidder. A responsible bidder shall:

1. have adequate financial resources for performance, or have the ability to obtain such resources as required during performance;
2. have the necessary experience, organization, technical qualifications, skills, and facilities, or have the ability to obtain them (this may include subcontractor arrangements);
3. be able to comply with the proposed or required occupancy date; and
4. not have an unsatisfactory record of contract performance.

B. The Real Estate Leasing Section may request the following information:

1. a letter of credit from a financial institution;
2. financial statement;
3. a letter of commitment from the bank or other institution financing the project and addressed to the Division of Administration, stating the amount and terms of commitment to the lessor;
4. information from the prospective lessor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;
5. other information supportive of financial responsibility, including financial data, and records concerning lessor performance;
6. publications, including credit ratings and trade and financial journals; and
7. information from other sources, including banks, other financial companies, state departments and agencies, and courts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:904 (November 1984), amended LR 26:1022 (May 2000).

**§510. Assignment of Proceeds of Lease and Assignment of Lease**

A. Assignments of Lease and Assignments of Proceeds of Lease by a lessor must be approved in advance and in writing by the Office of Facility Planning and Control—Real Estate Leasing Section. Approval of a requested assignment shall not be unreasonably or arbitrarily withheld by either party. However, the approval of any assignment of proceeds of lease may be conditioned upon receipt of reasonable assurances from assignee of his ability and willingness to assume responsibility for performance of the terms of the lease in the event of failure of performance by the assignor. Assignment of Lease Forms and Assignment of Proceeds of Lease Forms shall be provided by the Office of Facility Planning and Control, Real Estate Leasing Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1022 (May 2000).

**§511. Resolution of Controversies**

A. Right to Protest. Any prospective lessor who is aggrieved in connection with the solicitation or award of a contract may protest to Facility Planning and Control. Protests with respect to a solicitation shall be submitted in writing no later than 10 days prior to the opening of bids. If a person protests a solicitation, an award cannot be made until said protest is resolved. Protests with respect to the award of a contract shall be submitted in writing within 14 days after contract award. Said protest shall state fully and in particular, the reason for protest if a protest is made with respect to the award of a contract. Work on the contract cannot be commenced until it is resolved administratively.

B. Decision. The assistant director, Facility Planning and Control, must notify the protesting party in writing and the legal counsel of the Division of Administration within 14 days after receipt of said protest whether or not the protest is denied or granted. If the protest with reference to the solicitation is granted, the solicitation will be canceled and reissued. If the protest with reference to the award is granted, then the lease will be voided and the remaining solicitations may be re-evaluated for another selection. If another selection cannot be made or if it appears to be in the best interest of the state, a new solicitation will be issued.

C. Appeal. If an aggrieved party is not satisfied with the rendered decision, then that party may appeal said decision in writing to the Commissioner of Administration within seven days of the decision. The protesting party should fully explain the basis of his appeal. The commissioner then must render a decision in writing within 14 days of receipt of the appeal. The commissioner's decision is final and an

aggrieved party may bring judicial action within two weeks from receipt of said decision.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1551-1736.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 11:946 (October 1985), amended LR 22:345 (May 1996), repromulgated LR 26:1023 (May 2000).

### §512. Lease Clauses

A. A lease may include clauses providing for equitable adjustments in prices, time for performance, or other contract provisions, as appropriate, covering such subjects as:

1. the unilateral right of the state to order in writing changes in the work within the general scope of the contract in the drawings, designs, or specifications for space to be furnished;

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 and actual quantities.

B. A lease may include clauses providing for appropriate remedies covering such subjects as:

1. liquidated damages as appropriate;

2. specified excuses for delay or non-performance;

3. termination of the contract for default; and

4. termination of the contract in whole or in part if sufficient funds have not been appropriated by the legislature.

C. A lease may also provide that in the event that the lessor fails to fulfill or comply with the terms of any contract, he may be subject to disqualification on future state projects and 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 lessor.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1551-1736.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1023 (May 2000).

### §513. Emergency Procurement

A. The Office of Facility Planning and Control, Real Estate Leasing Section, may make emergency procurements for acquisition of housing space of 5,000 square feet or more when there exists an imminent threat to the public health, welfare, safety or public property.

B. The declaration of an emergency must be made in writing by the Chief Procurement Officer or his designee, fully documenting the nature of the emergency, the circumstances leading up to the emergency and a description of the threat to public health, welfare, safety or public property.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1598.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:904 (November 1984), amended LR 26:1023 (May 2000).

### §514. Sole Source Procurements

A. The Office of Facility Planning and Control, Real Estate Leasing Section may make sole source procurements for acquisition of housing space of 5,000 square feet or more or may amend an existing lease to total in excess of 5,000 square feet or more when the Chief Procurement Officer, or his designee, determines in writing that there is only one source for the required space.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1597.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1023 (May 2000).

### §515. Amendments to Leases

A. Additional Space. Any additional space added is to be only that for which the requirement could not reasonably have been foreseen at the time of execution of the lease or the latest option renewal; the additional space provision is not to be used to circumvent the bid law.

1. Leases for Space of Less than 5,000 Square Feet. Any lease for less than 5,000 square feet may be amended by negotiation between the user agency and the lessor. The square footage of such a lease may be increased up to a total of 4,999 square feet with the approval of the Division of Administration. If the amendment causes the space to measure 5,000 square feet or more, the additional space must be procured in accordance with RS 39:1594 unless it is deemed a sole source or emergency procurement.

2. Leases for Space of 5,000 Square Feet or More. Any lease for space of 5,000 square feet or more, may be amended by negotiations between the user agency and the lessor to include up to 4,999 square feet of additional space. Such amendment must also be approved by the Division of Administration. If the amendment adds 5,000 square feet or more, the additional space must be procured in accordance with RS 39:1594 unless it is considered a sole source or emergency procurement.

B. Modifications and Alterations. In the event alterations to or modifications of space currently under lease are required to meet changed operating requirements, a lease may be amended. Such lease amendment may, with the approval of the Division of Administration, provide an adjustment in monthly lease payments not to exceed 25 percent of the original annual lease price per square foot, sufficient to reimburse the lessor for paying for the leasehold improvements. Any adjustment in lease payments shall also require the approval of the Joint Legislative Committee on the Budget. The continuance of a rental adjustment in excess of 25 percent of the original rental rate shall be further contingent on the appropriation of funds in the following fiscal years.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:904 (November 1984), amended LR 26:1023 (May 2000).

### **§516. Renegotiation and Renewal of Current Leases**

A. Leases of Less than 5,000 Square Feet. If an agency wishes to renew an existing lease of less than 5,000 square feet, it may renegotiate with the present lessor or attempt to obtain proposals from other prospective lessors.

B. Space of 5,000 Square Feet or More. An existing lease for office or warehouse space of 5,000 square feet or more, may be renegotiated with the present lessor, but only after the Division of Administration has entered into a competitive negotiation process involving discussions with at least three offerors who submit written proposals. If less than three written proposals are submitted, the Division of Administration may, nevertheless, hold discussions with those offerors, as well as with the current lessor, but without revealing information gleaned from competing proposals to other offerors. Such proposals shall be solicited by advertising as provided in R.S. 39:1594.C.

C. Evaluation of Proposals. If the Commissioner of Administration, or his designee, determines after evaluation of the proposals and discussions with the current lessor that to renew the present lease would be in the best interest of the state, an existing lease may be renewed. The commissioner, or his designee, may enter into a lease with one of the other offerors if determined to be in the best interest of the state. In making such a determination, the commissioner, or his designee, shall take into consideration, over the duration of the lease, rental rates, the amount of funds necessary to relocate, any geographical considerations particular to that state program, the amount of disruption to state business that may be incurred in moving to a new location, and any other relevant factors presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 26:1024 (May 2000).

### **§517. Revised Statutes and Louisiana Administrative Code**

A. These regulations shall be read and interpreted jointly with Chapter 17 of Title 39 of the Revised Statutes and, when not in conflict, with the purchasing rules of the *Louisiana Administrative Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Facility Planning and Control, LR 10:904 (November 1984), amended LR 26:1024 (May 2000).

## **Chapter 7. Demolition or Disposing of State-Owned Buildings**

### **§701. Preface**

A. Act 537 of 1982 enacted R.S. 38:2212.2 to provide for the demolition of state buildings. The statute prohibits the demolition of state buildings unless the appropriate legislators have been notified and unless disposition has been approved by the Office of Facility Planning and Control (FPC). Following are the procedures adopted and promulgated pursuant to this statute.

1. Any state agency proposing to raze, demolish or otherwise dispose of any building or structure owned by the state of Louisiana (except highways, bridges, and railroads), shall first submit such proposal directly to Facility Planning and Control. The request from the user agency must contain the state building identification number, the reason for the request, pictures of the structure, estimated costs involved, the source of funding, the legislative district where the building is located (both senatorial and representative), and information regarding whether the building has been surveyed for asbestos containing materials.

2. Upon receipt of the properly authorized request from the state agency, Facility Planning and Control will notify the legislators representing the district in which the structure is located. This letter from Facility Planning and Control will identify the building or structure, location, reasons for such action, brief description of the work involved and copies of the pictures. In the event that demolition involves historic properties within the city of Baton Rouge, Facility Planning and Control will also notify the state historic preservation officer as required by R.S. 25:781 through 785. A copy of these letters and the attachments are sent to the Louisiana property assistance agency and to the engineering section of Facility Planning and Control. All recipients of such letters are to be assured that under no conditions shall a request for property disposition be approved by Facility Planning and Control prior to 30 days from the date of the notification letter.

3. After receipt of the letter requesting approval for disposition, a Facility Planning and Control field engineer will make an inspection of the subject building or structure. His report shall include his recommendations regarding disposition, any suggested alternatives or possible use of the structure by other state agencies, and any asbestos abatement activity which may be necessary prior to demolition/disposal.

4. Copies of the field engineer inspection report are sent to the user agency and to the Louisiana Property Assistance Agency. Contents of the report may require a response from the agency.

5. If it is determined by the office of facility planning and control that a building or structure has been damaged as a result of fire, hurricane, or natural disaster and imminent danger is presented to life or property, the director of facility planning and control, division of administration, may

approve a request to raze or demolish a building or structure immediately after legislative notification has been issued.

6. If capital outlay funds are to be used for demolition, Facility Planning and Control will authorize contracts to be awarded for the demolition. When the demolition has been completed, Facility Planning and Control will notify the State Land Office and Office of Risk Management so the building can be removed from the statewide building inventory and insurance coverage will be deleted.

7. If other than capital outlay funds are to be used, the user agency will be responsible for demolition of the structure in accordance with state purchasing laws and regulations. When the demolition has been completed the user agency must notify the State Land Office and the Office of Risk Management so the building can be removed from the statewide building inventory and insurance coverage will be deleted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1410.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 20:47 (January 1994), amended LR 32:2048 (November 2006).

## Chapter 9. Public Contracts

### §901. Closed Specifications for Certain Products

A. This rule applies to the closing of specifications to products that are necessary to expand or match products in existing systems but for which a person or group of persons possesses the right to exclusive distribution.

B. A closed specification may be submitted and authorized where a person or group of persons possesses the right to exclusive distribution of the specified product when that product is required to expand or extend an existing system at a facility or site if that product is one of the systems listed in §901.B.1-11, or a component of one of them, and the approving authority has determined that all products other than the one specified would detract from the utility of the system; and all other applicable requirements of R.S. 38:2290-2296 have been met:

1. energy management systems;
2. chillers when necessary for refrigerant conversion;
3. fire alarm systems;
4. electronic security systems;
5. elevators;
6. nurse call systems;
7. medical gas systems;
8. stage lighting systems;
9. sound systems;
10. clock systems;
11. brick and stone.

C. It is the responsibility of the approving authority to verify that the product for which the specification is closed is the only acceptable product and to comply with all applicable requirements of R.S. 38:2290-2296.

AUTHORITY NOTE: Promulgated in accordance with R.S. 38:2290(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 24:333 (February 1998).

## Chapter 11. Rulemaking Petitions

### §1101. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration  
Re: Rulemaking Petition  
P.O. Box 94095, Capital Station  
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with RS 39:103 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning and Control, LR 46:331 (March 2020).

### §1103. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:103 and 49:953, et seq.

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Facility Planning

and Control, LR 46:332 (March 2020).

# Title 34

## GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

### Part V. Procurement

EDITOR'S NOTE: In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Division of Administration, Office of State Procurement, has amended Chapters 9, 25, and 31, Procurement, of LAC 34:V. The Rules were revised to align with Act 864 of the 2014 Regular Legislative Session, effective January 1, 2015. The Act amended and reenacted R.S.3:4(B)(1)(b), and chapter 17 of subtitle III of title 39 of the *Louisiana Revised Statutes* of 1950, to be comprised of R.S. 39:1551 through 1755, and repealed chapter 16 of subtitle III of title 39 of the *Louisiana Revised Statutes* of 1950, comprised of R.S. 39:1481 through 1526.

The amended and reenacted statutes effectively combined Louisiana's procurement of personal, professional, consulting and social services provisions (formerly chapter 16 of title 39) and provisions for the purchasing of supplies, services and major repairs, into the *Louisiana Procurement Code* (chapter 17 of title 39). All authority, duties and responsibilities formerly residing with the Office of Contractual Review and the Office of State Purchasing were placed under a new central purchasing agency identified as the Office of State Procurement. Revisions to the rules brought them into compliance with the new law by eliminating any outdated references to offices which no longer exist. Therefore, effective January 1, 2015, any reference to the Office of Contractual Review or the Office of State Purchasing, which still remain in the rules, will refer to the Office of State Procurement.

## Chapter 1. Procurement of Supplies, Services, and Major Repairs

### §101. General Purpose and Policies

#### A. Definition and Purpose

1. *Specification*—any description of the physical functional, or performance characteristics, or of the nature of a supply, service, or major repair item. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or major repair item for delivery. Unless the context requires otherwise, the terms *specification* and *purchase description* are used interchangeably throughout these regulations.

2. The purpose of a specification is to serve as a basis for obtaining a supply, service, or major repair item adequate and suitable for the state's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the state that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the state's requirements.

3. All definitions, whether listed here or elsewhere within Part V of these regulations, or as listed in R.S. 39:1556, shall apply.

a. *Invitation for Bids*—all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in R.S. 39:1594. Unless the context requires otherwise, invitation for bids (IFBs) and invitation to bid (ITB) are used interchangeably herein.

b. *Proposer*—a firm, venture or individual who responds to the competitive sealed proposal.

B. Nonrestrictiveness. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or major repair item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that is not practicable to use a less restrictive specification.

C. Preference for Commercially Available Products. It is the general policy of this state to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

D. Escalation and De-Escalation Clauses. Solicitation specifications may contemplate a fixed escalation or de-escalation in accordance with a recognized escalation index.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

### §103. Availability of Documents

A. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection pursuant to R.S. 44.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014).

### §105. Authority to Prepare Specifications

A. Statutory Authority of the Chief Procurement Officer and State Agencies. The chief procurement officer is authorized to prepare specifications in accordance with R.S. 39:1652, subject to the authority granted purchasing

agencies in R.S. 39:1653 of the Louisiana Procurement Code.

B. Delegation of Authority to State Agencies. The chief procurement officer may delegate in writing the authority to prepare and utilize specifications to purchasing agencies and using agencies for any type of supplies, services, or major repairs provided such delegations may be revoked by the chief procurement officer.

C. Authority to Contract for Preparation of Specifications

1. A contract to prepare specifications for state use in procurement of supplies, services, or major repairs may be entered into when a written determination is made by the chief procurement officer, or the head of a purchasing agency authorized to prepare such specifications, that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the state.

2. Whenever specifications are prepared by other than state personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of the Louisiana procurement code and of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

**§107. Procedures for the Development of Specifications**

A. Provisions of General Application

1. Application of Section. This Section applies to all persons who may prepare a specification for state use, including the chief procurement officer, the head of a purchasing agency, the head of a using agency, the designees of such officers, and also consultants, architects, engineers, designers, and other draftsmen of specifications used for public contracts.

2. Specification of Alternates May Be Included. To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repair items where two or more design, functional, or performance criteria will satisfactorily meet the state's requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014), LR 40:2548 (December 2014).

**§109. Definitions and Use**

A. Proprietary Specifications

1. *Proprietary Specification*—a specification that cites brand name, model number, and some other designation as

permitted by R.S. 39:1655, that identifies a specific product to be offered exclusive of others.

2. Use

a. Since use of a proprietary specification is restrictive, it may be used only when the chief procurement officer or his designee, or a governmental body delegated authority under R.S. 39:1566, makes a written determination that only the identified brand name item or items will satisfy the state's needs.

b. Some examples of circumstances which could necessitate proprietary procurement(s) are:

i. revolving fund purchases for resale, such as groceries, canned good, packing house products, drug sundries, candy, tobacco and other similar items;

ii. revolving fund purchases of foods for cafeterias, dining halls or dormitories;

iii. standard replacement parts such as automobiles, machinery, and equipment;

iv. repairs to automobiles, machinery, equipment, etc.

3. Competition. The procurement officer shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Chapter 9 (Sole Source Procurement) of this Part.

B. Brand Name or Equal Specification

1. Definition. A specification that cites brand names, model number, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

2. Use. Some examples of circumstances which could necessitate the use of brand name or equal specifications are:

a. no specification for a common or general use item or qualified products list is available; or

b. time does not permit the preparation of another form of specification, not including a brand name specification; or

c. the nature of the product or the nature of the state's requirements makes use of a brand name or equal specification suitable for the procurement; or

d. use of a brand name or equal specification is in the state's best interest.

3. Competition

a. Specifications shall seek to designate as many different brands as are practicable as "or equal" references and shall state that substantially equivalent products to those designated will be considered for award.

b. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain



explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

c. Unless the chief procurement officer or the head of a purchasing or using agency authorized to finally approve specifications determines that the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

#### C. Qualified Products List

1. *Qualified Products List*—a specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next solicitation; on approved brands list.

2. Use. A qualified products list may be developed with the approval of the chief procurement officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or major repair items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

3. Comments, Final Approval, Revisions, and Cancellation. Comments on final approval of, and revisions to the proposed criteria and methodology for establishing and maintaining a qualified products list, and the cancellation thereof, shall follow the procedures of Subparagraphs D.3.b-e of this Section applicable to specifications for common or general use items.

#### 4. Solicitation

a. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

b. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements.

#### D. Common or General Use Item

1. Definition. *Specification for a Common or General Use Item*—a specification which has been developed and approved for repeated use in procurement in accordance with the provisions of R.S. 39:1651.

2. Use. If a specification for a common or general use item has been developed or a qualified products list has been developed for a particular supply, service, or major repair item, or need, it shall be used unless the chief procurement officer or the head of a purchasing agency makes a written determination that its use is not in the state's best interest and that another specification shall be used.

#### 3. Special Additional Procedures

a. Preparation and Utilization. A specification for common or general use shall, to the extent practicable, be prepared to be utilized:

i. when a supply, service, or major repair item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or major repair item as commercially produced or provided remain relatively stable while the frequency or volume of procurement is significant;

ii. where the state's recurring needs require uniquely designed or specially produced items; or

iii. when the chief procurement officer, or the head of a purchasing or using agency authorized to prepare such specifications, finds it to be in the state's best interest.

b. In the event a using agency requests the preparations of a specification for a common or general use item, the chief procurement officer, his designee, or a governmental body delegated authority under R.S. 39:1566, shall prepare such a specification if such officer determines the conditions in Clauses 3.a.i-iii of this Paragraph have been met.

c. Comments on the Draft. The chief procurement officer, his designee, or the head of a purchasing or using agency preparing a specification for a common or general use item, shall provide an opportunity to appropriate parties to comment on the draft specification including, as reasonable, a number of manufacturers and suppliers as such officer deems appropriate.

d. Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the chief procurement officer, or his designee, or a governmental body delegated authority under R.S. 39:1566.

e. Revisions. Revisions to specifications for common or general use items which do not change the technical elements of the specifications but which are necessary for clarification may be made upon approval of the chief procurement officer, or the head of a purchasing or using agency authorized to approve such specifications. Interim revisions to fit the requirements for a particular procurement which change the technical elements of the specification may be made by the chief procurement officer, or the head of a purchasing or using agency authorized to approve such a specification. All other revisions shall be made in accordance with Subparagraphs D.3.a-d of this Section.

f. Cancellation. A specification for a common or general use item may be canceled by the chief procurement officer, or by the head of a purchasing or using agency authorized to give final approval to such specifications.

E. Use of Functional or Performance Descriptions. State agencies should emphasize functional or performance criteria while limiting design or other detailed physical

descriptions to those necessary to meet the needs of the state to the extent practicable.

1. *Functional or Performance Specifications*—terms used interchangeably to designate an approach to specifications that is less interested in dimensions and materials and configurations and more interested in what a product does. These specifications describe the characteristics and capabilities that are pertinent to the intended use of the article and, at a minimum, would include an explanation of the results required, testing methods, and characteristics that the goods or service must perform.

2. *Design Specifications*—a term that customarily employs dimensional and other physical requirements of the item being purchased.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1347 (July 2014), LR 40:2548 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018), LR 47:579 (May 2021).

#### **§111. Major Repairs and Labor and Material Service Projects**

A. *Major repairs* is as defined in R.S. 39:1556(32).

1. Major repairs may include, but are not limited to the following:

- a. repair or replacement projects, such as painting, flooring installation, etc.;
- b. roof repairs which do not require specialty contractors or designers, or architects or engineers;
- c. repair or replacement of minor building components, such as fixtures.

B. *Services* is as defined in R.S. 39:1556(51). For purposes of this Part, “services” and “labor and material services” shall be used interchangeably.

1. Services do not include those items listed in R.S. 39:1556(51)(b); but, does include, though not limited to, the following:

- a. maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment;
- b. routine recurring maintenance of immovable property;
- c. housekeeping services;
- d. operation of government-owned equipment, immovable property, and systems;
- e. information technology services.

2. When in doubt about what may be identified as a major repair or services, the final determination will be

made by the chief procurement officer or his designee in collaboration with the Office of Facility Planning and Control, where applicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:751 (April 2018).

## **Chapter 3. Competitive Sealed Bidding**

### **§301. Content of the Invitation to Bid (ITB)**

A. Invitation to Bid

1. Purchases whose estimated cost exceeds the defined maximum value for small purchases established by executive order of the governor shall provide adequate public notice in accordance with R.S. 39:1594. Determination of adequate public notice shall take into consideration the nature and complexity of the solicitation. All advertisements, written invitations to bid, or other forms of solicitations allowed by law posted through a secure centralized electronic interactive environment pursuant to the Louisiana Uniform Electronic Transaction Act (R.S. 9:2601-2621) and applicable rules and regulations (i.e. LAC 4:XV.701 et seq.) shall contain general descriptions of the classes of commodities on which bids are solicited and shall state:

- a. the date and time when bids will be received, opened and publicly read;
- b. the names and locations of the state agencies for which the purchases are to be made;
- c. where and how specifications and bid forms may be obtained.

2. The invitation to bid shall be on the state’s standard forms containing all pertinent information and shall be full and complete including specifications, quantities, units, packaging and number of containers to the case.

B. Content. The invitation to bid shall include the following:

1. the purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and
2. the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

C. Incorporation by Reference. The invitation to bid may incorporate documents by reference provided that the invitation to bid specifies where such documents can be obtained.

D. Special Conditions. If any special conditions are to apply to a particular contract, they shall be included in the invitation to bid.

E. Types of Purchases. Purchases are made in two different ways.

1. *Open Market*—a purchase made other than under a schedule or term contract.

2. *Term Contracting*—a technique by which a source of supply is established for a specific period of time. Term contracts are usually based on indefinite quantities to be ordered "as needed," although such contracts can specify definite quantities with deliveries extended over the contract period.

F. Request for Proposals. In the event the state uses the request for proposals method of procurement pursuant to R.S. 39:1595, the procurement shall be made in accordance with Chapter 26 of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1349 (July 2014), LR 40:2549 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:751 (April 2018), LR 47:579 (May 2021).

### §303. Bidding Time

A. Bidding time is the period of time between the date of distribution of the invitation to bid and the date set for opening of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. For bids whose estimated cost exceeds the defined maximum value for *small purchases* established by executive order of the governor, a minimum of 10 days shall be provided unless the chief procurement officer or his designee deems that a shorter time is necessary for a particular procurement. However, in no case shall the bidding time be less than 10 days, except as provided in R.S. 39:1598 and Chapter 11 of these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1349 (July 2014), amended LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:751 (April 2018), LR 47:579 (May 2021).

### §305. Addenda Modifying an Invitation To Bid

A. Addenda modifying an invitation to bid shall not be issued within a period of 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying an invitation to bid within the 72 hours excluding Saturdays, Sundays and any other legal holiday(s), prior to the advertised time for the opening of bids, then the opening of bids shall be extended a minimum of 7 calendar days, without the requirement of re-advertising. Addenda shall be sent to all prospective bidders known to have received an invitation to bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1349 (July 2014), amended LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

### §307. Bidder Submissions

A. Bid Forms. All written bids, unless otherwise provided for, must be submitted on, and in accordance with forms provided, properly signed, including electronic signature, when applicable, and in the manner specified including receipt by mail, direct delivery, or through any secure electronic interactive environment permitted pursuant to the Louisiana Uniform Electronic Transaction Act and applicable rules and regulations. Bids submitted in the following manner will not be accepted:

1. bid submittal contains no signature indicating an intent to be bound as noted in LAC 34.V. 321.B.2;
2. bid filled out in pencil;
3. bid not received as specified in the invitation to bid,
4. bid not received at the address specified in the invitation to bid prior to bid opening.

#### B. Bid Samples and Descriptive Literature

1. *Descriptive Literature*—information available in the ordinary course of business which shows the characteristics, construction, packaging, or operation of an item which enables the state to consider whether the item meets its specifications and needs.

2. *Bid Sample*—a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

3. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

4. The invitation to bid shall state whether bid samples or descriptive literature are required and state the deadline for submittal. Unsolicited bid samples may not be returned.

5. When required, samples must be received not later than the time set or specified for bid opening, free of expense to the state. Samples should be marked plainly with name and address of bidder, bid number and opening date of bid, also memorandum indicating whether bidder desires return of sample or samples. Providing they have not been used or made useless through tests, when requested, samples submitted will be returned at bidder's risk and expense. All samples submitted are subject to mutilation as the result of tests by the agency. Failure to submit samples within time allowed will result in disqualification or nonconsideration of bid.

C. Conditional Bids. Conditional bids are subject to rejection in whole or in part. A conditional bid may be

accepted if the condition is not a substantial deviation from the invitation to bid.

D. All or Part. Bids may be considered for all or part of total quantities.

E. Bids Binding. Unless otherwise specified, all formal bids shall be binding for a minimum of 30 calendar days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the state may award to this bidder after this period has expired, or after the period specified in the formal bid has expired.

F. Net Prices. Bid prices, unless otherwise specified, must be net including any and all transportation and handling charges prepaid by contractor to destination.

G. Taxes. Vendor is responsible for including all applicable taxes in the bid price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018), LR 47:579 (May 2021).

### §309. Bidder Lists

A. Bidder lists may be compiled to provide the state with the names of businesses that may be interested in competing for various types of state contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a state contract.

B. Where feasible, use should be made of the Office of State Procurement's computerized vendor list. It shall be the responsibility of the bidder to confirm that his company is in the appropriate bid category.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

### §311. Pre-Bid Conferences

A. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation to bid and shall be advertised and/or electronically posted if the estimated cost exceeds the defined maximum value for small purchases established by executive order of the governor and attendance is mandatory. The conference should be held long enough after the invitation to bid has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in

preparing their bids. Nothing stated at the pre-bid conference shall change the invitation to bid unless a change is made by written addenda as provided in §305.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018), LR 47:579 (May 2021).

### §315. Pre-Opening Modification or Withdrawal of Bids

A. Procedure. Bids may be modified or withdrawn in accordance with R.S. 39:1594(G). Method for submittal of bids, modifications, or withdrawals may be by written, telegraphic, fax notice, direct delivery or electronic transmission through a secure centralized interactive environment and received at the address designated in the invitation to bid prior to the time set for bid opening. Receipt shall be as recorded by date stamp or, received electronically in accordance with R.S. 9:2615(B) or applicable regulations, at the purchasing agency. Acceptable method of delivery of modification or withdrawal shall be as stated within the invitation to bid.

B. Withdrawal of Bids. A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of opening. If a bidder withdraws a bid prior to bid opening, the bid will be returned to the ownership and possession of the bidder in accordance with §319.D of this Part.

C. Disposition of Bid Security. Bid security, if any, shall be returned to the bidder if requested when withdrawal of the bid is permitted.

D. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file, except in accordance with Subsection E of this Section.

E. The final disposition of unopened bids which are withdrawn in accordance with this Section shall be managed in accordance with §319. D of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018), LR 47:580 (May 2021).

### §317. Late Bids

A. Formal bids and addenda thereto, received at the designated place in the invitation to bid after time specified for bid opening will not be considered, whether delayed in the mail, in transmission or for any cause whatsoever. If receipt of a bid is delayed by actions of the Office of State

Procurement or the using agency handling the solicitation, and this delay prejudices a vendor, then the Office of State Procurement or using agency shall cancel the solicitation and re-bid. In no case will late bids be accepted.

B. The final disposition of unopened bids which are late as described in this Section shall be managed in accordance with §319.D of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018), LR 47:580 (May 2021).

### §319. Receipt, Opening and Recording of Bids

A. Receipt. Upon receipt, all bids and modifications will be time-stamped, if received other than electronically, but not opened. All bids received shall be secured until bid opening time.

1. Electronically received bids receipt time shall be determined in accordance with R.S. 9:2615(B).

#### B. Opening and Recording

1. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the invitation to bid. The names of the bidders and the bid price shall be read aloud or otherwise made available and shall be recorded.

2. The opened bids shall be available for public inspection, in accordance with R.S. 44:Chapter I.

C. Postponed Openings Exceptions. In the event that bids are scheduled to be opened on a day that is a federal holiday, or if the governor by proclamation creates an unscheduled holiday, or for any cause that exists that creates a nonworking day, bids scheduled to be opened on that day shall be opened on the next working day at the same address and time specified in the invitation to bid.

D. The final disposition of an unopened withdrawn bid or an unopened late bid shall be managed according to the following steps.

1. For purposes of this Subsection only, *bid* shall be understood to also refer to a competitive sealed proposal, and *bidder* shall be understood to also refer to a person submitting a competitive sealed proposal.

2. The Office of State Procurement or the using agency shall not open an unopened bid in its possession for any reason unless so properly ordered by a court of competent jurisdiction.

3. The Office of State Procurement or the using agency shall document by scan, photograph, or similar means any and all visible surfaces of the bid envelope or packaging which appear to contain text. Resulting images shall be retained in the bid file.

4. The Office of State Procurement or the using agency shall notify, in writing, the bidder whose bid is withdrawn or late that such bid is not the property of the state because it has been withdrawn or determined to be late, and that the bidder should retrieve, or arrange for third-party disposition of, its property within 30 days of written notice.

5. If the bidder fails to retrieve its bid within 60 days of written notice, the Office of State Procurement or the using agency shall dispose of the bid using secure means.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1992), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018), LR 47:580 (May 2021).

### §321. Mistakes in Bids

A. Correction or Withdrawal of Bids. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders, and such actions may be taken only to the extent permitted under these regulations. A request to withdraw a bid after the bid opening must be made in accordance with R.S. 39:1594(G). If it is determined that the error is patently obvious, then the bid may be withdrawn, and if a bid guaranty was required it shall be returned to the bidder.

B. Minor Informalities. Minor informalities are matters of form rather than substance which are evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The chief procurement officer or the head of a purchasing agency may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include, but are not limited to, the failure of a bidder to:

1. return the number of signed bids required by the invitation to bid;
2. sign the bid, but only if the unsigned bid is accompanied by other signed material indicating the bidder's intent to be bound;
3. sign or initial write-overs, or corrections in bids;
4. get an agency's certification that a mandatory job-site visit was made; and
5. return nonmandatory pages of the bid proposal.

C. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Some examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, unit prices placed in the extended amount column,

and failure to return an addendum provided there is evidence that the addendum was received. When an error is made in extending total prices the unit bid price will govern. Under no circumstances will a unit bid price be altered or corrected unless it is obvious that a unit price is submitted in a different unit of measure than shown on the bid form and the bidder's extended total verifies that the unit bid price was submitted using a wrong unit of measure, then the unit price may be changed to correspond with the correct unit of measure.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

### **§323. Bid Guaranty and Bond**

#### **A. Bid Guaranty**

1. When specified in the invitation to bid, a bid bond, cashier's check, or certified check, made payable to the Department of the Treasury of the state of Louisiana, for the amount specified, must accompany each bid.

2. If a bid bond is used, it shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the *A.M. Best's Key Rating Guide* to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide.

#### **B. Performance Bond**

1. Any performance bond furnished shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A- rating in the latest printing of the *A.M. Best's Key Rating Guide* to write individual bonds up to 10 percent of policyholders' surplus as shown in the *A.M. Best's Key Rating Guide* or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

2. No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A- rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the

amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

3. In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the state of Louisiana. If a performance bond has been required, the requirement cannot be waived, unless otherwise allowed by Louisiana statutes.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2552 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

### **§325. General Guaranty**

A. At a minimum, the state shall require that the contractor submit to the following guarantees.

1. Hold the state, its agents and employees harmless against any liability for negligent acts or omissions by the contractor.

2. Hold the state, its agents and employees harmless against any liability for infringement of any copyright or patent arising from performance of this contract.

3. Protect the state against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit.

4. Pay for all necessary permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made or the contract to be performed, and of the state of Louisiana including, when applicable, registration with the Secretary of State office.

B. The contractor may propose substitute guarantees which provide greater protection to the state.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1352 (July 2014), LR 40:2552 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

### **§327. Bid Evaluation and Award**

A. General. The contract is to be awarded "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation to bid." See R.S. 39:1594(H) (competitive sealed bidding, award) of the Louisiana procurement code. The invitation to bid shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the invitation to bid.

## B. Responsiveness and Responsibility

*Responsible Bidder or Proposer*—as defined in §1501 of this Part.

a. The Office of State Procurement, or using agency, whichever is applicable, may request suitable evidence that a vendor is a responsible bidder or proposer in accordance with Chapter 15 of this Part.

*Responsive Bidder*—a person who has submitted a bid under R.S. 39:1594 which conforms in all substantive respects to the invitation to bid including the specifications set forth in the invitation.

## C. Product Acceptability

1. The invitation to bid shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

a. inspection or testing of a product prior to award for such characteristics as quality or workmanship;

b. examination of such elements as appearance, finish, taste, or feel; or

c. other examinations to determine whether the product conforms with any other purchase description requirements, such as unit packaging. If bidder changes the unit or packaging, and it is determined that the change prejudices other bidders, then the bid for the changed item shall be rejected.

2. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the invitation to bid. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

## D. Determination of Lowest Bidder

1. Following determination of product acceptability as set forth in Subsection C of this Section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the invitation to bid. Only objectively measurable criteria which are set forth in the invitation to bid shall be applied in determining the lowest bidder. Examples of such criteria include but are not limited to transportation cost, and ownership or life-cycle cost formula. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall:

a. be reasonable estimates based upon information the state has available concerning future use; and

b. treat all bids equitably.

E. Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that required by the invitation to bid unless the bid is also the lowest bid as

determined under Subsection D of this Section. Further, this Section does not permit negotiation with any bidder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1352 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018), LR 47:580 (May 2021).

## §329. Tie Bids

### A. Definition

*Tie Bids*—low responsive bids from responsible bidders that are identical in price and which meet all requirements and criteria set forth in the invitation to bid.

### B. Resident Business Preference

1. In state contracts awarded by competitive sealed bidding, resident businesses shall be preferred to nonresident businesses where there is a tie bid and where there will be no sacrifice or loss of quality.

2. *Resident Business*—one authorized to do and doing business under the laws of this state, which either:

a. maintains its principal place of business in the state; or

b. employs a minimum of two employees who are residents of the state.

C. Award. In the discretion of the chief procurement officer or the head of a purchasing agency, award shall be made in any manner that will discourage tie bids. A written determination justifying the manner of award must be made. This would include, but is not limited to, consideration of such factors as resident business, proximity, past performance, delivery, completeness of bid proposal. Tie bids over \$10,000 must be reported to the attorney general. (See Chapter 23, Reporting of Suspected Collusive Bidding or Negotiations).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

## §331. Awarding of Bids

A. Rejection of Bids. The right is reserved to reject any or all bids in whole or in part, and to award by items, parts of items, or by any group of items specified. Also, the right is reserved to waive technical defects when the best interest of the state thereby will be served.

B. Information on Bid Results. Information pertaining to results of bids may be secured by visiting the agency, except

weekends and holidays, during normal working hours, or by complying with §335.

**C. Cash Discounts**

1. Open Market Purchases and Definite Quantity Term Contracts. All cash discounts will be taken. However, cash discounts will only be considered in determining an award on terms for 30 days or more and at least 1 percent.

2. Indefinite Quantity Term Contracts. Cash discounts will be accepted and taken but will not be considered in determining awards.

D. Increase or Decrease in Quantities. Unless otherwise specified in the invitation to bid, the state reserves the right to increase or decrease the quantities of any item or items shown in the bid by 10 percent.

E. Availability of Funds. A contract shall be deemed executory only to the extent of appropriations available to each agency for the purchase of such articles.

**F. All or None Bids**

1. A business may limit a bid on acceptance of the whole bid, whereupon the state shall not thereafter reject part of such bid and award on the remainder. An award shall be made to the "all or none" bid only if it is the overall low bid on all items, or those items bid.

2. Overall low bid shall be that bid whose total bid, including all items bid, is the lowest dollar amount; be it an individual's bid or a computation of all low bids on individual items of those bids that are not conditioned "all or none."

a. Open Market Purchases. When multiple items are contained on any solicitation and the state chooses to make an item or group award in order to save the state the cost of issuing a different purchase order, an award may be made to a vendor on that item if the total bid for said item is \$1,000 or less, and the difference between the low bidder and the bidder receiving the award is \$100 or less.

b. An "all or none" bid may be awarded in a similar fashion, to save the state the cost of issuing another purchase order, if the difference in the overall cost between the vendors is \$100 or less and no single item exceeds \$1,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

**§333. Documentation of Award**

A. Following award, a record showing the basis for determining the successful bidder, including reasons for rejecting any nonresponsive bids, shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2554 (December 2014).

**§335. Publicizing Awards**

A. Written notice of award shall be sent to the successful bidder. Notice of award shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2554 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:580 (May 2021).

**§337. Assignments**

A. No contract or purchase order or proceeds thereof may be assigned, sublet or transferred without prior written approval of the commissioner. This does not include agencies exempt in R.S. 39:1572.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1353 (July 2014), LR 40:2554 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

**§339. Deliveries**

A. Extension of Time. Any extension of time on delivery or project completion time must be requested in writing by the vendor and accepted or rejected in writing by the purchasing department. Such extension is applicable only to the particular item or shipment affected.

B. Additional Charges. No delivery charges shall be added to invoices except when express delivery is substituted on an order for less expensive methods specified in contract. In such cases, when requested by the agency, the difference between freight or mail and express charges may be added to the invoice.

C. Weight Checking. Deliveries shall be subject to reweighing on official scales designated by the state. Payments shall be made on the basis of net weight of materials delivered.

D. Rejection of Deliveries, Payment for Used Portion. Payment for any used portion of delivery found (as a result of tests or otherwise) to be inferior to specifications or contract requirements, will be made by the state on an adjusted price basis, using the procedures outlined in R.S. 39:1673.



E. Contracts—Reduction in Prices. All state agencies will receive the benefit of any reduction in price on any unshipped portion of any commodity contract. In the event the contractor reduces his price to any one state agency or political subdivision of the state, or makes a general reduction in price, all state agencies being supplied under these contracts are automatically entitled to the lower price; and the contractor shall rebate to all state agencies in a proportional amount. Also, in the event the total purchases of all state agencies of any items covered by the contract entitle the state to a greater quantity discount, the state shall receive the quantity discount appropriated to the total amount of actual purchases made by all state agencies. All price reductions made by any supplier under these contracts, designed for the benefit of any state agency, shall be made directly to the Office of State Procurement, Division of Administration. Also, the state agencies shall report any offer of a reduction in contract price to the Office of State Procurement, and the right is reserved to accept or reject such offers; but the best interest of the state as a whole will always be considered.

F. Invoices. Upon delivery of each order and its acceptance by the state agency, the supplier shall bill the state agency by means of invoice and the invoice shall make reference to the purchase order number, contract award number, and/or purchase requisition number. All invoices shall be submitted by the supplier on the supplier's own invoice forms, in duplicate, directly to the accounting office of the state agency as required by the purchase order.

#### G. Payment

1. After receipt and acceptance of order and receipt of valid invoice, payment will be made by the state agency within 30 days. Payment will be made at the respective unit prices shown on the bid or price schedule, less any percentages off list price, less federal excise tax (unless otherwise specified), less cash discount earned.

2. If a state agency without reasonable cause fails to make any payment due within 90 days of the due date prescribed by contract, the state agency shall pay a penalty in accordance with R.S. 39:1695.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1354 (July 2014), LR 40:2554 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

### §341. Blackout Period

A. All competitive sealed bids conducted in accordance with R.S. 39:1594 and all competitive sealed proposals conducted in accordance with R.S. 39:1595 (for purposes of this Section together called *competitive sealed procurements*) shall:

1. provide for a defined blackout period relative to such procurement in which communication between the

bidder or proposer and the state relative to the procurement itself is generally prohibited, with defined exceptions;

2. provide a summary of the application of the state of Louisiana's blackout period policy;

3. provide a reference to the full text of the state of Louisiana's blackout period policy; and

4. designate a contact person, and corresponding method of communication, to whom all communications by bidders or proposers should be addressed.

B. The blackout period is a period of time beginning with posting of the competitive sealed procurement and ending with the award or cancellation of the same. During a competitive sealed procurement, any proposer, bidder, or its agent or representative, is prohibited from communicating with any state employee or contractor of the state involved in any step in the procurement process about the affected procurement other than the designated contact person. Communications properly sent to the designated contact person regarding questions, clarifications, or complaints regarding procedures or status related to the competitive sealed procurement are allowed. *Involvement* in the procurement process includes but may not be limited to project management, design, development, implementation, procurement management, development of specifications, or evaluation of a particular procurement.

C. Upon notification of receipt of a timely protest to an award, and a resulting stay of award, the blackout period shall be reinstated until such time as the stay has been lifted by the chief procurement officer. All communications regarding the protested award shall be addressed to the chief procurement officer. In the case of an appeal, all communications shall be addressed to the Commissioner of Administration.

D. Any state employee or contractor who discovers any inappropriate contact shall immediately report such inappropriate contact to the chief procurement officer, whether the discovery occurs during or after the award of the contract.

E. The head of any agency conducting any competitive sealed procurement subject to a blackout period shall provide notice to staff regarding the affected procurement and instructions. An agency may choose to implement a blanket blackout period program in which employees acknowledge their responsibility to comply for all competitive sealed procurements rather than by the agency providing individual notices.

F. In any instance in which a prospective vendor is also an incumbent vendor for any contract, the state and the incumbent vendor may contact each other regarding the existing contract, but the incumbent vendor and/or its representative(s) may not discuss the procurement subject to the blackout period unless pursuant to an exception in this Section.

G. Notwithstanding any conflicting provision of this Section, the blackout period shall not apply to:

1. the submission of a protest to a solicitation pursuant to R.S. 39:1671;

2. duly noticed site visits and/or conferences for bidders or proposers;

3. oral presentations during the evaluation process;

4. communications regarding a particular solicitation between any person and staff of the procuring agency, provided the communication is limited strictly to matters of procedure. Procedural matters include deadlines for decisions or submission of proposals and the proper means of communicating regarding the procurement, but shall not include any substantive matter related to the particular procurement or requirements of the competitive sealed procurement. Any employee who receives such an inquiry shall report it and the response, if any, to the designated contact who shall keep a record of the inquiry in the agency's files regarding the procurement.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:580 (May 2021).

## Chapter 5. Reverse Auctions

### §501. Authorization

A. The reverse auction process may be utilized in accordance with R.S. 39:1600(D), subject to the approval of the state chief procurement officer that the best interests of the state would be served.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:581 (May 2021).

### §505. Addenda Modifying a Reverse Auction

A. Addenda will be issued in accordance with §305 of these rules.

B. It is the responsibility of the bidder to obtain any solicitation amendment(s) if the solicitation and addenda are posted on the state's internet-based system for posting bid opportunities.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1406 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018).

### §507. Price Submittals

A. Bidders may submit multiple prices during the event. The lowest price offered will become the price portion of the bid response.

B. The preference provisions of R.S. 39:1604-1604.7 shall apply to the reverse auction process.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018).

### §509. Withdrawal of Bids

A. Withdrawal of bids will be handled in accordance with §315 and §321 of this Part.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:25560 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018), LR 47:581 (May 2021).

### §511. Tie Bids

A. In the event that multiple bidders submit identical prices for the same goods or services, the bid received first will be considered to be the lowest. Any other identical bids received later will be considered in the order received.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014).

### §513. Rejected Bids

A. The awarding authority may reject any bid, in whole or in part, and may select the next lowest responsive and responsible bid, if any of the following occur:

1. the materials, supplies, services, products, or equipment, for which the bid is offered are not in compliance with the requirements, specifications, terms or conditions as stated in the reverse auction;

2. the price of the lowest responsive and responsible bid exceeds the amount budgeted for the procurement;

3. it is determined that awarding any item is not in the best interest of the agency/department.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:52 (January 2016).

### §515. Public Viewing of Auction Event

A. The public may view the internet auction event which will be conducted such that the names of the bidders will not be disclosed until after the completion of the auction, at which time the event record will be available to the public.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014).

### **§517. Security**

A. All reverse auctions shall be conducted in accordance with the electronic security requirements of R.S. 9:2615(B) of the Office of Technology Services.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:52 (January 2016), LR 44:756 (April 2018).

## **Chapter 7. Small Purchases**

### **§701. Small Purchases**

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

B. Any person who intentionally violates this Part will be penalized in accordance with R.S. 39:1679.

C. See appropriate Executive Order entitled "Small Purchases."

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1355 (July 2014).

## **Chapter 9. Sole Source Procurement**

### **§901. Application**

A. These provisions shall apply to all sole source procurement unless emergency conditions exist as defined in Chapter 11 (Emergency Procurement) of these regulations.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014), amended LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1669 (September 2015).

### **§905. Conditions for Use of Sole Source Procurement**

#### **A. Determination**

1. The determination as to whether a procurement of a supply, service, or major repair item or a professional, personal, consulting, or social services contract award shall

be made as a sole source shall be made by the state chief procurement officer, a chief procurement officer or either officer's designee upon sufficient factors and cause, and shall be in the best interests of the state. Such determination shall be in writing. Such officer may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited. Any request by a using agency that a procurement be restricted to one potential contractor shall be in writing and accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

2. Sole source procurement is permissible only if a requirement is available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or proposer for that item. Examples of circumstances which could necessitate sole source procurement are:

a. where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;

b. where a sole supplier's item is needed for trial use or testing;

c. procurement of items for resale;

d. procurement of public utility and services;

#### **B. Purchase of Antiques, Used or Demonstrator Equipment**

1. Any agency may procure any equipment which is used, rebuilt/remanufactured/refurbished or preowned by an individual or corporation and where the procurement officer has determined that the procurement of said equipment is cost effective to the state.

2. The used equipment shall be purchased by the head of the agency within the price range set by the director of the Office of State Procurement in his statement of written approval for the purchase which must be obtained by the head of the agency prior to the purchase.

3. The head of the agency shall certify in writing to the director of the Office of State Procurement all of the following:

a. the price for which the used equipment may be obtained;

b. the plan for maintenance and repair of the equipment and the cost thereof;

c. the savings that will accrue to the state because of the purchase of the used equipment;

d. the fact that following the procedures set out in the Louisiana Procurement Code will result in the loss of the opportunity to purchase the equipment.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982) amended LR 21:566 (June 1995),

repromulgated LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:756 (April 2018), LR 47:581 (May 2021).

**§907. Record of Sole Source Procurement**

A. A record of sole source procurement shall be maintained that lists:

1. each contractor's name;
2. the amount and type of each contract;
3. a listing of the supplies, services, major repairs, or professional, personal, consulting or social services procured under each contract; and
4. the identification number of each contract file.

B. The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:581 (May 2021).

**Chapter 11. Emergency Procurement**

**§1101. Application**

A. The provisions of this Chapter apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:582 (May 2021).

**§1103. Definition of Emergency Conditions**

A. An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the chief procurement officer. The existence of such condition creates an immediate and serious need for supplies, services, major repairs, or professional, personal, consulting or social services that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. the functioning of Louisiana government;
2. the preservation or protection of property; or
3. the health or safety of any person.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:582 (May 2021).

**§1105. Scope of Emergency Procurement**

A. Emergency procurement shall be limited to only those supplies, services, major repairs, or professional, personal, consulting or social services necessary to meet the emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 40:1357 (July 2014), LR 47:582 (May 2021).

**§1107. Authority to Make Emergency Procurement**

A. Any state agency may make emergency procurements in accordance with R.S. 39:1598 and R.S. 39:1600(E), when an emergency condition arises and the need cannot be met through normal procurement methods. Prior to all such emergency procurements, the chief procurement officer or his designee shall approve the procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), LR 40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:582 (May 2021).

**§1109. Source Selection Methods**

A. General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or major repair items are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained. Any offer accepted shall be confirmed in writing.

B. After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an invitation to bid are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1357 (July 2014), amended by the Office of the Governor,

Division of Administration, Office of State Procurement, LR 44:756 (April 2018).

### **§1111. Determination and Record of Emergency Procurement**

A. Determination. The procurement officer or the head of a purchasing agency shall make a written determination stating the basis for any emergency procurement or award of a contract, and for the selection of a particular contractor. Such determination shall be sent promptly to the chief procurement officer for approval or rejection.

#### B. Record

1. A record of emergency procurement shall be maintained in a form/format determined by the director of the Office of State Procurement that lists, for those entities under its jurisdiction, at a minimum, the following:

- a. each contractor's name;
- b. the amount and type of each contract;
- c. a listing of the supplies, services, major repairs, or professional, personal, consulting or social services procured under each contract; and
- d. the identification number of each contract file.

2. The record for the previous fiscal year shall be provided by the Office of State Procurement at the beginning of the legislative session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), LR 44:756 (April 2018), LR 47:582 (May 2021).

## **Chapter 13. Cancellation of Solicitations; Rejection of Bids or Proposals**

### **§1301. Scope**

A. The provisions of this Chapter shall govern the cancellation of solicitations issued by the state and rejections of bids or proposals in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:582 (May 2021).

### **§1303. Policy**

A. Solicitations should only be issued when there is a funded, valid need unless the solicitation states that it is for informational purposes only. Preparing and distributing a solicitation requires the expenditure of state time and funds.

Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be canceled only when it is in the state's best interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing Office, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1357 (July 2014).

### **§1305. Cancellation of Solicitations—Notice**

A. Each solicitation issued by the state shall state that the solicitation may be canceled as provided in these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1357 (July 2014).

### **§1307. Reasons for Cancellation**

A. A solicitation may be canceled in whole or in part when the chief procurement officer or the head of a purchasing agency determines in writing that such action is in the state's best interest for reasons including but not limited to:

1. the state no longer requires the supplies, services, or major repairs;
2. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
3. ambiguous or otherwise inadequate specifications were part of the solicitation;
4. the solicitation did not provide for consideration of all factors of significant cost to the state;
5. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
6. all otherwise acceptable bids received are at unreasonable prices; or
7. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

B. When a solicitation is canceled prior to opening, a notice of cancellation shall be sent to all businesses solicited. When a solicitation or item is canceled after bids are opened, a notice of cancellation should be sent to all bidders if the amount canceled exceeds the defined maximum value for *small purchases* established by executive order of the Governor.

C. The notice of cancellation shall:

1. identify the solicitation;

2. briefly explain the reason for cancellation; and

3. where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar supplies, services, or major repairs.

D. Documentation. The reasons for cancellation shall be made a part of the procurement file and available for public inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:582 (May 2021).

**§1309. Rejection of Individual Bids or Proposals**

A. General. This Subsection applies to rejections of individual bids or proposals in whole or in part.

1. *Proposals* (as used in this Section)—competitive responses solicited in accordance with R.S. 39:1595 and Chapter 26 of these regulations.

B. Notice in Solicitation. Each solicitation issued by the state shall provide that any bid or proposal may be rejected in whole or in part when in the best interests of the state as provided in these regulations.

C. Reasons for Rejection. As used in this Section, *bid* means any bid or proposal submitted in compliance with competitive sealed bidding requirements and submissions under Chapter 7 (Small Purchases) or competitive sealed proposals governed by R.S. 39:1595. Reasons for rejecting a bid or proposal include but are not limited to:

1. the person that submitted the bid or proposal is nonresponsible as determined under §1511 of these regulations;

2. the bid or proposal is not responsive.; or

3. the supply, service, or major repair items is unacceptable, that is, it fails to meet the specifications or permissible alternates or other acceptability criteria set forth in the invitation to bid or request for proposal. See Chapter 3, §327.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018), LR 47:582 (May 2021).

**§1311. Disposition of Bids or Proposals**

A. When bids or proposals are rejected, or a solicitation is canceled after bids/proposals have been opened, the bids/proposals shall be retained in the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

**§1313. Appeals of a Cancellation**

A. In accordance with R.S. 39:1605, R.S. 39:1630 and R.S. 39:1691, the pre-award cancellation of a solicitation by the chief procurement officer or his designee shall be final and conclusive unless the person adversely affected by the cancellation has timely appealed to the Nineteenth Judicial District Court, in accordance with R.S. 39:1691(D), within 14 days of the cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:583 (May 2021).

**Chapter 15. Responsibility and Prequalification**

**§1501. Definitions**

*Responsible Bidder* or *Proposer*—a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. See also R.S. 39:1606 of the Louisiana procurement code. For the purpose of these regulations, *capability* as used in this definition means capability at the time of award of the contract, unless otherwise specified in the solicitation.

*Solicitation*—an invitation to bid, or any other document, such as a request for quotations or a request for proposals issued by the state for the purpose of soliciting offers or proposals to perform a state contract.

*Suppliers*—as used in R.S. 39:1607 (prequalification of suppliers) of the Louisiana procurement code, means prospective bidders or proposers.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018), LR 47:583 (May 2021).

**§1503. Application**

A. A determination of responsibility or nonresponsibility shall be governed by this Chapter and applicable sections of the procurement code.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1358 (July 2014), amended by the Office of the Governor,

Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

### **§1505. Standards of Responsibility**

#### **A. Standards**

1. A reasonable inquiry to determine the responsibility of a bidder or proposer may be conducted in accordance with R.S. 39:1606. The following standards, as they relate to the particular procurement under consideration, may be used, but is not limited to the following:

a. has adequate financial resources for performance; or, has the ability to obtain such resources as required during performance;

b. has the necessary experience, organizations, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements);

c. is able to comply with the proposed or required time of delivery or performance schedule;

d. has a satisfactory record of integrity, judgment and performance (contractors who are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall in the absence of evidence to the contrary or evidence of compelling circumstances, be presumed to be unable to fulfill the requirement);

e. is otherwise qualified and eligible to receive an award under applicable laws and regulations.

2. Before making a determination of responsibility, the Office of State Procurement; or, the head of the using agency, shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in Subsections A and B of this Section. Information from the following sources may be utilized before making a determination of responsibility:

a. information from the prospective contractor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;

b. other existing information within the agency, including financial data, the list of debarred and ineligible bidders and records concerning contractor performance;

c. publications, including credit ratings and trade and financial journals;

d. other sources, including banks, other financial companies, and state departments and agencies.

3. When applicable, to the extent that a prospective contractor cannot meet the standard in Paragraph A.2 of this Section except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system or prospective major subcontractors are determined by the Office of State

Procurement or the head of the using agency to satisfy that standard.

4. Nothing herein shall prevent the procurement officer from establishing additional responsibility standards, provided that these additional standards are set forth in the solicitation.

**B. Information Pertaining to Responsibility.** The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

### **§1507. Ability to Meet Standards**

A. The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

1. evidence that such contractor possesses such necessary items;

2. acceptable plans to subcontract for such necessary items; or

3. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1359 (July 2014).

### **§1509. Duty Concerning Responsibility**

A. Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995), LR 40:1359 (July 2014).

### **§1511. Written Determination of Nonresponsibility Required**

A. If a bidder or proposer who otherwise would have been awarded a contract of \$5,000 or more is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the

chief procurement officer, or head of a purchasing agency, as applicable. A copy of the determination shall be sent promptly to the nonresponsible bidder or proposer. The determination shall be made part of the procurement file.

1. Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, consideration of §§1505 and 2536.

B. Any such bidder or proposer who is proposed to be disqualified shall be given a reasonable opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

## Chapter 17. Types of Contracts

### §1701. Centralization of Contracting Authority

A. When a mandatory use statewide competitive contract for supplies or services is established all state governmental bodies, excluding those exempted from the central purchasing agency by R.S. 39:1572(B), shall use such statewide competitive contracts when procuring such supplies or services unless given written exemption by the chief procurement officer. The following exceptions may be considered:

1. Functional differences, for example:
  - a. size available is not suitable because of space limitations;
  - b. compatibility with existing equipment.
2. Agency's need is so small that it cannot use the minimum order quantity in the contract.
3. Delivery of contract item does not meet agency's urgent requirement.

B. A lower local price is not justification for exception. The contract vendor has guaranteed prices for the term of the contract and is delivering the item to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

### §1703. Policy Regarding Selection of Contract Types

A. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or major repairs to be procured, the uncertainties which may be involved in contract performance, and the extent to which

the state or the contractor is to assume the risk of the cost of performance of the contract.

B. The objective when selecting a contract type is to obtain the greatest value of supplies, services, or major repairs at the lowest overall cost to the state. In order to achieve this objective, the chief procurement officer, before choosing a contract type, should review those elements of the procurement which directly affect the cost and risk of performance and profit incentives bearing on the performance.

C. Among the factors to be considered in selecting any type of contract are:

1. the type and complexity of the supply, service, or major repair items being procured;
2. the difficulty of estimating performance costs such as the inability of the state to develop definitive specifications to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
3. the administrative costs to both parties;
4. the degree to which the state must provide technical coordination during the performance of the contract;
5. the effect of the choice of the type of contract on the amount of competition to be expected;
6. the stability of material or commodity market prices or wage levels;
7. the urgency of the requirement; and
8. the length of contract performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1591.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1359 (July 2014).

### §1707. Types of Contracts

A. Subject to the limitations of R.S. 39:1611 and 1612, any type of contract which will promote the best interest of the state may be used, provided that the chief procurement officer makes a written determination justifying the type of contract used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1360 (July 2014).

### §1709. Use of Brand Name, LaMAS (Louisiana Multiple Award Schedule), and Multi-State Contracts

A. The state reserves the right to create and use brand name, LaMAS, and multi-state contracts (hereinafter referred to as Louisiana price schedules for different brands of same or similar item(s)).



B. Where Louisiana price schedules ("LaPS") exist for same or similar item(s) and the estimated cost of the procurement exceeds the defined maximum value for *small purchases* established by executive order of the Governor, all eligible users of these contracts will utilize the following procedures.

1. Prepare a request for responses that may include, if applicable the following: (A request for response is an informal process used to make a best value determination.)

a. a performance-based statement of work that includes such things as:

- i. the work to be performed;
- ii. location of work;
- iii. period of performance;
- iv. deliverable schedule;
- v. applicable performance standards;
- vi. acceptance criteria;

vii. any special requirements (e.g., security clearances, special knowledge, etc.);

viii. the products required using a generic description of products and functions whenever possible;

b. if necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks;

c. a best value determination is one that considers, in addition to underlying contract pricing, such factors as:

- i. probable life of the item selected;
- ii. environmental and energy efficiency considerations;
- iii. technical qualifications;
- iv. delivery terms;
- v. warranty;
- vi. maintenance availability;
- vii. administrative costs;
- viii. compatibility of an item within the user's environment; and
- ix. user's familiarity with the item or service;

d. a request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.

2. Submit the request for response to at least three LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the agency's needs.

3. Evaluate responses and select the contractor to receive the order.

a. After responses have been evaluated, the order shall be placed with the contractor that represents the best value that meets the agency's needs. The ordering agency should give preference to small-entrepreneurships or small and emerging businesses when two or more contractors can provide the services and/or products at the same firm-fixed total price.

b. The ordering agency shall document in the procurement file the evaluation of the contractors' responses that formed the basis for the selection. The documentation shall identify the contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.

c. Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

d. A listing of all contracts applicable to this Section will be maintained on the website of the Office of State Procurement.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 33:2650 (December 2007), repromulgated LR 40:1360 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018), LR 47:583 (May 2021).

## **Chapter 18. Progressive and Multiple Awards**

### **§1801. Progressive Award**

A. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required. A progressive award may be in the state's best interest when awards to more than one bidder or proposer for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

### **§1803. Multiple Award**

A. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or proposer, and the state is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the state's best interest when award to two or more bidders or proposers for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be

exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the state's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of using agencies. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of such users that can be met under the contract be obtained in accordance with the contract, provided that:

1. the state shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract;

2. the state shall reserve the right to take bids separately if the chief procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring or special need of the state;

3. the contract shall allow the state to procure supplies produced, or services performed, incidental to the state's own programs, such as industries of correctional institutions and other similar industries, when such supplies or services satisfy the need.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014), amended LR 44:758 (April 2018).

#### **§1805. Intent to Use**

A. If a progressive or multiple award is anticipated prior to issuing a solicitation, the method of award should be stated in the solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014).

#### **§1807. Determination Required**

A. The chief procurement officer shall make a written determination setting forth the reasons for a progressive or multiple award, which shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014).

## **Chapter 19. Multi-Year Contracts**

### **§1901. Determination**

A. For purposes of this Chapter, *multi-year contract* shall be defined as a contract whose term exceeds 12 months.

B. Multi-year contracts may be entered into for supplies, services, major repairs, or professional, personal, consulting and social services in accordance with R.S. 39:1615 or as otherwise provided by law.

C. Prior to the utilization of a multiyear contract for supplies, services, or major repairs, it shall be determined in writing:

1. that estimated requirements cover the period of the contract and are reasonably firm and continuing; and

2. that such a contract will serve the best interests of the state by encouraging effective competition or otherwise prompting economies in state procurement.

D. All contracts shall contain a termination for non-appropriation clause in accordance with R.S. 39:1615(C), (E) and (I), unless specifically exempted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1361 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:583 (May 2021).

### **§1905. Multi-Year Contract Procedure**

A. Solicitation. The solicitation shall state:

1. the estimated amount of supplies, services or major repairs required for the proposed contract period;

2. whether a unit price discounted off of established catalog price shall be given for each supply, or service or major repair, and that such unit prices or discount shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);

3. that the multi-year contract will be canceled if funds are not appropriated, un-appropriated, or otherwise not made available to support continuation of performance in any fiscal period succeeding the first;

4. if an installment purchase, that the provisions of R.S. 39:1616 shall apply.

5. how the multi-year contract award will be determined.

B. Cancellation

1. Cancellation, as used in multi-year contracting, means the cancellation of the total requirements for the remaining portion of the contract because funds were not appropriated or otherwise made available.

2. Cancellation results when the procurement officer notifies the contractor of nonavailability of funds for contract performance for any subsequent fiscal period.

3. Nothing in this Section shall be construed to limit the authority otherwise existing for an agency to terminate a contract for convenience, or for cause, or for any other

lawful reason allowable in the contract, or as required in law or regulation.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018), LR 47:584 (May 2021).

## Chapter 20. Leases of Movable

### §2001. Description

A. A lease of movables is a contract for the use of equipment under which title does not pass to the state.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014).

### §2003. Use

A. A lease of movables may be entered into provided:

1. it has been competitively bid in accordance with these rules and regulations, applicable executive orders, and policy and procedure memoranda;

2. it is in the best interest of the state;

3. all conditions for renewal and costs of termination are set forth in the lease.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014).

### §2005. Lease with Purchase Option

A. Unless a requirement can be met only by the leased supply as determined in writing by an officer above the level of procurement officer, a purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding. Before exercising such an option the chief procurement officer shall:

1. investigate alternative means of procuring comparable supplies; and,

2. compare estimated costs and benefits associated with the alternative means and the exercise of such option, for example, the benefit of buying new state-of-the-art equipment compared to the estimated initial savings associated with exercise of a purchase option.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014).

## Chapter 21. Miscellaneous Contract Provisions for Supplies, Services, and Major Repairs

### §2101. Contract Provisions

A. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. When such a contract is awarded, exercise of the option shall be at the state's discretion only, and shall be at the mutual agreement of the state and the contractor.

B. Contract Clauses. Contracts for supplies, services and major repairs may permit or require the inclusion of clauses providing for equitable adjustments in prices, time for performance, or other contract provisions identified in R.S. 39:1661 in addition to the following, as appropriate:

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;

d. security for contract performance;

e. insurance requirements including as appropriate but not limited to general liability, automobile coverage, workers' compensation, and errors and omissions;

f. beginning and ending dates of the contract;

g. maximum compensation to be paid the contractor including due date of the payment(s);

2. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance;

3. variations between estimated quantities of work in a contract and actual quantities;

4. manufacturers' design drawings shall be supplied in duplicate for all state buildings, to the appropriate state agency at the conclusion of the contract.

C. Additional Contract Clauses. Contracts may permit or require the inclusion of clauses providing for appropriate remedies and covering 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. an annual appropriation dependency clause;

6. audit language;

7. when a contract requires an original signature as provided by R.S. 9:2601-2621 and LAC 4:I.Chapter 7, Implementation of Electronic Signatures in Global and National Commerce Act—P.I., 106-229, an electronic signature is considered an original signature.

D. Additional contract clauses for contracts awarded from a competitive sealed proposal shall contain as a minimum:

1. description of the work to be performed or objectives to be met, when applicable;
2. amount and time of payments to be made;
3. description of reports or other deliverables to be received, when applicable;
4. date of reports or other deliverables to be received, when applicable;
5. responsibility for payment of taxes, when applicable;
6. circumstances under which the contract can be terminated either with or without cause;
7. remedies for default;
8. a statement giving the legislative auditor the authority to audit records of the individual firm;
9. performance measurement;
10. monitoring plan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended LR 41:670 (April 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018), LR 47:584 (May 2021).

**§2103. Exercise of Option**

A. Before exercising any option for renewal, extension, or purchase, the chief procurement officer shall attempt to ascertain whether a re-solicitation is practical, in terms of current market conditions and trends and cost factors, and would be more advantageous to the state than renewal or extension of the existing contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

**§2105. Goods Manufactured or Services Performed by Supported Employment Providers**

A. R.S. 39:1604.4 provides in part that a preference shall be given by all agencies in purchasing products and services

from individuals with disabilities through supported employment providers.

B. Purchases of goods manufactured by or services performed by individuals with disabilities through supported employment providers as defined in R.S. 39:1604.4 shall be exempt from competitive sealed bidding in accordance with the provisions of R.S. 39:1594.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018), LR 47:584 (May 2021).

**Chapter 22. Inspection of Plant and Supplies; Audit of Records**

**§2201. Inspection**

A. State contracts may provide that the state may inspect supplies and services at the contractor or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract and shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the procurement officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

B. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014).

**§2203. Audit of Records**

A. The state may enter a contractor's or subcontractor's plant or place of business to:

1. audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to R.S. 39:1629 and 1629.1; and
2. investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to R.S. 39:1672.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014),

amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

## Chapter 23. Reporting of Suspected Collusive Bidding or Negotiations

### §2301. Anticompetitive Practices

A. For the purposes of this Chapter, an anticompetitive practice is a practice among bidders or proposers which reduces or eliminates competition or restrains trade. An anticompetitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from business actions which have the effect of restraining trade, such as controlling the resale price of products. Indications of suspected anticompetitive practices include identical bids or proposals, rotated low bids or proposals, sharing of the business, tie-in sales, resale price maintenance, and group boycotts (see Identical Bidding, §2309).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018), LR 47:584 (May 2021).

### §2303. Independent Price Determination

A. Every solicitation shall provide that by submitting a bid or proposal, the bidder or proposer certifies that the price submitted was independently arrived at without collusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

### §2305. Reporting Suspected Anticompetitive Practices

A. The chief procurement officer, in consultation with the attorney general, shall develop procedures, including forms, for reporting suspected anticompetitive practices. A procurement officer who suspects that an anticompetitive practice has occurred or may be occurring shall report the suspected anticompetitive practice to the Attorney General's Office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement LR 47:584 (May 2021).

### §2307. Detection of Anticompetitive Practices

A. In order to ascertain whether or not an anticompetitive practice may have occurred or may be occurring, the procurement officer will often find it necessary to study past procurement including, as appropriate, the following:

1. a study of the bidding history of a supply, service, or major repair item over an amount of time sufficient to determine any significant bidding patterns or changes;
2. a review of similar state contract awards over a period of time; or
3. consultation with outside sources of information, such as bidders or proposers who have competed for similar state business in the past but who are no longer competing for such business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

### §2309. Identical Bidding

A. The term *identical bidding* means the submission by bidders or proposers of the same total price or the same price on a particular line item. The submission of identical bids may not signify the existence of collusion. In some instances, price controls imposed by state or federal governments result in the submission of identical bids. Bids may also be identical as a result of chance. Identical bids for supplies are more likely to occur due to chance if:

1. the supply is a commodity with a well-established market price or a brand name with a "suggested retail price;"
2. the quantity being purchased is small in relation to the supplier's total sales;
3. early delivery is required; or
4. transportation expenses are low relative to total costs.

B. In seeking to determine whether collusion has taken place, the procurement officer should view the identical bids or proposals against present and past pricing policies of the bidders or proposers, the structure of the industry involved, including comparisons of prices f.o.b. shipping point and f.o.b. destination, and the nature of the supply, service, or major repair involved, such as whether it is a basic chemical or material. Identical bids or proposals may also result from resale price maintenance agreements which are described in §2311.C of this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), amended by the Office of

the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

### **§2311. Possible Anticompetitive Practices**

A. General. The practices which are described in Subsections B-F of this Section and which the procurement officer suspects might be anticompetitive shall be reported in accordance with §2305 (Reporting Suspected Anticompetitive Practices).

B. Rotated Low Bids or Proposals. Rotated low bids or proposals result where all bidders or proposers participating in the collusive scheme submit bids, but by agreement alternate being the lowest bidder or proposers. In order to determine whether rotation may be occurring, the procurement officer must review similar past procurement in which the same bidders or proposers have participated.

C. Resale Price Maintenance. The practice of resale price maintenance consists of an agreement between a manufacturer and a distributor or a dealer to fix the resale price of a supply. A procurement officer should consider the possibility that such an agreement exists where prices offered adhere to an established pattern, such as a published price schedule, and identical bidding occurs.

D. Sharing of the business occurs where potential bidders or proposers allocate business among themselves based on the customers or the territory involved. Thus a procurement officer might discover that a potential bidder or proposer is not participating in a state procurement because a particular state agency, or a particular territory has not been allocated to such bidder or proposer by the producer or manufacturer.

E. "Tie-In" Sales. "Tie-in" sales are those in which a bidder or proposer attempts to sell one supply or service only upon the condition that the procurement officer purchase another particular supply or service.

F. Group Boycott. A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a state procurement until the boycotting competitors' conditions are met by the boycotted competitor or the state. The boycott of a competitor by other competitors may have an effect on the market structure or price of a supply, service, or major repair items needed by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

## **Chapter 24. Suspension, Debarment and Reinstatement**

### **§2401. Suspension, Debarment and Reinstatement [Formerly LAC 34:V.2539]**

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the state chief procurement officer shall have authority to suspend or debar an individual or business for cause from consideration for a contract, in accordance with the provisions of R.S. 39:1672.

1. The state shall also have the right to suspend or terminate a contract based on the absence of appropriated, funds for the acquisition of goods or services or for cause; or, when in the best interest of the state.

#### **B. Reinstatement**

1. If the commissioner finds that the state chief procurement officer was in error, then he may reinstate said individual or business. If the commissioner affirms the decision of the state chief procurement officer that decision is final and conclusive.

2. The state chief procurement officer, upon request of a debarred individual or business shall review the requesting debarred contractor's file on an annual basis, and may reinstate said contractor for future consideration if he believes the circumstances warrant reinstatement and it would be in the best interest of the state. A list of debarred individuals and businesses shall be kept by the Office of State Procurement and made available upon request to state agencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:594 (November 1982), amended LR 10:458 (June 1984), LR 11:1071 (November 1985), repromulgated LR 40:2566 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), amended LR 44:766 (April 2018), repromulgated LR 47:584 (May 2021).

## **Chapter 25. Procurement of Professional, Personal, Consulting, Social Services, and Energy Efficiency Contracts**

### **Subchapter A. General Provisions**

#### **§2501. Delegation of Authority**

A. The director of the Office of State Procurement may delegate in writing certain responsibilities set forth herein in accordance with R.S. 39:1566.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual

Review, LR 4:495 (December 1978), amended LR 7:179 (April 1981), LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985), repromulgated LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

### §2503. Definitions and Classes of Contractual Services

A. The following services shall be contracted out in accordance with these regulations.

1. *Personal Services*—for contracts with individuals who render work which requires use of creative or artistic skills including but not limited to those individual services identified in R.S. 39:1556(37) and entertainers, expert speakers and other services satisfying the requirements of the definition for personal services as added by regulation.

2. *Professional Service*—for contracts with a total amount of compensation of \$50,000 or more, the definition of "professional service" shall be limited to lawyers, doctors, dentists, psychologists, certified advanced practice nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, claims adjusters, pharmacists, visiting professors, municipal advisors, and any other profession that may be added by regulations adopted by the Office of State Procurement of the Division of Administration.

3. *Consulting Service*—for contracts as defined in R.S. 39:1556(10).

4. *Retroactive Claims Recovery Services*—those consulting services where third party coverage identification and verification represent the primary services, and any operations type activities such as information technology and/or claims submission are merely incidental to the total work tasks to be performed, and where such services will result in revenue enhancement to the state through a contingency fee arrangement. The RFP process for this type of consulting service shall require that at least 50 percent of total weighted criteria for evaluation be allocated to cost.

5. *Social Service*—for contracts as defined in R.S. 39:1556(54).

6.a. *Performance-Based Energy Efficiency Contract*—a contract for energy efficiency services and equipment in which the payment obligation for each year of the contract is either:

- i. set as a percentage of the annual energy cost savings attributable to the services or equipment under the contract; or
- ii. guaranteed by the person under contract to be less than the annual energy cost savings attributable to the services or equipment under the contract.

b. Any state agency, board, or commission may enter into a performance-based energy efficiency contract for services and equipment. Any such agency, board, or commission shall contact the Division of Administration for assistance in preparation of the requests for proposals, analysis of the proposals, and development of the contract.

The contract shall be considered a consulting services contract.

c. Performance-based energy efficiency contracts shall be awarded through a request for proposal process. Any performance-based energy efficiency contract entered into shall be for a period not to exceed 10 years and shall contain a guarantee of energy savings.

7. Interagency contracts between governmental entities as defined in R.S. 39:1556(25) and 1556(30), respectively, for any of the services enumerated in Paragraphs 1, 2, 3, 4, 5 or 6 of this Subsection shall be governed by these regulations, except that contracts between boards of higher education and their respective institutions shall be exempt.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985), LR 13:652 (November 1987), LR 17:264 (March 1991), LR 20:542 (May 1994), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 41:1669 (September 2015), LR 40:2556 (December 2014), amended LR 40:2544 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1669 (September 2015), amended LR 44:761 (April 2018), LR 47:585 (May 2021).

### §2505. Performance-Based Energy Efficiency Contracting

#### A. Preparation of Requests for Proposals

1. Performance contracts shall be considered to be consulting services contracts under the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and shall be awarded in accordance with the provisions of that chapter, the rules and regulations promulgated by the Office of State Procurement pursuant to that chapter and this Section.

2. Prior to its preparation of an RFP, a state agency, as defined in R.S. 39:2 (hereinafter, "user agency") shall perform a needs analysis in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by the Division of Administration, through its Office of State Procurement ("OSP") pursuant to that chapter. Such needs analysis shall be in a form approved by the Commissioner of the Division of Administration or his designated agent and shall include a detailed audit of energy use.

3. Prior to its preparation of an RFP, a user agency shall submit its needs analysis to the Commissioner of the Division of Administration or his designated agent for approval.

4. Upon approval of a user agency's needs analysis pursuant to this Section, such user agency shall prepare an RFP in a form approved by OSP, which form shall require proposers to separately itemize the costs and savings associated with each proposed energy cost savings measure ("ECSM"). In accordance with the provisions of title 39,

chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by OSP pursuant to that chapter, every RFP shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the performance contract, the criteria to be used in evaluating the proposals and the time frames within which the work must be completed. Prior to advertising its RFP, a user agency shall submit it to the Commissioner of Administration or his designated agent and obtain his written consent to the advertisement of the RFP.

5. Upon approval of a user agency's RFP, such user agency shall advertise its RFP in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by OSP pursuant to that chapter.

#### B. Evaluation of Submitted Proposals

1. A user agency shall review any proposals it timely receives in response to its RFP and shall submit to the Office of Facility Planning and Control ("FPC") the results of its review, along with each proposal that is responsive and responsible and otherwise in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. A user agency shall not make a final selection from among the proposals it submits to FPC.

2. Prior to the award of any performance contract, FPC shall evaluate all proposals submitted by a user agency for that performance contract. In its evaluation, FPC shall include suggestions, if appropriate, for the resolution of any unique issues arising in connection with a particular proposed performance contract. FPC's evaluation shall also include, but not be limited to, a consideration of the following:

- a. whether proposed ECSMs are in compliance with the provisions of R.S. 39:1622;
- b. whether proposed ECSMs will generate net savings, as those terms are defined in Subsection E of this Section; and
- c. whether the proposed protocol for measuring and verifying the energy savings guaranteed in the contract conforms to the latest standards set forth by the International Performance Measurement and Verification Protocol.

3. FPC shall, within 60 days of the receipt of the submitted proposals, forward to the Commissioner of Administration or his designated agent its written evaluation of the submitted proposals, along with the results of the review of the submitted proposals by the user agency. FPC shall not make a final selection from among the proposals it forwards to the Commissioner of the Division of Administration except if FPC has been designated as the Commissioner's agent for that specific purpose.

4. Prior to the award of any performance contract, the Commissioner of the Division of Administration or his designated agent may retain an independent consultant in accordance with this Section. Such independent third-party

consultant shall evaluate all proposals and written evaluations submitted to the Commissioner of the Division of Administration or his designated agent. Such evaluation shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. After completing its evaluation, an independent consultant shall submit to the Commissioner of the Division of Administration or his designated agent the written results of such evaluation. An independent consultant shall not make a final selection from among the proposals it evaluates.

5. Prior to retaining an independent third-party consultant pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall require every proposed independent consultant to execute a written certification verifying that he or she has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency. Such written certification shall be in a form approved by the legislative auditor. In order to assist the legislative auditor in verifying the independence of a proposed independent consultant, such proposed independent consultant shall provide to the legislative auditor any documentation or information the legislative auditor requests. A proposed independent consultant shall not be retained, unless the legislative auditor has determined that such proposed independent consultant has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency.

6. After completing his review of the submitted proposals and evaluations prepared by the independent consultant, if any, pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall provide written notification to a user agency that the Commissioner of the Division of Administration or his designated agent has consented to the award of a performance contract to a specified energy services company ("ESCO") or that he has not consented to the award of a performance contract. Pursuant to the provisions of Title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section, such consent shall be given to the responsible ESCO whose proposal is determined by the Commissioner of the Division of Administration or his designated agent to be the most advantageous to the state of Louisiana, taking into consideration all of the evaluation factors set forth in the RFP, as well as any evaluations or recommendations provided by the user agency, and the independent consultant, if any. In the event that the Commissioner of the Division of Administration or his designated agent determines that consent to the award of a performance contract would not be advantageous to the state of Louisiana, he shall provide the user agency with written reasons for his decision to withhold his consent.



7. Except as explicitly set forth in this Section, no party shall disclose information derived from submitted proposals prior to the consent by the Commissioner of the Division of Administration or his designated agent to the award of a performance contract to a specified ESCO.

#### C. Negotiation of Performance Contracts

1. A user agency shall negotiate with an approved ESCO a performance contract in a form approved by OSP. The process of such negotiation shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. The Commissioner of the Division of Administration or his designated agent may require that an independent consultant retained pursuant to this Section participate on behalf of a user agency in the negotiation of a performance contract with an approved ESCO.

a. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall set forth the total units of energy saved, the method, device or financial arrangement to be used to establish the amount of such savings, the cost per unit of energy and, if applicable, the basis for any adjustment in the cost per unit of energy during the term of the contract.

b. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall, with respect to each ECSM included in such performance contract and in addition to fulfilling any other requirements set forth in this Section, state the following:

- i. the detailed scope of work to be performed pursuant to the performance contract;
- ii. the initial price to be paid by the user agency;
- iii. the annual energy cost savings guaranteed by the ESCO;
- iv. the annual maintenance savings guaranteed by the ESCO, including, but not limited to, services, parts, materials, labor and equipment;
- v. the annual new maintenance costs, including operating expenses added as a result of new equipment installed or service performed by the ESCO; and
- vi. the total annual savings guaranteed by the ESCO. *Total annual savings* means annual energy cost savings plus annual maintenance savings minus annual new maintenance costs.

c. Notwithstanding any other provisions of this Section, no payment shall be made to an ESCO pursuant to a performance contract unless such performance contract complies with Paragraph C.1.

2. The term of every performance contract negotiated pursuant to this Section and term of any obligation incurred by a user agency to fund a performance contract shall be for a period equal to the lesser of 20 years or the average life of the equipment installed by the ESCO and shall contain a

guarantee of energy savings, which guarantee shall, at a minimum, ensure total annual savings sufficient to fully fund any financing arrangement entered into pursuant to such performance contract.

3. Every performance contract negotiated pursuant to this Section shall contain the following clause: "The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the agency, board or commission except for payments which have been earned prior to the termination date."

4. A user agency shall submit a negotiated performance contract to OSP for its review and approval. A user agency's submission of a negotiated performance contract shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section.

5. At the time a performance contract is executed, the contracting ESCO shall submit a certified or cashier's check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 2 1/2 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

#### D. Audits of Performance Contracts

1. An ESCO that enters into a performance contract shall provide the user agency with all performance information and other reports required by the performance contract.

a. An ESCO's reports to the user agency shall conform with the standards of the International Performance Measurement and Verification Protocol.

b. An ESCO's reports to the user agency shall, in addition to fulfilling any other requirements set forth in its performance contract or in this Section, state the following:

- i. the name of the user agency;
- ii. the ESCO's name and address;
- iii. whether the payment obligation under the performance contract is either:

(a). set as a percentage of the annual energy cost savings attributable to the services or equipment under the performance contract; or

(b). guaranteed by the ESCO to be less than the annual energy cost savings attributable to the services or equipment under the performance contract;

iv. the total annual savings guaranteed by the ESCO;

v. the total amount the user agency is required to pay under the performance contract and the term of the contract;

vi. the total amount paid to date by the user agency and the amount paid each year to date under the performance contract;

vii. any costs paid by the user agency which were associated with the set-up or maintenance of the performance contract or with repair or maintenance of the equipment used under the performance contract;

viii. the annual cost to the user agency of energy or other utilities beginning two years prior to operation of the performance contract and during the operation of the performance contract; and

ix. the annual energy cost savings each year, shown also as a percentage of the annual amount to be paid by the user agency under the performance contract. When calculating annual energy cost savings, maintenance savings shall be included. *Maintenance savings* means operating expenses eliminated and future capital replacement expenditures avoided by the user agency as a result of new equipment installed or services performed by the ESCO.

2. Upon a request by a user agency, by the Commissioner of the Division of Administration or his designated agent or by the legislative auditor, an ESCO shall provide any working documents, accounting records or other materials relating to costs, pricing or any other aspect of the ESCOs performance pursuant to a performance contract. Documents, records and other materials provided by an ESCO in accordance with this Section shall be subject to review and verification by a user agency, by the Commissioner of the Division of Administration or his designated agent, by the legislative auditor, or by an independent third party selected by a user agency, by the Commissioner of the Division of Administration or by the legislative auditor.

3. User agencies shall provide to the legislative auditor copies of all performance information and other reports submitted by an ESCO pursuant to a performance contract or this Section. The legislative auditor shall conduct periodic audits of performance contracts, both during the term of such performance contracts and upon the completion of such performance contracts.

E. Retention by User Agencies of Net Savings Generated by Energy Cost Savings Measures

1. Pursuant to R.S. 39:254.B(1), a user agency that is able to demonstrate net savings from implementing an ECSM by means of a performance contract may retain its net savings relating to such ECSM, until the investment costs of implementing the ECSM are paid in full, and thereafter may retain one half of such net savings over the remaining useful life of the ECSM. Such retained net

savings shall be from funds appropriated or allocated to the user agency for utility costs.

2. The Commissioner of the Division of Administration or his designated agent shall develop and promulgate such rules and regulations as are necessary to provide for the measurement and verification of net savings relating to ECSMs.

3. For the purposes of these rules, ECSM refers to a repair, equipment modification, procedure, course of action or other step taken which lowers energy costs.

4. For the purposes of these rules, *net savings* from the implementation of ECSMs shall be defined as measurable and verifiable energy cost savings that directly result from such implementation and shall be determined in accordance with the following provisions.

a. ESCOs shall employ energy savings measurement techniques that embody the best practical methods of determining net savings generated by the ECSMs to be evaluated. Such measurement techniques shall be fully defined and set forth in the RFP and performance contract that includes the ECSMs. In selecting a measurement technique, an ESCO shall consider the complexity of the ECSM to be evaluated and other factors that may affect energy use, such as changes in the mission of a facility, population, space utilization and weather.

b. Energy savings measurement may be based upon estimates, calculations or computer models, if metering is not practical.

c. Every RFP and performance contract shall set forth in detail the method to be used by an ESCO in order to determine the unit energy costs by which an energy baseline and energy savings are to be multiplied. For the purposes of these rules, an energy baseline shall be defined as the amount of energy that would be consumed annually without implementation of a given ECSM and shall be based upon historical metered data, engineering calculations, submetering of buildings or other energy-consuming systems, building load simulations, statistical regression analysis, or some combination of these methods.

d. The selection of every energy savings measurement technique and method of determining unit energy costs or energy baseline shall be subject to the approval of the Commissioner of the Division of Administration or his designated agent, who shall have the authority to modify such techniques and methods if he determines, in his sole discretion, that such modification is warranted by changed conditions or other circumstances affecting the accuracy or appropriateness of such techniques and methods.

e. Net savings must be real savings of money that the state of Louisiana either is currently spending or has budgeted to spend in the future. Such money must be available in the state's budget for payments against the performance contract involved. Net savings may be either recurring or one-time cost savings.

f. Examples of net savings shall include, but not be limited to, recurring operation, maintenance and repair tasks, which are currently performed by the state or its agents and which are directly related to the energy-consuming system affected by an ECSM. The savings associated with such tasks shall be net savings, if the ESCO assumes such tasks, reduces the burden of such tasks or eliminates such tasks. The Commissioner of the Division of Administration or his designated agent shall determine whether an ESCO's action with respect to a given recurring task generates net savings and shall determine the value of such net savings.

g. Net savings may also include one-time cost savings of money budgeted by the state and available to fund a project or task that is made unnecessary by the implementation of an ECSM. The Commissioner of the Division of Administration or his designated agent shall determine whether an ESCO's action with respect to a given one-time project or task generates net savings and shall determine the value of such net savings.

h. Any utility company rebates or other incentives arising in connection with the implementation of an ECSM shall be the property of the user agency. An ESCO shall provide any assistance necessary in order to permit a user agency to apply for and receive such rebates or other incentives.

i. In accordance with the provisions of R.S. 39:1622(H), if at any time after the execution of a performance-based energy efficiency contract, a state agency makes a unilateral change or modification to the scope of work under the contract, the annual energy cost savings attributable to the services or equipment shall be adjusted to account for any expended costs and any projected savings that can no longer be measured or verified as a result of the change or modification. However, any adjustment that reduces the annual energy cost savings attributable to the services or equipment by 20 percent or more shall require approval of the Joint Legislative Committee on the Budget prior to the amendment of the contract. This Subsection shall apply to all performance-based energy efficiency contracts in effect on and after January 1, 2010, and all future contracts executed pursuant to this Section.

#### F. Grandfathered Performance Contracts

1. Notwithstanding any other provision of this Section, where an RFP or a proposed performance contract is exempt from the application of subparagraphs (a) through (d) of R.S. 39:1622(E)3.a.(ii), the selected ESCO shall, at the time a performance contract is executed, submit a certified or cashier's check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 1 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

2. Where an RFP or a proposed performance contract is exempt from the application of subparagraphs (a) through (d) of R.S. 39:1622(E)3.a.(ii), such RFP or proposed performance contract shall not be subject to the application of Subsection A or B of this Section but shall be subject to the remaining provisions of this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office Facility Planning and Control, LR 31:640 (March 2005), amended LR 32:2049 (November 2006), repromulgated LR 40:2558 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:762 (April 2018).

#### **§2506. Contracts Under Agency Delegation of Authority**

A. The state chief procurement officer may grant delegations of authority to an agency director to approve contracts without the necessity of forwarding a copy to the Office of State Procurement. The agency shall maintain a file for all such delegated contracts. This file shall be available for inspection by the Office of State Procurement upon request.

B. The using agency shall submit a report to the Office of State Procurement, as requested. This report shall contain a listing of all delegated contracts to include: the name of contractor, amount of contract, specific nature of services rendered, date of contract, total dollar amount of all delegated contracts entered into by the using agency, and any other information required by Office of State Procurement policy for that requested time period. If no such contracts have been entered into during this period, a report shall still be submitted notifying the Office of State Procurement.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:179 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1068 (November 1985), LR 17:265 (March 1991), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2561 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), repromulgated LR 41:1669 (September 2015), amended LR 44:763 (April 2018).

#### **§2509. Contract Contents**

A. Each contract for professional, personal, consulting and social services shall contain the contract provisions set forth in R.S. 39:1625.

B. Contracts funded fully or in part by federal funds, in addition to meeting all the requirements of these guidelines and R.S. 39:1551-1755 shall meet all applicable federal standards and shall contain all necessary clauses required by federal statutes, rules or regulations. The burden of complying with federal regulations shall rest with the using agency.

C. Travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49 (the state general travel regulations, LAC 4, Part V). Persons performing services under contracts approved by the Office of State Procurement shall be considered to be other persons under LAC 4:V.1503.C.3 (the state general travel regulations).

D. When a contract is to include travel and other reimbursable expenses, it shall contain language to effect the following:

1. travel and other reimbursable expense shall constitute part of the total maximum payable under the contract. Travel expenses shall be reimbursed in accordance with Administration Policy and Procedure Memorandum 49 (PPM 49), LAC 4, Part V; or

2. no more than (a certain sum) of the total maximum amount payable under this contract shall be paid or received as reimbursement for travel and other reimbursable expenses. Travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49, LAC 4, Part V.

E. If the using agency desires to reimburse the contractor other than in accordance with rates established in Policy and Procedure Memorandum 49, LAC 4, Part V, such reimbursement must be approved by the Commissioner of Administration as a waiver to the requirements of PPM 49.

F. Include the right to suspend or terminate a contract based on non-appropriated funds; or for cause or to protect the best interest of the state.

G. An electronic signature as provided by LAC 4:I.Chapter 7 is considered an original signature.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:496 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2561 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:763 (April 2018).

#### **§2512. Modification of Contract**

A. All amendments to contracts for professional, personal, consulting and social services shall be submitted to the Office of State Procurement and shall become effective only upon approval by the director of the Office of State Procurement.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987), repromulgated LR 40:2562 (December 2014), amended by the

Office of the Governor, Division of Administration, Office of State Procurement, LR 44:763 (April 2018), LR 47:585 (May 2021).

#### **§2515. Termination of Contract**

A. Whenever a contract is terminated prior to the termination date stated in the contract, the Office of State Procurement shall be notified in writing by the using agency of such prior termination, and the reasons there for.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), repromulgated LR 40:2562 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018).

#### **§2518. Submission of Contracts**

A. At least one copy of said contract and attachments shall be submitted to the Office of State Procurement. Copies of such contracts shall be forwarded to the Legislative Fiscal Office upon request. The Office of State Procurement will not accept for review and approval any contract that is not accompanied by the necessary attachments and copies as required.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987), repromulgated LR 40:2562 (December 2014), amended LR 41:671 (April 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018), LR 47:585 (May 2021).

#### **§2521. Contractual Review Process**

A. Contracts arriving in the Office of State Procurement will be date stamped and logged in. Contracts should be submitted prior to their effective dates and no contract shall be approved which has been submitted 60 days after its effective date unless written justification is provided by the using agency and approval granted by the director of the Office of State Procurement or his designee. All Submittals will be required to have a cover letter attached thereto.

B. If a contract does not appear to be out of the ordinary and appears to have the necessary attachments and inclusions, it will be routed as appropriate to the Division of Administration budget analyst for the submitting agency. A BA-22, or its equivalent, shall be submitted with every contract or amendment submitted to the Office of State Procurement, which contains any expenditures or reduction in expenditures.

C. Contracts that are incomplete as to form, or missing an attachment, may be returned to the submitting agency.

D. Contracts Returned from Budget

1. Not Recommended for Approval. If a contract is not recommended for approval, the Office of State Procurement shall discuss the reason with the budget analyst. If the problem cannot be resolved, the contract shall be returned to the submitting agency with an explanation.

2. Recommended for Approval. If a contract is recommended for approval the review process shall continue.

E. Legal and Content Review. There are a number of different types of contracts, and content requirements may vary. All contracts shall contain the following:

1. signatures of both the head of the using agency or his designee and the contractor. An electronic signature as provided by LAC 4:I.Chapter 7 shall be considered an original signature;

2. contractor name and address (including zip code);

3. scope of services that clearly and completely identifies the work to be performed and products to be delivered;

4. beginning and termination dates for the contract. Contracts shall not include a clause permitting automatic renewal or extension of the original beyond a three-year period, unless authorized by the funding statute. Per R.S. 39:1622(C)(1) performance-based energy efficiency contracts shall have a term not to exceed 10 years;

5. the maximum amount of compensation to be paid under the contract. This maximum must be inclusive of all payment, fees, travel expenses, etc. When applicable, the amounts shall be stated by category and then given as a comprehensive total. The payment schedule shall be given also;

6. a statement giving the legislative auditor and/or the Office of the Governor, Division of Administration auditors authority to audit the financial records of the contractor relative to work done under the contract;

7. a clause providing that the contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the submitting agency thereto, provided, however, that claims for money due or to become due to the contractor from the using agency under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to both the using agency and the director of the Office of State Procurement;

8. the Office of State Procurement shall notify the using agency in writing when an assignment of proceeds notice has been received from a contractor;

9. a statement giving the contractor the responsibility for paying any taxes which may be due as a result of the contract. The taxes could include state or federal income taxes or payroll taxes;

10. advance payments on all contracts except those for professional services are allowable if limited to less than or equal to 20 percent of the contract amount and if necessary to provide for the lowest cost delivery of service, and as provided by R.S. 39:1613:

a. all such advances shall be approved by the director of the Office of State Procurement. If federal funds are to be advanced, federal guidelines shall prevail on the conditions and amount of the advance. Specific state statutory authority may override the 20 percent limit for certain contracts;

b. when submitting for approval a contract including provisions for an advance, the using agency shall submit the following additional information at a minimum:

i. certification by the using agency that the procurement of the services involved at the lowest cost requires the advance and that no other source of funding is available;

ii. provisions in the contract specifying the amount and timing of the payments and safeguarding repayment of the advance.

F. Each contract submitted for approval which exceeds the value specified in R.S. 39:1623(A) shall be accompanied by a certification letter as described in R.S. 39:1623, signed by the using agency's representative.

G. Proof of review and approval by other agencies shall accompany submitted contracts as follows; or contracts will be returned to the submitting agency without final approval.

1. Civil Service. All contracts must have Civil Service approval unless exempted by the Department of Civil Service.

2. Attorney General. Contracts for legal services that are not consulting work and that do involve or lead to litigation must be reviewed by the attorney general in accordance with R.S. 49:258. Approval of the attorney general can be evidenced by the signature on the contract documents or by a letter from the attorney general. Contracts with Louisiana district attorneys do not require this approval.

3. Legislative Auditor. Contracts for financial auditing of state agencies must have prior written approval of the legislative auditor.

4. If the contractor is a corporation not incorporated under the laws of the state of Louisiana, then the contractor must secure a certificate of authority pursuant to R.S. 12:301-302 from the secretary of the state of Louisiana and verification of such certificate must be made available to the Office of State Procurement.

5. The Office of Information Technology Services shall review and recommend any contract containing elements of telecommunication services before returning it to the Office of State Procurement for completion of the analysis.

H. If a contract is subject to the provisions of R.S. 39:1621(B), it must have been awarded pursuant to the

requirements of R.S. 39:1595(B), unless exempt in accordance with Chapter 9 or Chapter 11 of this Part. Failure to so comply shall result in the using agency having to reconduct the process. Prior to approval of a contract for consulting services pursuant to this Subsection, the Office of State Procurement shall verify that the requirements of §2605 of this Part have been met.

I. Information technology consulting service contracts whose value exceeds the maximum amount specified in R.S. 39:1621(C) shall be procured in accordance with Subchapter B of this Chapter.

J. If a contract is for services defined as social services in R.S. 39:1556(54) it must have been awarded pursuant to the requirements of R.S. 39:1595(B) unless exempt by R.S. 39:1619. Failure to so comply shall result in the using agency having to reconduct the process. Prior to approval of a contract for social services pursuant to this Subsection, the Office of State Procurement shall verify that the requirements of §2605 of this Part have been met.

K. A formal, dated board resolution, disclosure of ownership or annual report filed with the Louisiana Secretary of State's office identifying the signatory as an officer, or equivalent document signed by one or more owners of the contractor must be secured and attached to the contract indicating that the signatory is a representative of the contractor and authorized to sign said contract.

L. When it has been determined that a contract is complete, the contract shall be returned to the submitting agency with an approval from the Office of State Procurement.

M. A performance evaluation for every personal, professional, consulting or social services contract shall be conducted by the using agency in accordance with R.S. 39:1569.1. This performance evaluation shall be retained by the using agency for all contracts approved under delegated authority. For all other contracts, this performance evaluation shall be submitted to the Office of State Procurement within 120 days after the termination of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:182 (April 1981), amended LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1069 (November 1985), LR 13:87 (February 1987), LR 13:653 (November 1987), LR 15:81 (February 1989), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 40:2562 (December 2014), amended LR 40:2545 (December 2014), LR 41:671 (April 2015), repromulgated LR 41:1669 (September 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018), LR 47:585 (May 2021), repromulgated LR 47:725 (June 2021).

**§2524. Exempt Occupations**

A. The following list of occupations shall be construed as falling within the definition of medical, nursing or allied

health fields given in R.S. 39:1626. Personnel employed in these fields would therefore be exempt from the prohibition contained in R.S. 39:1624(A)(4) which disallows personal, professional, consulting or social services contracts between the state of Louisiana and state employees:

1. audiologist;
2. dental assistant;
3. dentist;
4. electroencephalograph technician;
5. emergency medical technician;
6. hospital chaplain;
7. inhalation therapist;
8. medical laboratory technologist;
9. accredited medical records technician/administrator;
10. nurse anesthetist;
11. occupational therapist;
12. optometrist;
13. osteopath;
14. pharmacist;
15. psychologist;
16. physical therapist;
17. physician;
18. podiatrist;
19. practical nurse;
20. professional dietitian;
21. psychiatrist;
22. radiologic technologist;
23. radioisotope technologist;
24. registered nurse;
25. rehabilitation counselor;
26. respiratory therapy technician;
27. respiratory therapy technologist;
28. social worker;
29. speech pathologist;
30. ultrasonography technologist.

B. Other specialists as may be included later by the director of the Office of State Procurement by issuance of a policy and procedure memorandum.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:593 (November 1982), amended LR 10:457 (June

1984), LR 11:1070 (November 1985), LR 15:82 (February 1989), LR 17:266 (March 1991), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018).

#### **§2527. Delegation of Signature Authority**

A. R.S. 39:1595(A)(10)(b)(i), (ii) and 39:1595.1 requires that the head of the using agency or his designee shall sign all contracts for personal, professional, consulting or social services. All delegations of signature authority by the head of the using agency must be in writing and must be approved by the Office of State Procurement.

B. In addition, autonomous or semi-autonomous boards or commissions may sign their own contracts if such authority is granted them by their enabling legislation or by the heads of the agency in which they are placed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 8:593 (November 1982), amended LR 10:457 (June 1984), LR 11:1070 (November 1985), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018), LR 47:586 (May 2021).

#### **§2530. Confidentiality of Technical Data or Trade Secrets**

A. The using agency shall be responsible for protecting technical data, financial information, overhead rates, and trade secrets which may come into their possession from individuals and businesses doing business with the state. Any such information received by the Office of State Procurement shall be returned to the using agency upon completion of said review or retained using secure means if return to the using agency is not practicable or permissible.

B. A bidder or proposer who asserts a trade secret or confidentiality over any information contained in its bid or proposal but fails to provide OSP a redacted copy of its bid or proposal upon request of OSP, shall have the option to either waive its assertion of trade secret or confidentiality or have its bid or proposal rejected, subject to applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:457 (June 1984), LR 11:1070 (November 1985), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018), LR 47:586 (May 2021).

#### **§2534. Cost Reimbursement Contracts**

A. If a nongovernmental provider is expected to receive \$100,000 or more per year of state funds via one or more cost-reimbursement contracts, then those contracts shall contain at least one of the following requirements:

1. source documentation verification (evidenced by invoices, canceled checks, certified payroll sheets, etc.) shall be submitted to the state to justify each payment request; or

2. utilizing internal auditors, the using agency shall perform frequent, unannounced contract compliance audits of the contractor. "Frequent" shall mean no less than once per contract or per 12 months if the contract is longer than 12 months and all disallowed expenditures shall be reimbursed to the using agency; or

3. the contract shall require the contractor to obtain a contract compliance audit of expenditures charged to the contract. This compliance audit shall be performed by a certified public accountant or the Louisiana Legislative Auditor's Office. A contract compliance audit must include an examination of reimbursed expenditures to determine if they are in accord with contract terms, not reimbursed by any other source, and in accord with any guidelines set by the using agency or other relevant authority. This examination shall be conducted in accordance with generally accepted auditing and sampling procedures, including the *Government Auditing Standards*.

a. Such an audit may be performed in conjunction with a financial audit, but results must be available to the using agency within 12 months after the fiscal year end of the contractor. It is the intention of this rule not to require audits at a different time of year if annual audits are currently being performed. Thus, a contract period may be covered by two separate audits.

b. For multi-year cost-reimbursement contracts, the provider may with the using agency's consent, elect to have a multi-year contract compliance audit done to cover the entire contract period.

c. If a single provider has multiple cost-reimbursement contracts subject to the requirements herein, then the provider may elect to have an audit done using the single audit model. In these instances, a major state contract means any state contract for which expenditures during the year exceed the greater of \$100,000 or 3 percent of such total expenditures.

d. All disallowed expenditures shall be reimbursed to the using agency. Such disallowances shall normally be recouped by the using agency in current or future contracts with the provider. For cost-reimbursement contracts, any audit of the contract period issued pursuant to the Single Audit Act of 1984, P.L. 98-502, OMB Circular A-110, or other federal legislation and regulations, shall fulfill the audit requirements of this Paragraph 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B) and 39:1521.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 15:82 (February 1989), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2565 (December 2014), amended LR 40:2545 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:766 (April 2018).

**§2536. Determination of Responsibility**

A. In order to qualify as responsible, a proposer must meet and, upon request by the agency or the chief procurement officer, present evidence of compliance with the standards identified in §1505.A of this Part, as they relate to the particular procurement under consideration.

B. No contract for consulting services meeting the value specified in R.S. 39:1621(B), regardless of time period, or for social services exceeding the value indicated in R.S. 39:1619(B)(7), regardless of time period or other exemption applicable pursuant to R.S. 39:1619(B), shall be awarded to any person or firm unless the head of the using agency has first determined that such person or firm is responsible.

C. In any case where a contract for consulting services meets the value threshold specified in R.S. 39:1621(B), regardless of time period, or where a contract for social services exceeds the value threshold specified in R.S. 39:1619(B)(7), regardless of time period or other exemption applicable pursuant to R.S. 39:1619(B), the head of the using agency shall prepare, sign, and place in the contract file a statement of the facts on which a determination of responsibility was based. Any supporting documents or reports and any information to support determinations of responsibility of the proposer or potential subcontractors should be kept on file with the agency, subject to inspection upon the request by the director of state procurement or his designee.

D. Before making a determination of responsibility, the head of the using agency shall have sufficient current information to satisfy himself that the prospective contractor meets the standards identified in §1505.A of this Part. Information from the sources identified in §1505.A.2 and 3 of this Part shall be utilized before making a determination of responsibility.

E. To the extent that a prospective contractor cannot meet the standards identified in §1505.A of this Part except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system or prospective major subcontractors are determined by the Office of State Procurement or the head of the using agency to satisfy that standard.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:496 (December 1978), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 13:654 (November 1987), repromulgated LR 40:2565 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:766 (April 2018), LR 47:586 (May 2021).

## **Subchapter B. Review of Certain Contracts for Information Technology Consulting Services**

**§2549. Procurement Support Team**

A. Unless a procurement support team (PST) is formed in accordance with R.S. 39:200(I), a procurement support team shall be formed in accordance with the procedures defined herein for every contract for the procurement of information technology consulting services in an amount exceeding the maximum value specified in R.S. 39:1621(C). At the discretion of the director of the Office of State Procurement, all other consulting services anticipated to exceed the maximum value specified in R.S. 39:1621(C) may require PST review of the RFP, the selection process, and subsequent contract. The formation of a procurement support team shall be accomplished by the Office of State Procurement and shall include one or more representatives from each of the following: the Office of State Procurement, the Attorney General's Office; the using agency initiating the procurement action; and the Legislative Fiscal Office. The procurement support team shall submit a recommendation to the director of the Office of State Procurement concerning the final contract. Where a procurement support team is formed in accordance with R.S. 39:200(I), the requirements of this Section may be met by including a representative from the Attorney General's Office.

B. At least two members of each procurement support team should have formal training in computer contract negotiations. The Legislative Fiscal Office and the Attorney General's Office shall each designate in writing to the Office of State Procurement the names of a primary and an alternate team member, and should insure that at least one of these individuals has received formal training in computer contract negotiations. It shall thereafter be the responsibility of each named agency to keep the Office of State Procurement advised of any changes in designated individuals. At least four members, one from each office designated, must be present to constitute a quorum.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2568 (December 2014), amended LR 40:2545 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:767 (April 2018), LR 47:587 (May 2021).

**§2551. Procurement Support Team Involvement**

A. Procurement support team participation must include, as a minimum, review of the request for proposals, review of using agency evaluation of proposals and award of contract, and review and/or negotiation of contract terms. Procurements requiring a procurement support team will involve the active participation of all of the members of the procurement support team as a unit. There will be at least



one joint meeting per phase during the process. The procurement support team will make written evaluations and recommendations as a group; these will not supplant written individual agency approvals as required by statute or regulations. The team leader will be designated by the Office of State Procurement.

B. All data processing consulting service contracts shall be subject to the statutory and regulatory requirements for consulting service contracts in general. The recommendation of a procurement support team member is not to be construed as approval by the agency which that team member represents, in those cases where formal agency approval of the final agreements is required.

C. In situations where formal negotiations with prospective contractors, or a successful proposer, is appropriate, such negotiations will be conducted by a negotiations team appointed by the procurement support team leader. One member of the negotiating team will be designated as lead negotiator. The results of such negotiations will, of course, be subject to all statutory required reviews. The lead negotiator and at least one other member of the negotiating team should have formal training in computer contract negotiations.

D. The individual agencies represented on procurement support teams will have the following primary responsibilities. The responsibilities may be enlarged or modified as appropriate to each given situation by the procurement support team leader with the concurrence of the Office of State Procurement.

1. Legislative Fiscal Office. The Legislative Fiscal Office shall have primary responsibility for the financial analysis of RFP's, and review of funding procedures, and certification of specific appropriation for the purpose prior to the final contract award.

2. Attorney General's Office. The Attorney General's Office shall have primary responsibility for developing the legal terms and conditions of draft contracts, evaluating the legal impact of substantive terms and conditions, reviewing to insure compliance with statutes and regulations, and legal negotiations.

3. Office of State Procurement. The Office of State Procurement shall have primary responsibility for insuring compliance with RFP procedures and regulations.

4. The Using Agency. The using agency shall have primary responsibility for the determination of the compliance of proposals with the functional requirements, drafting of the requests for proposals, the evaluation of proposals, the award of the contract and for all management decisions at each phase of the procurement process.

5. The Office of Information Technology Services shall provide technical staff to the procurement support team. They shall provide advice and support in the area of information technology techniques, negotiation techniques, and reviewing the structure and content of requests for proposals.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:460 (June 1984), amended LR 11:1073 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:767 (April 2018), LR 47:587 (May 2021).

#### **§2554. Emergency and Sole Source Procurements**

A. Notwithstanding the guidelines established in Chapters 9 and 11 of this Part, procurements of information technology consulting services in an amount exceeding the maximum value specified in R.S. 39:1621(C) under emergency or sole source conditions shall involve a procurement support team designated by the Office of State Procurement and under the direction of a team leader designated by the Office of State Procurement.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:461 (June 1984), amended LR 11:1074 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018), LR 47:587 (May 2021).

#### **§2557. Procurement Support Team; Procurement Schedule**

A. Each using agency contemplating a contract for information technology consulting services with an estimated value exceeding the maximum value specified in R.S. 39:1621(C) shall notify the Office of State Procurement prior to the drafting of the request for proposals. The Office of State Procurement shall then contact the appropriate agencies and obtain from those agencies the names of the individuals designated to participate on the particular procurement support team (PST). The Office of State Procurement shall then designate a team leader, insure that at least two members of the procurement support team have received formal training in computer contract negotiations, and forward to the team leader the names of the other team members, along with any information received from the using agency.

B. The team leader will establish a schedule for the procurement activity, define the role and task of each team member, and establish a project file. The using agency and all team members are responsible for insuring that the team leader receives a copy of all correspondence and documentation.

C. At the end of the procurement process one copy of the documentation related to the procurement will be retained on file by the Office of State Procurement. The team leader will make written status reports at the end of each phase to the Office of State Procurement. Such status reports shall be presented to the Office of State Procurement at each regular meeting.

D. Each member of the procurement support team must review as a minimum the request for proposals, the using agency's proposal evaluation, the award of contract and the final contract. As a minimum, this review must be indicated by the signature of each team member. Where team evaluations are made, each PST team member must sign the evaluation, or his designating or qualifying reports.

E. In the event that a PST team member indicates acceptance or concurrence with any activity, and that PST team member's agency subsequently refuses to approve the process pursuant to its statutorily required review, the reviewing agency and the individual PST team member must submit to the team leader written reasons for their actions. The PST team leader shall file these documents in the final activity file.

F. After a procurement process has been completed, PST team members and the using agency are encouraged to submit written evaluations and comments of the process, and suggestions for future improvements. Such evaluations, comments, and suggestions shall be sent to the Office of State Procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 10:461 (June 1984), amended LR 11:1074 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018), LR 47:587 (May 2021).

## Chapter 26. Contracts Let Via a Request for Proposals Process

### §2601. Application and Competitive Sealed Proposals

A. This Chapter shall be applicable to consulting services contracts governed by R.S. 39:1621(B), social services contracts which are not exempted by R.S. 39:1619(B), and any other competitive sealed proposals governed by R.S. 39:1595.

#### B. Competitive Sealed Proposals

1. For purposes of this Chapter, *competitive sealed proposals* means proposals protected from inspection prior to the deadline for submission. Proposals may be received in any manner specified in the request for proposals including receipt by mail, by direct delivery, or through any secure electronic interactive environment permitted by rule or regulation.

2. Any competitive sealed proposal which is withdrawn by the proposer prior to the deadline for submission of proposals, or which has been determined to be late relative to the deadline for submission of proposals, shall not be opened and shall instead be subject to the provisions of §319.D of this Part.

3. Except as provided in Paragraph 2 of this Subsection, competitive sealed proposals shall be secured until the proposal submission deadline.

4. Competitive sealed proposals shall not be inspected prior to the proposal submission deadline unless the chief procurement officer determines that doing so is necessary for the sole purpose of identifying the name of the proposer and/or the solicitation to which the proposal is addressed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 47:588 (May 2021).

### §2603. Content in Requests for Proposals [Formerly LAC 34:V.2545(A)(1)]

A. All request for proposals (RFP) solicitations should:

1. specifically define the task and desired results of project;

2. identify agency liaison personnel and resources available to the contractor;

3. state approximately when the contractor can begin the work, plus an estimate of the time necessary to accomplish the work, if applicable;

4. specify applicable procedures concerning billing, documentation requirements, progress reports, and final reports, if applicable;

5. specify that a minimum of two copies of the proposal be submitted;

6. inform the potential contractors of the criteria and the selection methodology and the weight which will be applied to each significant evaluation criteria to be used in evaluating the proposals' responsiveness to the RFP;

7. inform the potential contractors that the state reserves the right to use the best and final offer (BAFO) process as a part of the competitive negotiation process to clarify the scope of work and/ or to obtain the most cost effective pricing available from the proposer along with the proposers most favorable terms in response to the solicitation. When used, inform the potential contractors of the evaluation criteria and associated weights, if different from the initial scoring criteria and weights;

8. require potential contractors to include the following information in their proposals:

a. a description of the firm's qualifications, including a specific list of personnel to be used in the services and their qualifications (at least list the number and the qualifications of each position). However, a résumé should be required on each of the key personnel. Additionally, the contractor should be required to stipulate that these personnel will not be substituted or removed from the contract without prior approval of the using agency;

b. a list of the agencies with names and contact persons, for whom similar work has been done;

c. if applicable, the length of time needed for the services, broken down by phases, if phasing is necessary;

d. the proposed methodology for accomplishing the services with a precise statement of what the state will receive as an end product of the services (this is sometimes referred to as the technical section of the proposal);

e. for consulting services, an itemized cost statement showing various classes of man-hours at appropriate rate, delineated by phases, if phasing is used, and an itemized listing of all other expenses or fees that are expected to be paid by the state and a complete breakdown of consultant overhead rate, if applicable;

f. for social services, a detailed budget or other cost breakdown as may be required by the using agency and/or the federal government.

B. All request for proposals (RFP) solicitations shall:

1. provide for a blackout period in accordance with §341 of this Part;

2. require, and provide prominent notice, that a proposal must attain a minimum technical score equal to 50 percent or more of available technical points to be eligible to proceed to evaluation of cost or other point categories. No proposal which has failed to attain or exceed such a minimum technical score may be evaluated for cost, certified small entrepreneurship initiative participation, or any other category, nor may any prior calculation for cost or certified small entrepreneurship initiative participation be included in any final comparative tabulation if the proposer's technical score falls below 50 percent of available technical points subsequently. The State Chief Procurement Officer, or his designee, may waive the requirement to include this provision in writing if doing so is determined to be in the best interests of the state.

3. require, and provide prominent notice, if the RFP allocates points for Hudson or Veteran initiative points, that any awarded proposer which includes a good faith subcontracting plan for certified small entrepreneurship (e.g. Hudson, Veteran, or Service-Connected Disabled Veteran) initiative participation shall be subject to audit by the Louisiana Department of Economic Development or the Office of State Procurement to determine whether the contractor has complied in good faith with its subcontracting plan. The contractor must be able to provide supporting documentation to demonstrate that the good faith subcontracting plan was followed. If it is determined at any time by the using agency or the Office of State Procurement that the contractor did not in fact perform in good faith its subcontracting plan relative to certified small entrepreneurship initiative participation, the contract award or contract may be terminated by the Office of State Procurement.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:495 (December 1978), amended LR 7:180 (April 1981), LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1072 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing,

LR 40:2567 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1283 (July 2015), repromulgated LR 41:1670 (September 2015), amended LR 44:767 (April 2018), LR 47:588 (May 2021).

## **§2605. Procedures**

**[Formerly LAC 34:V.2545.A.2]**

A. The final selection of a contractor shall be made in accordance with the selection criteria established in the RFP. However, no contract may be enforced against the state until approval of the contract has been granted by the Office of State Procurement. When a final selection has been made, but prior to notice of award, the contract file containing the request for proposals, along with a selection memorandum justifying the final selection, shall be sent to the Office of State Procurement for final concurrence. The selection memorandum shall include, but not be limited to:

1. a list of criteria used along with the weight assigned each criteria;

2. scores of each proposal considered in each of the categories listed above along with overall scores of each proposal considered;

3. a narrative justifying selection.

B. After final negotiation and execution, the contract shall be sent to the Office of State Procurement for final review and approval.

C. Right to Protest. Any person who is aggrieved in connection with the request for proposal or award may protest and appeal pursuant to the provisions of R.S. 39:1671, 1681, 1683, 1691, and 1692.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1490(B).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), LR 40:2573 (December 2014), repealed, LR 47:589 (May 2021).

## **Chapter 27. Intergovernmental Regulations**

### **§2701. Scope**

A. This Part applies to cooperative purchasing and other cooperative activities authorized by R.S. 39:1702.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), LR 40:2572 (December 2014).

### **§2705. Cooperative Purchasing Agreement in Form of Open-Ended State Contract**

A. Cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement

unit contracts which are made available to local public procurement units.

B. Any agreement between the state and a local public procurement unit entered into pursuant to R.S. 39:1702 which provides that certain open-ended state procurement contracts shall be available to the local public procurement unit, shall also provide that:

1. the state shall conduct the procurement in compliance with the Louisiana Procurement Code;

2. when the local public procurement unit agrees to procure any supply or service under the state contract, its requirements for such supply or service shall be obtained by placing purchase orders against the appropriate state contract in accordance with the terms and conditions of such contract;

3. payment for supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;

4. inspection and acceptance of supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;

5. the state may terminate the agreement for failure of the local public procurement unit to comply with the terms of the contract or pay a contractor to whom the state has awarded an open-ended contract;

6. the exercise of any warranty rights attaching to supplies or services received by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit; and

7. failure of a local public procurement unit which is procuring supplies or services under a state contract to secure performance from the contractor in accordance with the terms and conditions of its purchase order will not necessarily require the state or any other local public procurement unit to consider the default or to discontinue procuring under the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), LR 40:2573 (December 2014).

**§2706. LaMAS (Louisiana Multiple Award Schedule) State Contracts Based on GSA Prices**

A. The State Central Purchasing Agency of the Division of Administration may establish state contracts based on GSA (general service administration) pricing when it has been determined in writing by the director of the Office of State Procurement that certain conditions are met, which shall become part of the procurement file.

B. Materials, supplies, or equipment shall not be purchased on a state contract based on GSA pricing at a

price higher than the price of the same item listed on any available statewide competitive contract established by the Office of State Procurement.

C. Establishment of a state contract based on GSA pricing will only be considered when there is a valid business case.

D. State agencies shall not procure materials, supplies or equipment directly under a GSA contract. The State Central Purchasing Agency of the Division of Administration will:

1. be responsible for analyzing and determining the feasibility of establishing a LaMAS state contract based on GSA prices; and

2. issue procedures for establishment and utilization of this type of contract.

E. No use shall be made of a LaMAS contract without the participation of a Louisiana licensed dealer or distributor. Louisiana-licensed dealers or distributors must meet the requirement of a resident business defined in R.S. 39:1556(47) Louisiana licensed dealers or distributors shall agree to:

1. Louisiana terms and conditions; and

2. provide written consent from the GSA contractor to extend current GSA pricing to the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581 and R.S. 39:1702(A)(2).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 29:2381 (November 2003), repromulgated LR 40:1365 (July 2014), LR 40:2573 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018).

**§2707. Supply of Personnel, Information, and Services**

A. Requests made to a public procurement unit by another public procurement unit or external procurement activity to provide or make available personnel, services, information, or technical services pursuant to R.S. 39:1706, shall be complied with only to the extent that the chief procurement officer determines that it is practical and feasible to do so in terms of personnel, time, and other resources.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1365 (July 2014), LR 40:2573 (December 2014).

## Chapter 31. Protests and Appeals, Bidder Responsibility, Suspension and Debarment of Bidders, Contract Controversies

### §3101. Application

[Formerly LAC 34:V.3103]

A. This Chapter shall only apply to boards of higher education and institutions under their jurisdiction in accordance with R.S. 39:1671, 1672, and 1673 of Title 39 of the *Louisiana Revised Statutes*, unless the institution is operating under a pilot procurement code in accordance with R.S. 17:3139.5(5)(c)(i), or R.S. 17:3393(A)(2)(d), which has adopted rules or procedures that supersede these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), repromulgated LR 40:1365 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018), repromulgated LR 47:589 (May 2021).

### §3103. Definitions

[Formerly LAC 34:V.3101]

*Aggrieved Person*—a person who files a written protest in connection with the solicitation or award or the issuance of a written notice of intent to award a contract under the Louisiana Procurement Code and has or may have a pecuniary or other property interest in the award of the contract.

*Candidate for Suspension or Debarment*—a candidate for suspension or debarment is a person, who in the opinion of the chief procurement officer has committed an action giving cause for suspension or debarment pursuant to R.S. 39:1672.C.

*Commissioner*—the commissioner of the Division of Administration.

*Contractor*—a person who has been awarded a contract.

*Hearing Officer*—the chief procurement officer or his designee who shall exercise such authority as is granted for the conduct of protests in accordance with the provisions of the Louisiana Procurement Code [title 39:1551 et seq., section 1671(B)].

*Interested Person*—any person who has submitted a bid in response to an invitation to bid, a request for proposals, or other solicitation issued under the Louisiana procurement code who has or may have a pecuniary or other property interest which may be affected by a determination made in a protest hearing.

*Party*—as used herein, unless the content clearly indicates otherwise, is either a contractor or a candidate for suspension or debarment or both.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 9:210 (April 1983), amended LR 23:67 (January 1997), repromulgated LR 40:1366 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1671 (September 2015), amended LR 44:769 (April 2018), repromulgated LR 47:589 (May 2021).

### §3105. Initiation of Hearing

A. Responsibility of Bidders and Proposers. A hearing held to consider the disqualification of a bidder or proposer shall be commenced with the giving of written notice issued by the chief procurement officer, the commissioners or head of a governmental body.

B. Protest of aggrieved person in connection with the solicitation, award, or issuance of written notice of intent to award. Any person who is aggrieved in connection with the solicitation, award, or issuance of written notice of intent to award may protest to the chief procurement officer. Protests with respect to a solicitation shall be submitted in writing at least 2 days prior to the opening of bids or proposals. Protests with respect to the award of a contract or the issuance of written notice of intent to award a contract shall be submitted in writing within 14 days after contract award.

1. The written protest must state the issue(s) protested. The protest hearing is limited to the issues contained in the written protest unless there is a showing that an issue not mentioned ought to be examined in order to properly dispose of the matter, or, in the public interest, there is other good ground for consideration of other issues and evidence.

2. Upon receipt of a written protest in conformity with the preceding Paragraph, the chief procurement officer shall cause to issue a written notice to the aggrieved person and shall also, issue a written notice to all interested persons.

C. Suspensions and Debarments. A hearing for a candidate for suspension or debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment shall be initiated by issuance of written notice thereof in accordance with the procurement code.

D. Contract and Breach of Contract Controversies. Hearings on controversies between the state and a contractor based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission shall commence with issuance of written notice by the chief procurement officer on his motion for reasons set forth in the notice or at the request of the contractor communicated in writing to the chief procurement officer and the head of the governmental body of the state utilizing the supplies, services, or major repairs under the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), amended LR 22:280 (April 1996),

repromulgated LR 40:1366 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

**§3107. Notice**

A. The written notice required to be sent in order to commence a hearing within the foregoing section of these rules for the adjudicatory hearings provided for to parties, aggrieved persons, or interested persons who do not waive their rights shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the statutes and rules involved;
4. a short and plain statement of the matters asserted.

B. If the chief procurement officer is unable to state the matters in detail at the time notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, the chief procurement officer shall issue a more detailed notice prior to the date set for the hearing.

C. In addition to the requirements of the notice set forth above, the notice may contain a statement advising all parties, aggrieved persons, or interested persons as applicable that failure to participate in the noticed hearing shall serve to waive any and all further administrative remedies.

D. Whenever practical, the notice shall be served by return receipt certified mail. Where time or other factors render mail service impractical, the chief procurement officer may effect service by any other means reasonably calculated to communicate the written notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), repromulgated LR 40:1366 (July 2014).

**§3109. Hearing; Record**

**A. Hearing**

1. An opportunity shall be afforded all parties, aggrieved persons, or interested persons to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

2. The hearing officer may, in his discretion, request written views from a governmental body which will be directly affected by the outcome of the adjudicatory hearing and give such weight to the submission as the facts and law require. A copy of such written submission shall be provided to all parties, aggrieved persons, or interested persons participating in the adjudicatory proceeding.

3. Informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

**B. Record**

1. The record shall contain:

- a. all pleadings, motions, intermediate rulings;
- b. evidence received or considered or a résumé thereof if not transcribed;
- c. a statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
- d. offers of proof, objections, and rulings thereon;
- e. proposed findings and exceptions;
- f. any decision, opinion, or report by the officer presiding at the hearing.

2. The hearing officer shall have all proceedings before him recorded electronically and may in his discretion, or shall upon written request of any party, aggrieved person, or interested person, cause to be made a full transcript of said proceedings.

a. The cost of a transcript shall be paid by the Division of Administration when the hearing officer elects upon his motion to transcribe the proceedings. In such event, any party, aggrieved person, or interested person requesting a copy shall be given a copy upon first paying the actual cost thereof or upon payment of the cost of a portion of the transcript if the request is for a particular portion of the transcript.

b. The cost of a transcript shall be paid by the party, aggrieved person, or interested person when a transcript is made at their request. Copies requested shall be paid for by the party, aggrieved person, interested person, or the hearing officer as the case may be.

3. Findings of fact made by the hearing officer shall be based exclusively on the evidence and on matters officially noticed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), repromulgated LR 40:1366 (July 2014).

**§3111. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Depositions and Discovery; and Confidential Privileged Information**

**A. Rules of Evidence**

1. The hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. He shall give effect to the rules of privilege recognized by law. He may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties, aggrieved person, or interested persons will not be prejudiced substantially, any part of the evidence may be received in written form.

2. All evidence, including records and documents in the possession of the governmental agency of which the hearing officer desires to avail himself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

B. Official Notice. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within a governmental agency's specialized knowledge. Parties, aggrieved persons, or interested persons shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. A governmental agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

C. Oaths and Affirmations. The hearing officer shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues. The hearing officer shall also have authority to raise issues not otherwise raised by persons party to a hearing where such an issue is pertinent to a proper disposition of the matter.

D. Subpoenas. The hearing officer shall have power to sign and issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party, aggrieved person, interested person, or governmental agency who wishes to subpoena the witness first deposits a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party, aggrieved person, interested person, or governmental agency who wishes to subpoena such witness as may be fixed by the hearing officer with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or give testimony, as required, the hearing officer may apply to the judge of the district court

for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt.

E. Depositions and Discovery. The hearing officer, governmental agency, or any party, aggrieved person, or interested person may take the depositions of witnesses, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in the record of the hearing. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by hearing officer in accordance with the rules of evidence provided in these rules.

#### F. Confidential and Privileged Information

1. Records and documents, in the possession of a governmental body, the hearing officer, or any officer or employee, including conclusions drawn therefrom which are deemed confidential and privileged shall not be made available for adjudication proceedings and shall not be subject to subpoena by any person or other state or federal agency.

2. Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated, by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:211 (April 1983), repromulgated LR 40:1367 (July 2014).

### §3113. Decisions and Orders of the Hearing Officer

A. If the subject matter of the hearing is not resolved, the hearing officer shall, within 14 days of the conclusion of a protest hearing, or within a reasonable time of the conclusion of a hearing to determine responsibility, suspension or debarment, or a controversy between the state and a contractor, issue a written decision stating the reasons for the action taken and informing the party, aggrieved person, or interested person of the right to administrative review and thereafter judicial review where applicable.

1. A copy of the decision or order shall be mailed or otherwise furnished the party, aggrieved person, or interested person immediately.

B. The decision of the hearing officer shall become final and conclusive unless the decision is fraudulent or the party, aggrieved person, or interested person adversely affected by the decision or order has timely appealed administratively to the commissioner.

1. The final decision of the hearing officer shall not be subject to the review of the commissioner when the decision

is rendered in a proceeding to determine responsibility of a bidder or proposer. Notice of the right to judicial review of the final decision shall accompany service of the final decision.

C. A bidder or proposer who is disqualified shall have the right to request a rehearing before the hearing officer. This right must be exercised within 10 days of the date of receipt of the decision of disqualification. The grounds for rehearing shall be limited to the following:

1.a. the decision or order is clearly contrary to the law and the evidence;

b. the party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

c. there is a showing that issues not previously considered ought to be examined in order to properly dispose of the matter; or

d. there is other good ground for further consideration of the issues and the evidence in the public interest;

2. the request for rehearing on behalf of a bidder or proposer disqualified after hearing on his responsibility shall be in writing and shall set forth the grounds which justify a rehearing. In the event a rehearing is granted by the hearing officer, it shall be confined to the grounds upon which the rehearing was granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:211 (April 1983), repromulgated LR 40:1368 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

**§3115. Administrative Appeal to the Commissioner**

A. The commissioner shall have authority to review and determine any appeal by a party, aggrieved person or interested person who has intervened in a hearing before the hearing officer from a determination by the hearing officer from an adjudication on a protest of a solicitation, award, or intent to award, a suspension or debarment, or a controversy between the state and a contractor.

**B. Scope of Appellate Review by the Commissioner**

1. An appeal to the commissioner authorized by R.S. 39:1681 and the foregoing provision shall be limited to a review of the record of the proceedings before the hearing officer and written briefs submitted by or on behalf of persons who have appealed.

2. A person seeking review by the commissioner of a decision by the hearing officer may, within the time limitations fixed herein below for appeals, raise by separate written documents:

a. the existence and discovery since hearing of new evidence important to the issues which he could not have with due diligence obtained before or during trial; or

b. the existence of issues not previously considered which ought to be examined in order to properly dispose of the matter. Upon receipt of such separate written document, the commissioner, should he deem the assertions well founded, may either remand the matter to the hearing office or grant a hearing to consider the assertions himself. In either event, whether the assertions are heard by the hearing officer or the commissioner, the evidence or submissions of said hearing shall be incorporated into the record and considered in the administrative appeal.

C. Appeal of Protest Hearing. An aggrieved person or an interested person who has participated in the proceedings before the hearing officer appealed from shall file an appeal to the commissioner within seven days of receipt of the decision of the hearing officer. The commissioner shall decide within 14 days whether the solicitation or award or intent thereof was in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. A copy of the decision of the commissioner on the appeal shall be mailed or otherwise furnished immediately to the aggrieved person or interested person who has appealed or otherwise participated in the appeal from the decision of the hearing officer. The decision of the commissioner on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or

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

D. Appeal of Suspension or Debarment Hearing. A party shall file his appeal with the commissioner from a suspension or debarment hearing within 14 days of the receipt of the decision of suspension or debarment from the hearing officer. The commissioner shall decide within 14 days whether, or the extent to which, the debarment or suspension was in accordance with the constitution, statute, regulations, and the best interests of the state and was fair. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person or any other party interviewing. The decision of the commissioner on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or

2. the debarred or suspended party has timely appealed to the court in accordance with R.S. 39:1691(B). The filing of a petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner except as is provided under the section entitled "Procedure upon Judicial Review" of this rule.

E. Appeal of Contractor Controversy. A party shall file his appeal with the commissioner within 14 days of the receipt of the determination under R.S. 39:1673(C). The commissioner shall decide within 14 days the contract or breach of contract controversy. A copy of the decision shall



be mailed or otherwise furnished immediately to the contractor. The decision of the commissioner on appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the contractor has timely appealed to the court in accordance with R.S. 39:1691(C). The filing of a petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner except as is provided under §3119, "Procedure upon Judicial Review."

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:212 (April 1983), repromulgated LR 40:1368 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

### **§3117. Judicial Appeal from Administrative Decisions**

A. Solicitation and Award of Contracts. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder, proposer, 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. Such actions shall extend to all kinds of actions, whether for monetary damages or for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691(A) shall be commenced within 14 days after receipt of the decision of the commissioner under R.S. 39:1683(C).

B. Debarment or Suspension. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the constitution, statute, and regulations. Such actions shall extend to actions for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691(B) shall be commenced within six months after receipt of the decision of the commissioner under R.S. 39:1684(C).

C. Actions under Contracts or for Breach of Contract. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a contractor who contracts with the state, for any cause of action which arises under or by virtue of the contract for a breach of the contract or whether the action is for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691(C) shall be commenced within six months after receipt of the decision of the commissioner under R.S. 39:1685(C).

D. Disqualification of Bidders or Proposer. A bidder or proposer disqualified after a hearing conducted pursuant to R.S. 39:1601 shall have a right of appeal to the Nineteenth Judicial District Court. Any action for review of a hearing conducted pursuant to R.S. 39:1601 shall be commenced within 30 days after receipt of the hearing officer's decision or within 30 days of the receipt of a decision on an application for rehearing.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:212 (April 1983), repromulgated LR 40:1369 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).

### **§3119. Procedure upon Judicial Review**

A. An appeal to the Nineteenth Judicial District Court for review of a decision of the commissioner shall be instituted within the time delays established in the preceding Section entitled "Judicial Appeal from Administrative Decisions" by the filing of a petition. An appeal to the decision of a hearing officer in a hearing involving the responsibility of a bidder or proposer shall likewise be filed within the delay provided in the preceding Section and shall be instituted by the filing of a petition.

B.1. The filing of the petition does not stay enforcement of a decision in proceedings involving responsibility of a bidder or proposer, suspension or debarment, or controversies between the state and a contractor. The commissioner may grant, or the Nineteenth Judicial District Court may order, a stay upon appropriate terms.

2. The filing of a petition shall stay progress of a solicitation or award of a contract unless the chief procurement officer makes a written determination that the awarding of the contract is necessary without delay to protect the substantial interests of the state. Upon such determination, no court shall enjoin progress under the award except after notice and hearing.

C. Review. The review shall be conducted by the Nineteenth Judicial District Court without a jury and shall be confined to the record. In case of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs. There shall be no right of review by a trial de novo.

D. Judgment on Review. The court may affirm the decision of the commissioner or chief procurement officer, as the case may be, or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the agency;
3. made upon lawful procedure;
4. affected by other error of law;
5. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
6. Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own

determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge the credibility of witnesses by first-hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:213 (April 1983), repromulgated LR 40:1369 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).

### **§3121. Appeals**

A. Review of a final judgment of the district court to the Court of Appeal for the First Circuit shall be taken as in other civil cases.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:213 (April 1983), repromulgated LR 40:1370 (July 2014).

## **Chapter 33. Vendors**

### **§3301. Vendor Fees**

A. The state reserves the right to charge an annual subscription fee to vendors, upon written notice of no less than 30 days. The fees may be used to ensure sustainability of various services to vendors that assist them in conducting business with the state of Louisiana relative to procurement and procurement related opportunities, such as training, instructive publications, etc.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1561.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 12:833 (December 1986), amended LR 13:342 (June 1987), LR 17:660 (July 1991), repromulgated LR 40:1370 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).

## **Chapter 35. Rulemaking Petitions**

### **§3501. Submission of a Rulemaking Petition**

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration  
Re: Rulemaking Petition  
P.O. Box 94095, Capital Station  
Baton Rouge, LA 70804-9095

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581 and 49:953, et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement LR 46:334 (March 2020).

### **§3503. Consideration of a Rulemaking Petition**

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581 and 49:953, et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Procurement LR 46:334 (March 2020).

**Title 34**  
**GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL**  
**Part VII. Property Control**

**Chapter 1. General Provisions**

**§101. Definitions**

*Agency*—any state office, department, board, commission, institution, division, officer, or other person, or functional group, heretofore existing or hereafter created, which is authorized to exercise, or that does exercise any function of the government of the state, excluding, however, any governing body or officer of any local government or subdivision of the state or any parochial officer who exercises functions coterminous with the municipality in which he performs those functions.

*Agency Property Manager*—the officer or employee designated by the head of the agency as property manager for the agency.

*Charitable Organization*—an organization authorized and doing business in the state of Louisiana with its primary purpose being the providing of help and assistance to the needy, by providing direct assistance or indirect assistance through an institution, organization, or fund established to help the needy. Said organization must have and maintain an IRS Section 501 status.

*Commissioner*—the Commissioner of the Division of Administration.

*Division*—the Division of Administration.

*Educational Organization*—an organization authorized and doing business in the state of Louisiana with its primary purpose being the imparting of knowledge or skill through systematic instruction by the teaching of structured courses at regularly scheduled intervals.

*Head of the Agency*—the individual responsible for the administration and operations of the agency.

*Louisiana Property Assistance Agency Director*—the individual in the Louisiana Property Assistance Section of the Division of Administration who has been designated by the commissioner as the person responsible to the commissioner for the administration of the State Property Control regulations. The responsibility of the director is to develop and organize the agency units necessary to carry out the requirements and functions of R.S. 39:321 et seq.

*Property*—all tangible nonconsumable moveable property owned by an agency with the exception of property specifically exempted by the commissioner. The commissioner hereby designates that state-owned timber should be considered to be moveable and state-owned pecans shall be considered to be nonconsumable for purposes of the Louisiana Property Control Law (R.S. 39:321 et seq.).

1. Timber and pecans are considered moveable and nonconsumable for the purpose of sales and are not to be included in the agency's inventory of moveable property.

*Religious Organization*—an organization authorized and doing business in the state of Louisiana with its primary purpose pertaining to or teaching a generally accepted and practiced religion within the state.

*Surplus Property*—any moveable state property which is deemed to be of no further use to an agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326, R.S. 39:331-332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:227 (August 1976), amended LR 7:71 (March 1981), LR 7:265 (May 1981), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 12:92 (February 1986), LR 15:830 (October 1989).

**§103. Inventory Classification Codes**

A. A listing of items of state property alphabetized by their commonly used names will be developed and maintained by the Louisiana Property Assistance Agency director or his designee. A code number representing each item will be designated. These codes and only these codes are mandated for use in inventorying moveable property by all state agencies subject to the provisions of Title 39 of the Louisiana Revised Statutes.

B. The agency property manager shall use the mandated classification code when completing the classification code field on the Louisiana Property Control Transmittal Form and the classification code section of the BF-11 Form.

C. When an Item has not been Assigned an Inventory Classification Code. The agency property manager must contact the Louisiana Property Assistance Agency for assignment of a new code number before submitting the Louisiana Property Control Transmittal Form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended LR 8:144 (March 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:93 (February 1986), LR 15:831 (October 1989).

**§105. Agency Numbers**

A. The agency number and sub-number are numbers assigned to the agency by the Louisiana property assistance agency director or his designee. This same number is the first five digits on all of the agency's state of Louisiana identification tags. Requests for new or additional agency

numbers should be directed to the Louisiana Property Assistance Agency director or his designee.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:321.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 15:831 (October 1989).

### **§107. Submission of a Rulemaking Petition**

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;
3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;
4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration  
Re: Rulemaking Petition  
P.O. Box 94095, Capital Station  
Baton Rouge, LA 70804-9095

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:326 and 49:953, et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 46:337 (March 2020).

### **§109. Consideration of a Rulemaking Petition**

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:326 and 49:953, et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 46:338 (March 2020).

## **Chapter 3. State Property Inventory**

### **§301. Appointment of Property Managers**

A. The head of the agency shall designate one of its officers or employees as agency property manager. In cases where an agency owns a large amount of property situated in more than one location. The Louisiana Property Assistance Agency director or his designee may authorize the appointment of more than one agency property manager within an agency. This authorization shall be in writing and granted only upon the request of the head of the agency. The head of the agency shall notify the commissioner, through the Louisiana Property Assistance Agency director or his designee, in writing, of the appointment of each agency property manager giving his name and domicile. The agency property manager's signature shall be placed on this letter.

B. The head of the agency shall notify the Louisiana Property Assistance Agency director or his designee in writing prior to the date any agency property manager ceases to function in that position. The Louisiana Property Assistance Agency director or his designee shall conduct an examination of the property inventory records under the jurisdiction of the agency property manager. On the basis of the report of this examination and the next accepted certification of moveable property inventory by the agency, the Louisiana Property Assistance Agency director or his designee shall approve the release of the agency property manager from responsibility and liability or shall make a written report of any defects in the records or damage to or shortages of property. In cases of damage to or shortages of property, the commissioner shall take steps as necessary to satisfy the claims of the state, as provided by R.S. 39:330.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:322, R.S. 39:326 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:93 (February 1986), LR 15:831 (October 1989).

### **§303. Faithful Performance of Duty Bond**

A. Where the Louisiana Property Assistance Agency director or his designee has approved the appointment of one or more property managers within an agency, each property manager shall be covered by the Faithful Performance of Duty Bond.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:326, R.S. 39:330 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:93 (February 1986), LR 15:831 (October 1989).

### **§305. Responsibility for Property**

A. Each agency property manager shall be the custodian of and shall be responsible for all the property within his agency until his release from responsibility is approved by the Louisiana Property Assistance Agency director or his designee.

B. Each agency property manager shall maintain for three years past, the following files:

1. copies of all transmittals submitted for which no record of acceptance has yet been received;

2. annual printout of inventory used for certification (§313.C and §313.G.2);

3. letters of certification of moveable property inventory and subsequent letters of acceptance or rejection (§313.F.11 and §313.G.12);

4. sequentially dated copies of all property acquisition/ change transaction listings received (§317.A);

5. sequential copies of BF-11s submitted, and responses received (§501).

C. When any property is entrusted to any other officer or employee of the agency, the agency property manager shall secure a receipt for such property from the person receiving the property, and in such event, the agency property manager shall be relieved of responsibility for the property but shall continue to maintain accountability for the property. Upon the return of the property to the agency property manager, he shall return the person's receipt or issue acknowledgement of the return of the property and resume responsibility.

D. Whenever an agency property manager has knowledge or reason to believe that any property of the agency is lost, stolen, damaged, or destroyed through vandalism, fire, wind-storm, or other acts of God, he shall immediately notify the head of his agency. The head of the agency shall immediately notify the commissioner, through the Louisiana Property Assistance Agency director or his designee and follow up with a written report. The Louisiana Property Assistance Agency director or his designee shall make an investigation and take necessary action as provided for in R.S. 39:330.

E. The agency property manager and each person to whom property is entrusted and receipted for as provided in these regulations shall be liable for the payment of damages whenever his wrongful or grossly negligent act or omission causes any loss, theft, disappearance, damage to or destruction of property of his agency for which he is responsible as provided herein, and such damages shall be recoverable in a civil suit, therefore, prosecuted on behalf of the state by the attorney general.

F. The head of the agency shall allow the agency property manager(s) the necessary time and provide them with the necessary supplies and assistance for performance of their duties under these regulations, and the head of the agency shall be responsible for seeing that the provisions of these regulations are carried out.

G. The agency property manager shall submit, within the week it becomes known, each idle or surplus item within his agency for disposition request utilizing a State Property Transaction Form BF-11.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:322, R.S. 39:326, R.S. 39:330 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:93 (February 1986), LR 15:831 (October 1989).

### **§307. Items of Property to be Inventoried**

A. All items of moveable property having an "original" acquisition cost, when first purchased by the state of Louisiana, of \$1000 or more, all gifts and other property having a fair market value of \$1000 or more, and all weapons, regardless of cost, with the exception of items specifically excluded in §307.E, must be placed on the statewide inventory system. The term "moveable" distinguishes this type of equipment from equipment attached as a permanent part of a building or structure. The term "property" distinguishes this type of equipment from "supplies" with supplies being consumable through normal use in no more than one year's time. All acquisitions of qualified items must be tagged with a uniform state of Louisiana identification tag approved by the Commissioner of Administration and all pertinent inventory information must be forwarded to the Louisiana Property Assistance Agency director or his designee within 60 calendar days after receipt of these items. In instances when equipment must be installed and/or tested before acceptance by the agency, the calendar days will begin upon official acceptance by the agency.

B. Gifts of moveable property must be given a fair market value as agreed upon between the donor and head of the receiving agency and recorded in the inventory if the fair market value is \$1000 or more.

C. Agencies manufacturing moveable property for use within the agency must determine the estimated cost based on the cost of labor and materials and include such items in the inventory provided that estimated cost is \$1000 or more.

D. Agencies which are eligible to receive federal surplus property must place on inventory all items acquired from Federal Surplus which would ordinarily be classified as moveable property and which have an acquisition cost of \$1000 or more. The acquisition date will be the date of acquisition by the state agency and the acquisition cost will be the actual cost incurred by the state agency.

NOTE: There are federal regulations regarding accountability for federal surplus property. State agencies should contact the Federal Surplus Property Section for information regarding these regulations.

E. Livestock acquired for breeding, dairy, and experimental purposes are classified as property and, with the exception of fowl, and rodents, and any other similar type small mammals, must be recorded in the inventory regardless of the value per animal. Animals acquired for slaughter need not be placed on inventory. When an agency acquires livestock by birth and determination is made that such animals will be used for breeding, dairy, or experimental purposes, the animals shall be included in the inventory and noted as having been acquired by birth and given an appraised fair market value. At each annual inventory, the value of livestock acquired by birth and used

for breeding, dairy, or experimental purposes will be re-appraised by the agency property manager and the acquisition cost will be adjusted on the inventory in accord with current fair market value. When an agency acquires livestock by birth and determination is made that such animals will be slaughtered for food, the animals shall not be included in the inventory.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:321 et seq.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:228 (August 1976), amended 8:277 (June 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 15:832 (October 1989), LR 18:1256 (November 1992), LR 28:481 (March 2002).

### **§309. Marking and Identifying Items of Property on Inventory**

A. Each item which meets the definition of items of property to be inventoried (§307) must be identified with an identification tag approved by the Commissioner of Administration which shall bear a unique identification number.

B. Agencies shall submit their requests for state of Louisiana identification tags directly to Louisiana Property Assistance Agency.

C. The agency property manager shall be responsible for the tagging of property, location, identification of property, and maintenance of property identification tags as prescribed in these regulations.

D. Livestock may be tagged in the ear with a metal tag provided that tag number is set aside. If there is any type of identification mark or tag already on the animal, such as bangs, brucellosis, etc., such identification shall be entered as the tag number provided the number has not been used before.

E. If the item cannot have a state of Louisiana identification number placed on it for physical reasons, the identification number should be set aside and the identification number written on the item with indelible ink (in case of items of cloth), or the number inscribed on the item with a small engraving tool. Authorization must be given in writing by the Louisiana Property Assistance Agency director or his designee for any inventoriable item which does not have a state identification mark due to extenuating circumstances.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:323, R.S. 39:326 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:229 (August 1976), amended LR 7:71 (March 1981), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:94 (February 1986), LR 15:832 (October 1989).

### **§311. Inventory of Property**

A. The agency property manager shall establish and maintain a property location index which shall be used to keep track of the location of property of the agency. The

agency property manager shall keep the property location index for the agency current and shall submit to the Louisiana Property Assistance Agency director or his designee an up-to-date index each time a change or modification is made in the index.

B. The agency property manager shall submit all pertinent inventory information on items acquired by the agency and defined in these regulations as items to be inventoried. The means of submitting the information shall be the Louisiana Property Control Transmittal Form. These forms may be obtained from the Forms Management Section of the Division of Administration. This form shall be sent monthly to the Louisiana Property Assistance Agency director or his designee listing the transactions of the agency for the month. The data submitted on the transmittal form will be forwarded to the Baton Rouge Computer Center by the Louisiana Property Assistance Agency director or his designee, where it will be keypunched into the agency's inventory master file.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:324, R.S. 39:326 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:229 (August 1976), amended LR 7:71 (March 1981), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:94 (February 1986), LR 15:832 (October 1989).

### **§313. Annual Inventory Requirements**

A. The agency property manager shall conduct a complete physical inventory of the property owned by the agency each fiscal year and not more than 12 calendar months since the last physical inventory. The agency property manager is responsible for recording the true and actual results of the physical inventory.

B. The agency property manager shall notify the commissioner through the Louisiana Property Assistance Agency director in writing 30 days prior to the date(s) inventory is to begin. Agencies inventorying on a rotation basis shall submit their schedule and shall notify the commissioner through the Louisiana Property Assistance Agency director of any changes to be made in that schedule. The commissioner, Louisiana Property Assistance Agency director, or their representatives, may supervise or observe all or any part(s) of any inventory.

C. Each agency property manager whose head of the agency elects to use Inventory Procedure I (§313.F) shall utilize the second half of the notification of inventory/request for printout to also request an annual printout of the agency's inventory master file. Additional requests will result in the assessment of a fee to cover costs.

D. The commissioner shall cause periodic observations of inventories and examinations of records to be made and shall cause reports submitted to the Louisiana Property Assistance Agency to be compared periodically with records of the agencies and with the physical property of the agencies for the purpose of testing the completeness and accuracy of inventories, records, and reports.

E. The head of the agency shall determine which of the two methods of inventory shall be used by the agency property manager in the annual physical inventory of the agency's property. The agency property manager shall be responsible for using the method determined by the head of the agency to be the best for the operations of his agency. Any procedure used other than the ones prescribed in these regulations (§313.F and G) must have prior written approval of the Louisiana Property Assistance Agency director or his designee.

#### F. Inventory Procedure

1. The agency property manager shall, under the direction of the head of the agency, select the date(s) most convenient to the operations of the agency, but not more than 12 months since the last annual physical inventory.

2. The agency property manager shall complete and submit to the Louisiana Property Assistance Agency director or his designee the notification of inventory/request for printout at least 30 days prior to the date(s) inventory is taken.

3. The agency property manager, under direction of the head of the agency, shall designate the personnel who will conduct the inventory by areas indicated in the agency's property location index (§311.A).

4. A copy of the property location index shall be provided to each of the persons participating in the physical inventory. It shall describe the areas and the property location code each person is to inventory.

5. The agency property manager shall provide each person participating in the physical inventory a copy of the state master file listing printout of inventory for the agency covering the area or location to be inventoried.

6. The agency property manager shall instruct the persons participating in the inventory on the method to be used to:

a. identify and mark on the inventory listing the items located;

b. mark clearly on the inventory listing the items not located; and

c. conspicuously mark and report to the agency property manager those items found without a property tag. The agency property manager shall make a determination that the items should or should not be tagged and submitted to the state master file listing of inventory for the agency based on these regulations.

7. The physical inventory shall be taken on the date(s) pre-selected. The agency property manager shall notify Louisiana Property Assistance Agency director or his designee if, for some unforeseen reason, it is necessary to alter the date(s).

8. The agency property manager shall compile the true results of the physical inventory and shall submit a discrepancy report, (if applicable), to the Louisiana Property Assistance Agency director or his designee with a copy to

the legislative auditor, containing all exceptions or discrepancies found in relating physical inventory results with the state master file listing of inventory for the agency.

9. The discrepancy report shall list each of the missing items by agency, tag number, description, location, acquisition date and acquisition cost, along with an explanation of what is believed to have happened to the items not located. The commissioner may cause an investigation to be made upon receipt of a discrepancy report, according to §301.B of these regulations.

10. Items not located during inventory for which there is no explanation available as to their disappearance must be retained on inventory and placed in a suspense location for three years. The location must indicate the year in which the item was first not located, (e.g., "9989"). During these three years, efforts must continue to locate the missing items. If items are relocated, the proper location is to be transmitted for inventory purposes. If, after the third year missing items are still not located, a request to remove from inventory as "not located" may be submitted on a DABF-11 form (§501).

11. The agency property manager shall submit the Certification of Annual Property Inventory to the Louisiana Property Assistance Agency director or his designee with a copy to the legislative auditor, after the physical inventory and the state master file listing of inventory for the agency have been reconciled according to the regulations.

#### G. Inventory Procedure II

1. The agency property manager shall, under the direction of the head of the agency, select the date(s) most convenient to the operations of the agency, but not more than 12 months since the last annual physical inventory.

2. The agency property manager shall complete and submit to the Louisiana Property Assistance Agency director or his designee the notification of inventory/request for printout of the state master file listing of agency inventory at least 30 days prior to the date(s) inventory is to be taken.

3. The agency property manager, under the direction of the head of the agency shall designate the personnel who will conduct the inventory by areas indicated in the agency's property location index (§311.A).

4. A copy of the property location index shall be provided to each of the persons participating in the physical inventory. It shall describe the areas and the property location code each person is to inventory.

5. The agency property manager shall provide each of the persons participating in the inventory with the Inventory Procedure II form and instruct each concerning its use.

6. The agency property manager shall also instruct those persons participating in the inventory on the method to be used to enter the agency number, tag number, and property location number of each item of property physically located and to conspicuously mark and report to the agency property manager those items found without a property tag. The agency property manager shall make a determination that the item should or should not be tagged and submitted to

the state master file listing of inventory based on these regulations.

7. The physical inventory shall be taken on the date(s) selected. The Louisiana Property Assistance Agency director shall be notified by the agency property manager if, for some unforeseen reason, it is necessary to alter the dates.

8. The agency property manager shall reconcile each of the completed true results on the Inventory Procedure II forms with the state master file listing of inventory for the agency.

9. The agency property manager shall submit a discrepancy report (if applicable) to the Louisiana Property Assistance Agency director or his designee with a copy to the legislative auditor, containing all exceptions or discrepancies found in relating physical inventory results with the state master file listing of inventory for the agency.

10. The discrepancy report shall list each of the missing items by agency tag number, description, location, acquisition date, and acquisition cost, along with an explanation of what is believed to have happened to the items not located. The commissioner may cause an investigation to be made upon receipt of a discrepancy report, according to §301.B of these regulations.

11. Items not located during inventory for which there is no explanation available as to their disappearance must be retained on inventory and placed in a suspense location for three years. The location must indicate the year in which the item was first not located, (e.g., "9989"). During these three years, efforts must continue to locate missing items. If items are relocated, the proper location is to be transmitted for inventory purposes. If after the third year missing items are still not located, a request to remove from inventory as "not located" may be submitted on a DABF-11 form (§501).

12. The agency property manager shall submit to the Louisiana Property Assistance Agency director or his designee the Certification of Annual Property Inventory after the physical inventory results and state master file listing of inventory for the agency have been reconciled in accordance with these regulations. The agency property manager shall submit a copy of the certification of annual property inventory to the legislative auditor.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:324, R.S. 39:325, R.S. 39:326, R.S. 39:327, R.S. 39:328 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:232 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:96 (February 1986), LR 15:832 (October 1989).

**§317. Reports from Louisiana Property Assistance Agency**

A. The agency property manager submits the Louisiana Property Control Transmittal Form each month to the Louisiana Property Assistance Agency listing the transactions for the month. At least once each month, the agency property manager will receive from Louisiana

Property Assistance Agency a report listing the property acquisitions and changes submitted for the month (if any). Eventually, this report will also include a listing of property dispositions recorded for the agency on the state master file listing for the respective month. This monthly report will show the change in total acquisition value of inventory accomplished for the agency by accepted transactions.

B. Agency Inventory Master File Report. This report contains all the current and updated items on the state master file listing of inventory for an agency and is received upon request from the agency property manager to the Louisiana Property Assistance Agency director. If many transactions have occurred during a period of time, a special request may be submitted for this report other than annually.

C. Inventory Classification Codes. The Louisiana Property Assistance Agency director or his designee will send, as deemed necessary by said director, an updated listing of approved classification codes for items of moveable property to all agency property managers of record. Upon special request from the agency property manager for this listing, a fee sufficient to cover costs will be assessed to the agency.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:324, R.S. 39:326 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:234 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:97 (February 1986), LR 15:834 (October 1989).

**§319. Agency Reporting Requirements: Summary**

A. Reports from Head of Agency

1. New agency or agency reorganization—notification of new property manager and domicile, §301.A.
2. Request for more than one agency property manager, §301.A.
3. Notification when agency property manager ceases to function/replaced, §301.B.
4. Notification when property is not located or destroyed, etc., §305.D.

B. Reports from Agency Property Manager

1. Request for agency code numbers, §105.
2. Request for new classification code number, §103.C.
3. Requisitions for state of Louisiana identification tags, §309.B.
4. Request for authorization not to tag an item, §309.E.
5. Copy of current agency property location index, §311.A.
6. Louisiana Property Control Transmittal Form—month, §311.B.



7. Request for Louisiana Property Control Transmittal Forms, §311.B.

8. Thirty days notice prior to annual inventory, §313.B.

9. Request for state master file listing of inventory using Inventory Procedure I, §313.C.

10. Discrepancy report using Inventory Procedure I, §313.F.8 and 9.

11. Certification of annual property inventory using Inventory Procedure I, §313.F.11.

12. Request for state master file listing of inventory using Inventory Procedure II, §313.G.2.

13. Discrepancy report using Inventory Procedure II, §313.G.9 and 10.

14. Certification of annual property inventory using Inventory Procedure II, §313.G.12.

15. Certification of annual property inventory using Inventory Procedure II, §313.G.12.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:324, R.S. 39:325, R.S. 39:326 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:235 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:100 (February 1986), LR 15:834 (October 1989).

### **§321. Acquisition by Transfer from State Surplus Property**

A. Surplus property from state agencies is normally retained for the inspection of state agencies at least 45 days before it is sold at public bid or auctioned or scrapped.

B. The purpose for displaying surplus and idle items at the state surplus property warehouse is for transferring those items to an agency where a need exists, thereby reducing expenditures for additional items.

C. The agency property manager or his designated representative shall select the item which the agency needs. A value less than the expected price from public sale of the item shall have been established for each item in the possession of the State Surplus Property Unit of the Louisiana Property Assistance Agency and the receiving agency shall be billed for that value when the item has been received by the receiving agency. Payment to the Louisiana Property Assistance Agency shall be within 30 days.

D. The agency property manager shall use the Louisiana Property Control Transmittal Form to input acquisitions by transfer from State Surplus Property into the state master file listing of agency inventory.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:324, R.S. 39:326, R.S. 39:330 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:235 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:100 (February 1986), LR 15:834 (October 1989).

### **§323. Responsibility of the Division of Administration Budget Office**

A. The Division of Administration Budget Section shall provide the Louisiana Property Assistance Agency with the name and number of each new agency, each abolished agency, and information concerning consolidation or other change of status of any agency. The status change of an agency shall also include those agencies that operate with revolving funds as nonbudget units. This information shall be provided on a timely basis so that the inventory of state-owned property can be kept accountable.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:326 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:236 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:100 (February 1986), LR 15:834 (October 1989).

### **§325. Regulations and Orders by the Commissioner**

A. The commissioner shall have power and authority to make necessary and reasonable regulations and orders to carry out the provisions of these regulations when it serves the best interest of the state, in addition to specific authorization contained in this Section.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:326 and R.S. 39:332.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:236 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:101 (February 1986), LR 15:835 (October 1989).

## **Chapter 5. State Property Disposition**

### **§501. Inventory Disposition Authority**

A. No property of any agency shall be sold to any person or legal entity or otherwise alienated, or be transferred, assigned or entrusted to any other agency or to any officer or employee of any other agency without the written permission of the commissioner through an approved State Property Transaction Form BF-11.

B. The BF-11 is the request from an agency property manager and is not, in any case, to be considered an approval for any action until a copy is received by the agency property manager with Section II—Division of Administration Use Only, completed and signed as approved. Entries are to be made in type or print only, except for signatures.

C. An approved State Property Transaction Form BF-11 shall be used as the authority to sell, transfer, scrap, dismantle, loan out or otherwise remove an item from the state master file listing of agency inventory.

D. The disposition of the request is binding upon the agency property manager. If it is different than that requested by the agency property manager, the manager may proceed to dispose of the item in the manner prescribed in Chapter 3 or request that the BF-11 be voided. Disapproval of the BF-11 will require resubmittal of the item in the manner

prescribed by the Louisiana Property Assistance director or his designee under the "Remarks" section.

E. The State Property Transaction form BF-11 must be approved by the Louisiana property assistance agency director or his designee prior to any transfer or disposition of state owned property. The BF-11 is the request from an agency property manager and is not, in any case, to be considered an approval for any action until a copy is received by the agency property manager with Section II-Division of Administration Use Only, completed and signed as approved. Entries are to be made in typed or print only, except for signatures. In no case shall property be destroyed prior to this approval. Requests to transfer or dispose of computer equipment must be approved by the director of state purchasing or his designee prior to approval by the Louisiana Property Assistance Agency director. Requests to transfer or dispose of telecommunications equipment must be approved by the director of the Office of Telecommunications or his designee prior to approval by the Louisiana Property Assistance Agency director.

F. No agency property manager or head of the agency shall authorize the transfer of any items of surplus property to the State Surplus Property Unit of the Louisiana Property Assistance Agency without a prior approved BF-11 for each item and a scheduled delivery date from the state surplus property director or state auto delivery/maintenance/operations director or their designees. Items which arrive with unapproved BF-11s at the state surplus property or state auto delivery/maintenance/operations warehouses for disposition will be returned to the shipping agency for proper compliance to these regulations.

G. The agency property manager must either see to the delivery to the designated state surplus property warehouse of items approved for transfer to surplus or contact the state surplus property director or state auto delivery/maintenance/operations director to schedule pickup of these items. In either case, the property manager must clearly mark each item with the BF-11 number by which the item was approved for transfer. Items scheduled for pickup must be located in an easily accessible area.

H. Whenever an agency property manager has knowledge or reason to believe that any property of the agency is lost, stolen, damaged, or destroyed through vandalism, fire, windstorm, or other acts of God, he shall immediately notify the head of the agency. The head of the agency shall immediately notify the commissioner, through the Louisiana Property Assistance Agency director or his designee, and follow up with a written report. The Louisiana Property Assistance Agency director or his designee shall make an investigation and take necessary action as provided for in R.S. 39:330.

I. A fee may be assessed to the receiving agency in accord with established policies approved by the commissioner governing the operations of the Louisiana Property Assistance Agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200.C, R.S. 39:326, R.S. 39:330, R.S. 39:330.1-2 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:236 (August 1976), amended LR 7:71 (March 1981), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:101 (February 1986).

**§503. State Property Transaction Form DABF-11  
(Revised 4-85)**

A. The BF-11 is the means of an agency receiving written approval for the disposition of any and all items of state property from the agency. Use only the latest revision of the form BF-11.

B. The BF-11 is the request from an agency property manager and is not, in any case, to be considered an approval for any action until a copy is received by the agency property manager with Section II-Division of Administration Use Only, completed and signed as approved. Entries are to be made in type or print only, except for signatures.

C. The agency property manager shall enter the originating date of the request.

D. Section I-Report and Evaluation

1. The agency property manager shall complete (check) one of the boxes indicating his recommendation for disposal of the item.

2. The agency property manager shall enter the complete title and mailing address of the reporting agency and the agency control number consisting of the five digit agency number, a fiscal year number (e.g., "00, 01, 02, 03, 04, 05, 06, 07, 08, or 09"), and the proper sequence number of the respective BF-11 for that agency (the first BF-11 for each fiscal year will be "00001," the second will be "00002," etc.).

3. The common name of the article, the make and model, and the manufacturer (if known) shall be completed. The quantity of items for which disposition is requested on this BF-11 must be noted. See §501.D concerning number of items allowed per BF-11. When preparing one BF-11, listing multiple items for disposition, the agency property manager must prepare an attachment indicating sub-numbers for each item listed (Exhibit 8). The first item listed should be shown with the BF-11 number only (e.g., BF-11 Number 189171); the second item should be shown with the BF-11 number plus "01" (e.g., BF-11 Number 18917101); the third item should be shown with the BF-11 number plus "02" (e.g., BF-11 Number 18917102), etc.

4. The agency property manager shall enclose with the BF-11 request for transferring vehicles and trailers to the Louisiana Property Assistance Agency director or his designee the following items.

a. Motor vehicle condition report DA121, revised 6-76 (Exhibit 9).

## b. Certificate of title (endorsed and notarized).

NOTE: Do not enter the receiver of title. The registration certificate must be delivered with the vehicle when transferred.

5. The agency property manager shall enter additional remarks giving justification for requests to scrap, dismantle, make an inventory adjustment, or remove as not located, and identifying the condition of items to be transferred to surplus or sold "as is, where is." Pictures must be attached for sale "as is, where is" items, a police report for stolen items, and a memorandum of justification for trade-ins.

6. The five-digit agency number and tag number must be entered in the required section. If the item(s) to be disposed of is (are) not active on agency inventory, this must be indicated in the remarks section of the BF-11 and an appropriate classification code must be listed for each item.

7. The following headings on the information form shall be completed for items active on agency inventory utilizing the state master file listing of agency inventory:

- a. serial number (up to 22 digits);
- b. property location;
- c. acquisition date; and
- d. acquisition cost.

8. The description of the physical storage location of the item shall be explicit. The contact person and his telephone number for pickup of transfer items shall be entered by the agency property manager.

9. The section entitled "Reimbursement Request" must be checked if applicable. Note: Specific documentation may be required by Louisiana Property Assistance Agency director or his designee showing the specific item was purchased with participating federal funds and the percentage, or with other funds requiring reimbursement, prior to release of the reimbursement to the agency. Normally, state agencies are not eligible for any reimbursement for surplus property proceeds.

10. The designated section must be signed by the agency property manager with his name and title typed or printed.

## E. Section II-Division of Administration Use Only

1. The disposition stated in this section is binding upon the agency property manager. If it is different than that requested by the agency property manager, the manager may proceed to dispose of the item in the manner prescribed in Chapter 3 or request that the BF-11 be voided. Disapproval of the BF-11 will require resubmittal of the item in the manner prescribed by the Louisiana Property Assistance Agency director or his designee under the "Remarks" section.

2. Approval of a BF-11 form will constitute grounds for deactivation of the listed property item(s) on the state master listing of the agency's inventory. The item will be deactivated on-line by Louisiana Property Assistance

Agency personnel. However, if property items designated for transfer to surplus are later not available for such transfer or if the agency property manager requests and approval is given for voiding a BF-11, the affected property items will be reactivated on the agency inventory.

F. Section III. This section is completed when the item is received at the State Surplus Property warehouse. The agency property manager must keep on file all BF-11s completed in this section as evidence that responsibility for the items listed has been transferred to State Surplus Property.

## G. Section IV-Receiving Agency

1. For all BF-11s with disposition of interagency transfer, the agency property manager for the reporting agency must enter the name, full address (Attention: Property Manager) and agency property control number of the receiving agency in Section IV of the BF-11. Once the BF-11 has been approved and the receiving agency property manager has acknowledged receipt of the item, Louisiana Property Assistance Agency personnel will remit a copy of the receipted BF-11 to the reporting agency property manager to be kept on file as evidence of transfer of responsibility for the item. A fee may be assessed to the receiving agency in accord with established policies approved by the commissioner governing the operations of the Louisiana Property Assistance Agency.

2. For every BF-11 with disposition of transfer to surplus or sale "as is, where is," this section is completed by the State Surplus Property Unit of the Louisiana Property Assistance Agency when the item is transferred to another agency. The receipt of the receiving agency is completed by the agency representative responsible for pickup of the item where he physically receives the item on behalf of the receiving agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326, R.S. 39:330 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:237 (August 1976), amended LR 7:71 (March 1981), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:101 (February 1986).

**§505. Disposition of State Moveable Property**

A. These regulations of the commissioner shall govern the condemnation and disposition of state property when it is determined that certain items of property are of no use to the agency or to the state.

B. Property transferred to the Louisiana Property Assistance Agency of the Division of Administration may be assigned for use in other agencies in accord with established policies of the Division of Administration when the commissioner deems it to be in the best interest of the state. A fee may be assessed to the receiving agency in accord with established policies approved by the commissioner governing the operations of the Louisiana Property Assistance Agency. Said property may, in accord with Division of Administration policies and R.S. 39:330(b), be

sold to political subdivisions, municipalities, or religious, charitable, or educational organizations when the commissioner deems it to be in the best interest of the state. To purchase such property, said subdivisions, municipalities and/or organizations must:

1.a. follow agency-listing procedures established by the Louisiana Property Assistance Agency director with the approval of the commissioner;

b. place purchased items in use within the subdivision, municipality, and/or organization within 90 days of purchase; and

c. maintain purchased items in use for subdivision, municipality, and/or organizational purposes for at least 18 months from date of purchase.

2. Exceptions to this regulation in individual instances require written approval from the Louisiana Property Assistance Agency director or his designee. Purchasing subdivisions, municipalities, and/or organizations shall make available to Louisiana property assistance auditors upon request all necessary records and documentation supporting compliance with these requirements.

C. Property owned by the state for more than six months and of no use to the state or agencies may be considered for disposition to the public.

D. The Louisiana Property Assistance Agency director or his designee may sell property "as is, where is" when it is determined to be in the best economical interest of the state.

E. The Louisiana Property Assistance Agency director shall deposit the proceeds from transfer or sale of property at public bid to the Louisiana Property Assistance Agency revolving fund.

1. Originating Purchase from Any Percentage of Participating Federal Funds. For equipment with a unit acquisition cost of less than \$1,000, the Louisiana Property Assistance Agency will retain 20 percent of the proceeds received from sale of the item and the percentage of the remainder which corresponds to the percentage of federal funding in acquisition of the item will be refunded to the agency if the program is still active. There will be no refund if the program has been discontinued. For equipment with a unit acquisition cost of \$1,000, or more, \$100, or 10 percent of the total sales, whichever is greater, will be retained by the Louisiana Property Assistance Agency for handling expense and the remainder will be refunded to the agency. Unless contractual or legal disposition requirements specify otherwise, agencies will be reimbursed 80 percent of the proceeds received by the Louisiana Property Assistance Agency for any item originally purchased by other grants, funds, etc., which require reimbursement.

NOTE: The agency's use of the reimbursed percentage of federal funds must be documented for the legislative auditor.

2. Originating Purchase from State Revolving Fund. The agency transferring the item shall be reimbursed at least 80 percent of the proceeds received by Louisiana Property Assistance Agency for the item.

3. Sale of Farm Produce. The cost to the agency for bid services rendered by Louisiana Property Assistance Agency shall be up to 5 percent of the proceeds of the sale.

4. Sale of State-Owned Timber. The cost to the agency for bid services shall be up to 5 percent of the proceeds of the sale.

5. As an exception to the general state property disposition regulations, state agencies may sell their livestock at any authorized public auction or sale. A BF-11, any documentation pertaining to the sale, and a check for the full amount of the sale proceeds, should be sent to the Louisiana Property Assistance Agency immediately after the sale. The livestock will then be removed from the state master listing of inventory for the agency if such is required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326, R.S. 39:330 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:239 (August 1976), amended LR 7:71 (March 1981), LR 7:265 (May 1981), LR 9:412 (June 1983), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:102 (February, 1986), LR 15:835 (October 1989).

#### **§507. Regulations and Orders by the Commissioner**

A. The commissioner shall have power and authority to make necessary and reasonable regulations and orders to carry out the provisions of these regulations when it serves the best interest of the state, in addition to specific authorizations contained in this Part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:240 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:103 (February 1986), LR 15:836 (October 1989).

## **Chapter 7. Agencies with Integrated Inventory Control Systems and Miscellaneous Exceptions**

#### **§701. Qualifications**

A. The commissioner shall have the authority to allow certain agencies which have utilized their own data processing facilities for their inventory control systems and those agencies which initiate data processing facilities for this purpose to maintain and use those systems provided those inventory systems can meet the requirements of R.S. 39:321-332 and these State Property Control regulations.

B. A prerequisite to receive written permission from the commissioner through the Louisiana Property Control Assistance Agency director is that the existing system must be integrated into other systems within the agency through data processing interfaces and not be a "stand alone" system. "Stand alone" inventory systems shall be converted to the state Property Control System. The Office of Information Services of the Division of Administration shall make that determination through an examination of those agencies

which apply to the commissioner through the Louisiana Property Assistance Agency director for permission to continue to use their own data processing facilities for agency inventory control.

C. Those agencies which receive written permission to utilize their own data processing facilities for inventory control are excluded from utilizing the Louisiana Property Control Transmittal Form.

D. These regulations must be met in full unless the head of the agency applies to the commissioner through the Louisiana Property Assistance Agency director for a specific exclusion from a requirement and receives written permission from the commissioner when he deems it to be in the best interest of the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:240 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:103 (February 1986), LR 15:836 (October 1989).

### **§703. Agency Inventory Master File Interface**

A. Those agencies which receive written permission from the commissioner through the Louisiana Property Assistance Agency director to utilize their own data processing facilities for inventory control shall coordinate through the Office of Information Services of the Division of Administration and complete the following conversion programs for transferring the agency master file information.

B. If the agency has not previously listed inventory on the Louisiana Property Assistance System, the agency shall transfer to the Division of Administration, Louisiana Property Assistance Agency Inventory Control System at the Baton Rouge Computer Center the agency's inventory master file with the same data and field length as required when using the Louisiana Property Control Transmittal Form through a computer tape-to-tape conversion. If the agency has previously listed inventory on the Louisiana Property Assistance System, Louisiana Property Assistance Agency will provide the agency with a computer tape of inventory to be used in establishing the agency system.

C. Each subsequent month, the agency shall submit a like formatted computer tape showing all acquisition and change transactions for the preceding month involving the agency inventory master file. Each acquisition/change transaction tape must be submitted in the format approved by Louisiana Property Assistance Agency.

D. Disposition and removal of items from inventory may only be accomplished by submission and approval of a BF-11 (§501).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended LR 8:144 (March 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:103

(February 1986), LR 12:677 (October 1986), LR 15:836 (October 1989).

### **§705. Inventory Classification Code System**

A. All state agencies shall utilize the inventory classification code system established by the Louisiana Property Assistance Agency director or his designee for the coded numbers which identify each item of inventory. Any agencies currently not utilizing the Louisiana Property Assistance Agency inventory classification code system shall convert the items on the agency inventory master file to said classification code system. This conversion shall be coordinated by the Office of Information Services between the agency and the Louisiana Property Assistance Agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended LR 8:144 (March 1982), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:103 (February 1986), LR 15:836 (October 1989).

### **§707. Reporting Requirements**

A. The head of the agency and the agency property manager(s) shall comply with the reporting requirements of these regulations with the exception of §311.B, §319.B.6.-7, which relate to the use of the Louisiana Property Control Transmittal Form. This form will not be used when an agency has received permission in writing to utilize their own data processing facilities. Computer tapes will be submitted on a monthly basis instead of the transmittal form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:104 (February 1986), LR 15:836 (October 1989).

### **§709. Nonexclusion from State Property Control Regulations**

A. These regulations, effective February 20, 1986, Chapters 1-7, (§§101-709) supersede all previous regulations and exceptional permissions, both written and verbal. Any exclusion request shall be submitted to the commissioner, through the Louisiana Property Assistance Agency director, for consideration. Any exclusion from these regulations must be approved in writing by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S.321, R.S. 39:326 and R.S. 39:332.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Control Section, LR 2:241 (August 1976), amended by the Office of the Governor, Division of Administration, Louisiana Property Assistance Agency, LR 12:104 (February 1986), LR 15:837 (October 1989).

## Chapter 9. Noncompliance

### §901. Penalties

A. The commissioner shall have power and authority to make necessary and reasonable regulations and orders to carry out the provisions of these regulations when it serves the best interest of the state. The commissioner shall have the authority to invoke any and all of the following actions when agencies are found to be in noncompliance with these regulations:

1. call in the good faith performance bonds of the respective property managers;
2. take action to restrict or require acquisition of movable property only on approval of the commissioner

until compliance with the movable property regulation is completed;

3. revoke or restrict purchasing authority for movable property;

4. contract, at the expense of the agency in noncompliance, the resources necessary to resolve the compliance problem.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:321 et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 12:103 (February 1986), amended LR 15:836 (October 1989), LR 17:266 (March 1991).

## Title 34

# GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

## Part IX. Federal Property Assistance Agency

### Chapter 1. Legal Authority

#### §101. Executive Order

A. Executive Order MJF 97-19, dated January 1, 1997, authorizes the name of the program to be the Louisiana Federal Property Assistance Program, a unit of the Louisiana Property Assistance Agency, a section of the Division of Administration in the Executive Branch of the Office of the Governor. This executive order authorizes the director of the agency, acting through the program manager, to possess all power and authority necessary to exercise and perform all the functions, duties and responsibilities cited in the plan of operation, so as to comply with all applicable state and federal laws and regulations.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:30 (January 1998).

#### §105. Appropriations Bill

A. The ancillary budget identifies the revolving fund of the program which is used as the means of financing for the program's operations.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:30 (January 1998).

#### §107. Submission of a Rulemaking Petition

A. In accordance with R.S. 49:953(C)(1), any interested person may petition an agency to adopt a new rule, or to amend or repeal an existing rule.

B. To petition an agency within the Division of Administration for changes to the agency's current rules, or for the adoption of new rules within the agency's purview, an interested person shall submit a written petition to the Division of Administration, Office of the Commissioner. The petition shall include:

1. the petitioner's name and address;
2. the name of the promulgating agency for the rule in question;

3. specific text or a description of the proposed language desired for the adoption or amendment of a rule, or the specific rule and language identified for repeal;

4. justification for the proposed action; and
5. the petitioner's signature.

C. The rulemaking petition shall be submitted by certified mail and addressed to:

Office of the Commissioner, Division of Administration  
Re: Rulemaking Petition  
P.O. Box 94095, Capital Station  
Baton Rouge, LA 70804-9095

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 46:338 (March 2020).

#### §109. Consideration of a Rulemaking Petition

A. Upon receipt, a rulemaking petition shall be forwarded to the promulgating agency for review.

B. Within 90 days of receipt of the rulemaking petition, the agency shall either:

1. initiate rulemaking procedures to adopt a new rule, or to amend or repeal an existing rule; or
2. notify the petitioner in writing of the denial to proceed with rulemaking, stating the reason(s) therefore.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:326 and 49:953, et seq.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 46:338 (March 2020).

### Chapter 3. Designation of State Agency

#### §301. Agency Responsible

A. The Federal Property Assistance Program, a unit of the Louisiana Property Assistance Agency, a section of the Division of Administration, which is in the Executive Branch of the Office of the Governor, is designated as the agency responsible for administering the federal surplus property program in the state of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), repromulgated LR 9:839 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:30 (January 1998).

**§303. Organization of the Program**

A. The program is under the supervision of the program manager, who directs the implementation of this plan of operation, which fully outlines the provisions of P.L. 94-519. This is a permanent plan of operation that is in compliance with 41 CFR 101-44 and P.L. 94-519. The program manager, with a staff of 16 employees, directs the operation of the program through inspection, selection, acquisition, transportation, storage, and issuance of federal surplus property to eligible donees in the state of Louisiana. The main segments of the organization are:

1. program management;
2. administration;
3. procurement, compliance, and utilization;
4. operations and property distribution.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:411 (October 1977), amended LR 9:839 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:31 (January 1998).

**§305. Facilities**

A. The program offices are located at 1635 Foss Drive, Baton Rouge, Louisiana. The central facilities are at this location, which includes approximately 29,000 square feet of covered space, 200,000 square feet of outside storage space, and 900 square feet of parking. This facility is owned by the state of Louisiana and is rent-free.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:412 (October 1977), repromulgated LR 9:840 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:31 (January 1998).

## Chapter 5. Inventory Control and Accounting System

**§501. Inventory Control**

A. Scope of Accountability System. The program shall maintain accurate accountability records of all donable property approved for transfer to the program and donable property received, warehoused, distributed, and disposed of by the program. Accountability records of all passenger motor vehicles and single items having an acquisition cost of \$5,000 or more, on which restrictions are imposed, shall be maintained in order to identify the items.

**B. Checking Property into Program Custody**

1. All property received shall be checked in promptly, as soon as full identification can be completed.

2. The approved copy of the Standard Form 123 (SF-123) is used as the basis for checking property into the program facility. The inventory adjustment voucher shall be used for property received without the SF-123. To supplement these, available shipping documents, invoices, trucking bills of lading, donee reports, etc., will be used.

3. Exceptions or differences in a line item on the SF-123 are noted when the item(s) are received to reflect any increase or decrease as it affects the line item. This action will be documented to report any change in the amount initially allocated on a report of overages/shortages. This action is subsequently posted to the property receipts register.

4. The SF-123 is considered as an order; therefore, any differences, over or short, are recorded on the Shortage/Overage Report Form. Copies of this form in every case are forwarded to the General Services Administration (GSA) regional office involved. A copy is also mailed to the holding agency when the record of receipt shows a variance from the quantities and items shown on shipping documents.

5. In accordance with the requirements of Federal Property Management Regulations (FPMR) 101-44.115 concerning overages, when the estimated fair value or acquisition cost of a line item of property is over \$500, it will be listed on the SF-123 and sent to the GSA regional office for approval.

C. All issues of property to eligible donees are recorded on a distribution document (invoice) with provisions made for recording the name of the item, state serial number, quantity, government acquisition cost, and service charges.

**D. Periodic Verification of Property on Hand**

1. A financial verification of the property on hand at the end of each month at the state agency is made and reconciled with the books, in accordance with accepted accounting practices.

2. A physical inventory will be completed each fiscal year. This physical inventory will be compared with a unit-generated computer printout as each segment is completed. All differences will be properly noted, recorded, and will become a part of the regular accounting system. Any adjustments on items shall be reported to the manager for approval and any necessary follow-up and corrective action.

**E. Tracing Property from Receiving Document to Issue Document**

1. Each line item on the receiving report (Form 123) must be entered on the computer including noun nomenclature, federal supply classification code (group code), government acquisition cost, condition code, receipt date, and quantity received. Each receiving document is recorded in a register, and a file folder is maintained for each receiving document.

2. Each warehouse write-up document is numbered and filed numerically by month.



3. Every issue document (invoice) that is generated from the warehouse write-up documents must be entered on the computer so that the computer reports accurately reflect the federal property inventory. Each issue document is filed numerically by month. These documents are also filed by donee organization and are grouped by parish.

#### F. Means of Determining Quantity of Various Types of Property Donated to Individual Donees

1. A file folder is maintained in the program offices for each eligible donee. This folder will hold a copy of each distribution document (invoice), monthly status of account, correspondence, reports, and other items involving transactions with the donee.

2. A separate compliance record is maintained for each donee on items with a unit acquisition cost of \$5,000 or more and on all passenger motor vehicles on which restrictions are imposed.

3. A summary of distribution to record the acquisition cost of property transferred to each eligible unit is prepared monthly.

G. Disposal of Property of No Value to Program. Property will be reported to GSA for transfer to another state agency or disposed of by public sale, dumping, or abandonment, as authorized. Appropriate records are maintained to cover such disposals, in accordance with the procedures and requirements of FPMR 101-44.205.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:412 (October 1977), amended LR 9:840 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:31 (January 1998).

#### §503. Financial Accounting

A. Scope. A double entry financial accounting system provides a full accounting of all property requested, screened, received, issued, and disposed of, plus income, expenses, and status of the revolving fund. The system includes:

1. distribution documents (invoices);
2. accounts payable;
3. accounts receivable;
4. sale register (issues);
5. property receipts register;
6. deposit slips and vouchers;
7. cost center responsibility report (budget control);
8. general ledger;
9. payment of bills and expenses;
10. monthly financial report;
11. in-use inventory;

12. State Property Inventory Control Report;

13. record of disposals;

14. statistical analysis reports.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), amended LR 9:840 (December 1983), repromulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:32 (January 1998).

## Chapter 7. Return of Donated Property

### §701. Return of Property by Donee

A. When a determination has been made that property has not been put in use by a donee within one year from the date of receipt of the property, or when the donee has not used the property for one year thereafter under the terms and conditions of the Application, Certification, and Agreement Form signed by the chief executive officer or other authorized representative of the donee as a condition of eligibility (and repeated on the reverse side of each distribution document), the donee, if property is still usable, as determined by the program office, must either:

1. return the property, at its own expense, to the program warehouse;
2. transfer the property to another eligible donee within the state or to a federal agency, as directed by the program manager;
3. make such other disposal of the property, as the program manager may direct.

B. The program manager will periodically emphasize this requirement when corresponding and meeting with donees and when surveying and auditing utilization of donated property at donee facilities.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:840 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:32 (January 1998).

## Chapter 9. Financing and Service Charges

### §901. Financing

A. The state legislature approves the budget for the program, and an appropriation bill is signed into law by the governor each fiscal year which allows the program to operate a revolving fund. This allows the program to receive service charges from donees in order to defray the costs of the operating within the approved budget.

B. Funds expended or advanced, or commitments made or incurred shall be paid or provided for from the receipts of the program's revolving fund prior to the close of the fiscal year.

C. The revolving fund is established with the state treasurer to maintain the revenues from service charges which cover the costs of administering and operating this program. Monies deposited to the revolving fund must be used only for such purposes and for the short- and long-term benefit of the donees.

D. All income from service charges and other monies received by the program are deposited to the revolving fund. Payments covering all expenses are made by state check. All remittances must be in the form of checks drawn on the account of the donee and made payable to the program. All expenditures made from the revolving fund will be in accordance with federal regulations as per FPMR 101-44.202(c)(5).

E. Any evident surplus in the revolving fund shall be passed directly to the donees' benefit through reduction in the service charges for the current inventory during the fiscal year. Surpluses during the fiscal year may be utilized by the manager to acquire additional distribution facilities, improve existing facilities, or other capital expenditures deemed by the manager to be in the best overall interests of the donees. In the event the program is to be terminated, service charges will be reduced to the extent that any surplus will be passed on to the donees on the usable inventory.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:841 (December 1983), amended by Office of the Governor, Division of Administration, the Property Assistance Agency, LR 24:32 (January 1998).

### §903. Service Charges

A. Service charges are established for items at the time of receipt of the property and are designed to effect full recovery of the cost of operations of the program. The service charges shall be clearly marked on each item or lot. The service charges are based on the prorated expenses incurred annually by the program including, but not limited to, the following major cost areas: personnel, transportation, utilities, fuels, telephone, warehousing, storage, compliance, insurance, printing, supplies, and travel.

B. The service charges assessed each item shall be reasonable and fair in relation to the cost incurred and the services performed by the program. Emphasis will be placed on keeping the service charges to a minimum, but at the same time, providing the necessary service. Other factors considered in determining service charges are original acquisition cost, present value, screening cost, quantity, condition, desirability of property, transportation, loading and unloading cost, packing and crating, administrative cost, utilization and compliance, and delivery to donee when required.

C. The service and handling charge will be determined by applying zero to 50 percent of original acquisition cost or fair market value, taking into consideration factors listed in §903.B, D, and E and §907.C. The total of the service charges for all property donated by the program during any given fiscal year shall not exceed 15 percent of the original government acquisition cost of the property.

D. Special or extraordinary costs may be added to the service charges as follows.

1. Rehabilitated Property. Direct costs for rehabilitating property will be added to the service charge.

2. Overseas Property. Additional direct costs for returning the property may be added.

3. Long-Haul Property. Charges for major items with unusual costs may be added. Any such costs which are anticipated will be discussed with the donee prior to shipment.

4. Special Handling. An additional charge may be made for dismantling, packing, crating, shipping, delivery, and other extraordinary handling charges.

5. Screening. Extraordinary costs incurred in screening property may be added.

6. Homeless. Property provided to homeless activities (P.L. 110-77, Stewart B. McKinney Homeless Assistance Act enacted July 22, 1987) will be provided at a nominal fee.

E. The manager has the authority to reduce the service charges due to property condition. The manager may request, from the GSA regional office, a reduction on high-acquisition cost items when in poor condition, or when the item is to be used for secondary purposes.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:413 (October 1977), repromulgated LR 9:841 (December 1983), amended LR 16:690 (August 1990), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:33 (January 1998).

### §905. Minimal Charges

A. Service charges for items requested by a donee and which are shipped directly from the federal holding agency to the donee shall be based on a percentage of the acquisition cost of the item, which is derived from the percentage of the cost for each of the functions performed by the program.

B. Transportation costs, if transportation is provided by the program, shall be based on the cost per mile, cost of loading, unloading, crating, and packing. Transportation arranged by the donee shall be paid direct by the donee and must be provided in a timely manner in order not to lose the priority for the item.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), amended LR 9:841 (December

1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:33 (January 1998).

### **§907. Special Donations**

A. In cases involving major items of property or otherwise where unusual expenses may be incurred, the program may negotiate the service charge with the donee.

B. The State Agency Quarterly Donation Report of Surplus Personal Property will be used to measure performance.

C. The manager has the authority to reduce the service charge when he believes that an element of the charge is not applicable, or when he deems it to be in the best interests of the program.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), repromulgated LR 9:841 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:33 (January 1998).

## **Chapter 11. Terms and Conditions on Donable Property**

### **§1101. Restrictions on Property**

A. The program will require each eligible donee, as a condition of eligibility, to file with the program office an Application, Certification and Agreement form outlining the certifications, and agreements, and the terms, conditions, reservations, and restrictions under which all federal surplus personal property will be donated. Each form must be signed by the chief executive officer of the donee agreeing to these requirements prior to the donation of any surplus property. The donee shall be defined as the unit which is authorized to pay for the item(s) and which otherwise meets the qualification requirements. The certifications and agreements, and the terms, conditions, and reservations and restrictions, will be printed on the reverse side of each program distribution document (invoice), which shall be signed by the chief executive officer of the donee or his certified designee, whose name must be provided to the program office, in writing, over the signature of the chief executive officer of the donee.

B. The following periods of restriction are established by the program on all items of property with a unit acquisition cost of \$5,000 or more, and on all passenger motor vehicles.

1. Passenger motor vehicles—18 months from the date the property is placed in use.

2. Items with a unit acquisition cost of \$5,000 to \$10,000—18 months from the date the property is placed in use.

3. Items with a unit acquisition cost of over \$10,000—30 months from the date the property is placed in use.

4. Aircraft (except combat type) and vessels (50 feet or more in length) with a unit acquisition cost of \$5,000 or more—60 months from the date the property is placed in use. Such donations shall be subject to the requirements of a conditional transfer document.

5. Aircraft (combat type)—restricted in perpetuity. Donation of combat type aircraft shall be subject to the requirements of a conditional transfer document.

C. For good and sufficient reasons, such as the condition of the property, or the proposed use (secondary utilization, cannibalization, etc.), the program office may reduce the period of restriction on items of property falling within the provisions of §1101.B.3 and 4, at the time of donation, but no less than for a period of 18 months from the date the property is placed in use.

D. The program office, at its discretion, may impose such terms, conditions, reservations, and restrictions as it deems reasonable, on the use of donable property other than items with a unit acquisition cost of \$5,000 or more, and passenger motor vehicles.

E. The program office has imposed the following terms and conditions which shall be applicable during the period of compliance:

1. each passenger motor vehicle and any motorized heavy equipment (such as bulldozers, tractors, etc.) shall bear the official decal of the donee or the name of the donee in letters no less than 3 inches in height on each side of the item during the period of compliance;

2. donees which are defined as state agencies shall maintain those items which are movable, nonconsumable, and have a fair market value of \$250 or more and have been obtained from the federal surplus property program on the inventory control system defined in the State Property Control regulations of August 20, 1976;

3. donees which are not defined as state agencies shall maintain those items which are movable, nonconsumable, and have a fair market value of \$250 or more and have been obtained from the federal surplus property program on an inventory control system during the period of compliance. That inventory control system shall show the location of the items.

F. Failure to comply with the provisions of §1101.E will cause the program office to impose the following penalties on the donee:

1. return of the item to the program at the donee's expense;

2. a fine of 1 percent per day of the acquisition cost of the item shall be imposed on the donee for each day the restriction is not met;

3. the donee shall be declared ineligible as a participant in the program for a period of 90 days;

4. the manager may set aside the condition and penalties in §1101.E and F.1-3, in writing, for good and sufficient reasons.

G. Whenever information is obtained by the manager of the program from utilization reports, periodic surveys, or from other sources which indicate that a donee has failed to place property into use for the benefit acquired or within the prescribed period of time, or that there has been a loss or theft, or related acquisition, use, or disposal of property during the compliance period, the manager shall immediately initiate the appropriate investigative and compliance action as prescribed in §1903.D. When an investigation proves failure by the donee to comply with this Chapter, the manager shall impose the penalties listed in §1101.F.1-3.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:414 (October 1977), amended LR 9:841 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:33 (January 1998).

### §1103. Restrictions on Donations

A. The program may amend, modify, or grant release of any term, condition, reservation, or restriction it has imposed on donated items of personal property, in accordance with the standards prescribed in this plan, provided that the conditions pertinent to each situation have been affirmatively demonstrated to the satisfaction of the program manager and made a matter of public record.

B. The program office will impose on the donation of any surplus item of property, regardless of unit acquisition cost, such conditions involving special handling or use limitations as GSA may determine necessary because of the characteristics of the property.

C. The program office will impose on all donees the statutory requirement that all items donated must be placed in use within one year of donation and be used for the purpose for which it was donated for one year after being placed in use or otherwise returned to the program while the property is still usable.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:34 (January 1998).

## Chapter 13. Nonutilized Donable Property

### §1301. Methods of Disposal

A. All property in the possession of the program office which cannot be utilized by eligible donees shall be reported to GSA for disposal authorization, in accordance with FPMR 101-44.205. In accordance with this regulation, the program office shall either:

1. transfer the property to the program of another state or to a federal agency;
2. sell the property by public sale;
3. abandon or destroy the property.

B. In the event of disposal by transfer to an agency in another state or by public sale, the program office may seek such reimbursement as is authorized in accordance with FPMR 101-44.205.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:34 (January 1998).

## Chapter 15. Fair and Equitable Distribution

### §1501. Methods for Distribution and Utilization

A. General Policy. The program office shall arrange for a fair and equitable offering of available surplus property to the eligible units in the state, based upon their relative needs and resources and their ability to utilize the property in their program.

#### B. Determinations

1. The following criteria shall be used by the manager of the program in determining the relative needs and resources of donees and their ability to utilize the property:

a. the population of the parish of the donee, based on the current Preliminary Population Estimates for Louisiana by Parish. Source: Louisiana Tech University, official depository of U.S. Bureau of Census materials;

b. the per capita income of the parish of the donee. Source: current Bureau of Economic Analysis, Department of Commerce;

c. the percent of the average employed persons to the population of the parish of the donee. Source: Research and Statistics Unit, Department of Employment Security, current; and Louisiana Tech University, current Preliminary Population Estimates by Parish;

d. the daily average school attendance of the parish of the donee. Source: Louisiana Department of Education, current;

e. the number of hospital beds (short-term general hospitals) of the parish of the donee. Source: current Louisiana Hospitals Statistics of the State Office of Comprehensive Health Planning;

f. details on the scope of the donees' program, financial information, and specific items of property needed.

2. Other factors to be taken into consideration will include:

a. critical need on the part of the applicant due to a state of emergency or emergency, such as fire, flood, hurricane, etc.;

b. quantity and/or value of surplus property received by donee to date, and specific major items of equipment previously received;

c. interest and expressions of need on the part of the donee in the property available;

d. ability and willingness demonstrated by donee to inspect and select property, timeliness in removing property from warehouse, or a request for direct shipment from a federal holding agency;

e. financial ability of donee to acquire property, repair or renovate property (if necessary), and maintain the property.

C. Applications for Surplus Property Not in Inventory

1. A request for a specific item of property may be submitted by the chief executive officer, or his designee, of the donee to the manager of the program on a Request for Property form when the specific item is not in the inventory of the program.

2. The Request for Property form shall be the only means of requesting property by the donee, in order that the manager may use the same information in determining priority on competing requests for items. Priority ratings by the manager shall be made, utilizing the formula based on the criteria shown in §1501.D, and shall be based on the information submitted by the donee on the Request for Property form.

3. Falsification of any information on the Request for Property form submitted by the donee shall cause the donee's eligibility to participate in the program to be revoked for a period of 12 months.

D. Formula for Determining the Property Request Priorities

1. The program office shall use this formula for determining which donee shall receive an item for which there are competing requests. The information submitted by the donee on the Request for Property form shall be the main basis for the rating. The manager of the program shall have the authority to modify the rating formula on a quarterly basis and to delete and/or add categories, as are necessary to maintain fair and equitable distribution among the donees. The higher the donee rating, the higher the priority the donee will have for the item utilizing the formula.

2. Population by parish of the donee:

Under 10,000	10	50,001-100,000	5
10,001-20,000	9	100,001-150,000	4
20,001-30,000	8	150,001-200,000	3
30,001-40,000	7	Over 200,001	2
40,001-50,000	6		

3. Per capita income by parish of the donee:

Under \$3,000	10	\$3,901-\$4,100	5
\$3,001-\$3,300	9	\$4,101-\$4,300	4
\$3,301-\$3,500	8	\$4,301-\$4,500	3
\$3,501-\$3,700	7	Over \$4,501	2
\$3,701-\$3,900	6		

4. Percentage of average employed persons to the population by parish of the donee:

Less than 10%	10	30%-35%	5
10%-15%	9	35%-40%	4
15%-20%	8	40%-45%	3
20%-25%	7	Over 45%	2
25%-30%	6		

5. Daily school attendance by parish of the donee:

Under 5,000	10	40,000-60,000	5
5,001-10,000	9	60,001-80,000	4
10,001-20,000	8	80,001-100,000	3
20,001-30,000	7	over 100,000	2
30,001-40,000	8		

6. Number of hospital beds by parish of the donee:

0-25	5
26-50	4
51-200	3
201-500	2
over 500	1

7. State of emergency: 10

8. Emergency: 20

9. Unencumbered funds available to acquire property: Yes-10; No-0.

10. Unencumbered funds available to repair, renovate (if necessary), and maintain property: Yes-10; No-0.

11. Ability and willingness demonstrated by donee to inspect and select property, and timeliness in removing property from warehouse: 0-10.

12. Scope of donee's program and utilization of the item for the benefit of the residents: 0-10.

13. Interest and expressions of need on the part of the donee in the item: 0-10.

14. Direct pickup request from the federal holding agency by the donee: 5.

15. Value of surplus property received by donee to date.

Federal Acquisition Cost	Rating
0-\$10,000	10
\$10,001-\$ 25,000	8
\$25,001-\$ 50,000	6
\$50,001-\$100,000	4

16. Specific major items of equipment previously received: 0-10.

E. Selection and Shipment of Donable Property

1. The manager of the program shall recommend to GSA the certification of donee screeners, as are qualified and needed, in accordance with FPMR 101-44.116.

2. The program office shall, insofar as practical, on items requested on the Request for Property form, arrange for inspection and release of property directly from the holding agencies by the donee at minimal service charges to cover legitimate costs, as detailed in Chapter 9 of this plan, when requested by the donee.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:415 (October 1977), amended LR 9:842 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:35 (January 1998).

## Chapter 17. Eligibility

### §1701. Potential Donees

A. The program office will contact and instruct all known potential donees in the state on the procedures to follow to establish their eligibility to participate in the surplus property program. A listing of the potential donees in the state shall be established by using the standards and guidelines in FPMR 101-44.207, as well as the following guidelines.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:843 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:36 (January 1998).

### §1703. Public Agencies

A. The Louisiana Secretary of State's *Roster of Officials*, which lists cities, towns, parishes, the judiciary, state departments, divisions, councils, boards, commissions, institutions, Indian tribes, etc.

B. The executive officers of the above units will be contacted for a listing of local departments, divisions, commissions, and councils, indicating their different activities and functions.

C. The Economic Development and Planning Commissions will be contacted for lists of their recipients who might be qualified.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:843 (December 1983), repromulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:36 (January 1998).

### §1705. Nonprofit, Tax-Exempt Units

A. State departments of education, higher education, public health, mental health, community affairs, youth services, and others will be asked for listings of all local units approved or licensed by their departments.

B. Existing listings of units now eligible to participate in the surplus property program.

C. National, regional, and state organizations and associations.

D. Inquiries, letters, telephone calls, etc., received relative to eligibility.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), repromulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:36 (January 1998).

### §1707. Promulgating the Program

A. Contacts will be made by letter, telephone calls, general meetings, and conferences with the groups in §1703 and §1705, supplemented when necessary by news releases, informational bulletins, and attendance at conferences and meetings to discuss the surplus property program.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), repromulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

### §1709. Requirements for Eligibility

A. Each unit will be required to file with the program office, as a condition of eligibility:

1. an Application, Certification, and Agreement form, signed by the chief executive officer of the donee, accepting the terms and conditions under which property will be transferred;

2. a written authorization, signed by the chief executive officer or executive head of the donee activity, or a resolution by the governing board or body of the donee activity, designating one or more representative to act for the applicant, obligate any necessary funds, and execute distribution documents;

3. assurance of compliance indicating acceptance of civil rights and nondiscrimination on the basis of sex or handicap in accordance with GSA regulations and requirements;

4. directory information, including the applicant's legal name, address, and telephone number, and status as a public agency or nonprofit, tax-exempt educational or public health unit;

5. program details and scope, including different activities and functions;

6. a listing of specific equipment, material, vehicles, machines, or other items in which the donee would be interested in the future;

7. financial information, if necessary, for the evaluation of relative needs and resources;

8. proof of tax-exemption under Section 501(c)(3) of the *Internal Revenue Code* of 1954 (for nonprofit units only);

9. proof that the applicant is approved, accredited, or licensed in accordance with FPMR 101-44.207.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), amended LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

**§1711. Recertification of Eligibility**

A. All approvals of eligibility will be updated every three years except those programs that are certified, approved, and/or licensed annually, which must be updated every year.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

**Chapter 19. Compliance and Utilization**

**§1901. Scope**

A. The program office shall conduct utilization reviews to ensure compliance by donees with the terms, conditions, reservations, and restrictions imposed on:

1. any property not placed in use within one year from the date of acquisition, and not used for a period of one year;
2. any passenger motor vehicle;
3. any item of property valued at \$5,000 or more;
4. any item having characteristics that require special handling or use limitations imposed by GSA.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:417 (October 1977), repromulgated LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

**§1903. Methods**

A. The program office will arrange to visit each donee receiving major items of property, (i.e., items with a unit acquisition cost of \$5,000 or more and passenger motor vehicles with federal and/or state restrictions on the use of the property at least once during the period of restriction. All such visits will be made by the compliance/utilization audit staff or administration of the program.

B. Written reports of utilization from the chief executive officer of the donee will be requested during the periods of restricted activity or in the event of unusually heavy workloads at the program office.

C. Each visit on compliance utilization will encompass:

1. general utilization of property, including items with an acquisition cost of under \$5,000 and items listed under §1901.D;
2. compliance with all terms, conditions, reservations, and restrictions imposed on the use of the property;
3. any evidence of oversupply or stockpiling;
4. application advice for property needed;
5. effectiveness of the surplus property program;
6. recommendations for better service.

D. A report will be prepared on each compliance visit and submitted to the manager for approval. Follow-up action on noncompliance or nonuse will be taken, as necessary. Instances of suspected fraud or misuse will be reported to the Federal Bureau of Investigation and GSA. Program personnel will assist in any subsequent investigations.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

**Chapter 21. Consultation with Advisory Bodies, Public and Private Groups**

**§2101. Representation of the Program**

A. The program office will arrange for and participate in local, regional, or statewide meetings of public and private organizations and associations which represent potential donees to disseminate information on the program, discuss procedures and problems, and obtain recommendations on determining relative needs, resources, and the utilization of property and how the program office can provide more effective service. The program office will regularly provide information on the donation program to state and local officials, and to heads of nonprofit institutions and organizations, and will actively participate in, and, upon

request, provide speakers for conferences and meetings held by public and private organizations.

B. The program office, in consultation with advisory bodies and public and private groups, will invite eligible donees to submit expressions of interest and need for property items so that the program office may advise GSA of such requirements, including requests for specific items of property.

C. A Louisiana Federal Property Assistance Program advisory board shall be established by the manager of the program. It shall be composed of one representative from each of the eight areas listed in the program Quarterly Donation Report of Surplus Personal Property. The manager shall select the representative who is felt to best represent that segment of the donees. Advisory board members shall advise the manager on means to improve the program in the areas which they represent. The representatives shall serve without pay or compensation.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:37 (January 1998).

## Chapter 23. Audits

### §2301. Reconciling Financial Records

A. At the close of each month the program office will conduct an internal audit which will reconcile the warehouse and office records on inventory value, disposals, property received, and property issued.

B. Annually, the audit staff of the program will conduct an audit which shall include, in addition to fiscal affairs, a review of the conformance of the program with the provisions of this plan of operation and the requirements of 41 CFR 101.44.

C. An external audit will be performed at least once every two years by the legislative auditor or by an independent certified public accountant or independent licensed public accountant who is certified or licensed by a regulatory authority of the state or other subdivision of the United States. It shall include an audit of all fiscal affairs and a review of the conformance of the program with the provisions of this plan of operation and the requirements of 41 CFR 101-44. A copy of the audit will be furnished by the program office, immediately upon completion, to the GSA regional office. The manager will advise the GSA regional office of all corrective actions taken, with respect to any exceptions or violations indicated by the audit. It is agreed that GSA may, for appropriate reasons, conduct its own audit of the program, following due notice to the governor of the reasons for such audit, and may visit the program office for purposes of reviewing the program's operation, when it deems it appropriate.

D. Financial records and all other books and records of the program shall be available for inspections by representatives of GSA, the general accounting office, or other authorized federal activities.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), amended LR 9:844 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

### §2303. Donee Audits

A. Any state or local government, nonprofit organization or educational institution that receives item(s) valued at \$25,000 or more annually from the Donation of Federal Surplus Personal Property Program shall have an audit performed in accordance with the Office of Management and Budget Circular A-133. A copy of the audit shall be sent to the program office immediately after the donee receives the audit.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

## Chapter 25. Cooperative Agreements

### §2501. Types of Agreements

A. The program has the authority to enter into such cooperative agreements with federal agencies and other state agencies as may be necessary, in accordance with FPMR 101-44.206. Such agreements may involve, but not be limited to:

1. use of property by the program;
2. overseas property;
3. use of federal telecommunications system;
4. interstate transfers;
5. others, as may be necessary.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:418 (October 1977), repromulgated LR 9:845 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

## Chapter 27. Liquidation

### §2701. Procedures and Time Frame

A. In the event of liquidation, or at the time determination has been made by state officials to liquidate the program, a liquidation plan will be prepared in accordance with FPMR 101-44.201.c.14.

B. The liquidation plan shall include:



1. reasons for liquidation;
2. schedule and estimated date of termination;
3. method of disposal of surplus property on hand, consistent with the provisions of FPMR 101.44.205;
4. method of disposal of agency's physical and financial assets;
5. retention of books and records for a five-year period following liquidation.

C. Such plan will be submitted to GSA and its approval secured prior to the beginning of liquidation.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), amended LR 9:845 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:38 (January 1998).

## Chapter 29. Forms

### §2901. Types and Utilization

A. The distribution document (invoice) shall be used as the standard issue document and the invoice for all issues of surplus property to eligible donees or other states. The terms and conditions shall be printed on the back of each prenumbered distribution document (invoice).

B. Certain specific items require conditional transfer documents in addition to the standard forms:

1. noncombat type aircraft with a unit acquisition cost of over \$5,000 require a conditional transfer document;
2. combat type aircraft with a unit acquisition cost of over \$5,000 require a conditional transfer document;
3. vessels over 50 feet in length with a unit acquisition cost of over \$5,000 require a conditional transfer document.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), amended LR 9:845 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:39 (January 1998).

## Chapter 31. Records

### §3101. Time Frame for Retention

A. All official records of the program will be retained for no less than five years, except records involving property in compliance status for six years or longer will be kept for at least one year after the case is closed.

AUTHORITY NOTE: Promulgated in accordance with 41 CFR 101-44 and P.L. 94-519.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Federal Property Assistance Agency, LR 3:419 (October 1977), repromulgated LR 9:845 (December 1983), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 24:39 (January 1998).



## Title 34

# GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

## Part XI. Fleet Management

### Chapter 1. General Provisions

#### §101. Program Definition

A. Current Legal Authority. The Fleet Management Program for the state of Louisiana is established and operated under the authority given to the Commissioner of Administration by R.S. 39:361-363.

B. Mission, Goal, and Objectives of the Fleet Management Program

1. Program Mission Statement. The Fleet Management Program is established to provide motor vehicle, aircraft and related services to the state and to maintain safe, dependable, and cost-effective transportation for state employees who need designated types of vehicles or aircraft to perform their job responsibilities.

2. Program Goal and Objectives. To manage state provided transportation so as to reduce its cost and increase its benefit to state government by:

- a. establishing, reviewing, and revising statewide policies and standards for the Fleet Management Program;
- b. monitoring agency and vendor compliance with established policies and standards;
- c. financial planning in operations, maintenance, and capitalization of resources;
- d. identifying and adopting practices to maximize cost-effectiveness while maintaining proper vehicle and aircraft availability and utilization;
- e. receiving, investigation, and resolving all reports of abuse or misuse of fleet vehicles or aircraft.

C. Scope of the Fleet Management Program

1. Agency Scope. The state entities included in the scope of the Fleet Management Program are all agencies, boards, commissions, councils, departments, or other entities of the executive branch of government; all state colleges and universities; and all offices and entities of the judicial and legislative branches of government.

2. Vehicle Scope. To be included in the Fleet Management Program, vehicles or aircraft must be owned by the state or under lease by a state agency, and meet the criteria of either Subparagraph a or b below:

a. motorized and able to be licensed, with four or more wheels, whose primary use is surface transportation of passengers or delivery of small equipment and supplies;

b. motorized aircraft owned or leased by an entity within the scope of the Fleet Management Program except the Office of State Police. This scope includes:

- i. all automobiles, specifically: subcompact, compact, mid-size, full size, and station wagons;
- ii. all light duty pickup trucks (under 2 tons);
- iii. special use passenger vehicles—specifically: limousines, sport cars, ambulances, and motor homes (RV);
- iv. all cargo and passenger vans—mini through maxi;
- v. all busses;
- vi. utility trucks and carryalls (under 2 tons);
- vii. all motorized aircraft.

D. Definitions. For the purpose of these regulations, the following words have the meaning indicated.

*Agency*—any state entity as identified in §101.C.1. above.

*Agency Head*—use herein refers to statewide elected officials, the Commissioner of Administration, secretaries of executive departments appointed by the governor, presidents and chancellors of state colleges and universities and the equivalent position in the Office of the Governor, on state boards, commissions, and councils, or in the legislative and judicial branches.

*Agency Property Manager*—the employee designated by the agency head as the custodian of state property within the agency and who shall be responsible for all the property within his agency until his release from responsibility is approved by the commissioner.

*Agency Transportation Coordinator*—the employee designated by the agency head as the coordinator of fleet vehicles within the agency and who shall be responsible for any fleet management functions until his release from responsibility is acknowledged by the Commissioner of Administration.

*Break-Even Mileage*—the annual mileage traveled on official state business above which it is more economical to provide the employee with a personally assigned vehicle and below which, if there is not a pool vehicle available, it is more economical to reimburse the employee for use of the employee's personal vehicle.

*Commissioner*—the Commissioner of Administration.

*Fleet Vehicles*—vehicles that meet the criteria and scope as stated above in §101.C.2, Vehicle Scope of the Fleet Management Program.

*Home Storage*—the assigned off-duty storage location of the fleet vehicle is off state property and the vehicle is used for commuting, as defined by the Internal Revenue Service, by the individual to whom authorization for home storage is given.

*Louisiana Property Assistance*—that state agency within the Division of Administration delegated by the Commissioner of Administration as responsible for designated fleet management functions.

*Luxury Vehicles*—those vehicles equipped with non-essential, indulgent rather than necessity type options, which exceed state vehicle contract award, and enhance comfort and/or prestige.

*Personal Assignment*—the exclusive assignment of a fleet vehicle to one particular employee for permanent use in accomplishing the duties of the employee's position.

*Personally Assigned Vehicle*—a fleet vehicle assigned exclusively to one particular employee for permanent use in accomplishing the duties of his/her position.

*Pool Vehicle*—any fleet vehicle which is not a personally assigned vehicle is a pool vehicle. Pool vehicles are made available to state employees on a specific trip basis.

*State Employee*—any classified or unclassified employee of the state of Louisiana; any duly appointed member of a state board, commission, or advisory council; and any other person who has received specific approval from the Division of Administration to operate or travel in a fleet vehicle.

*State Fleet Manager*—the Commissioner of Administration or the person appointed by the Commissioner of Administration as responsible for the implementation, monitoring, and overall administration of the Statewide Fleet Management Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:361-363 and R.S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 13:15 (January 1987), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 38:1588 (July 2012).

### **§103. Functions of the Fleet Management Program**

A. In accordance with the responsibilities and authority vested in the Commissioner of Administration by Sections 361 and 362 of Title 39 of the Louisiana Revised Statutes of 1950, as amended, inter-agency management of state-owned vehicles is the responsibility of the Division of Administration. The functions of the State Fleet Management Program shall include:

1. program planning:
  - a. long range planning for the Fleet Management Program. The state fleet manager shall be responsible for:
    - i. the continuous review of the scope of the Fleet Management Program including identifying and defining

vehicle types to be included in the program, reviewing the scope of agencies subject to the rules and regulations established by the Division of Administration, and reviewing the scope of the functions of the Fleet Management Program;

- ii. the review and evaluation of the overall Fleet Management Program objectives and revision of the objectives as needed;

- iii. the review and recommendation of proposed fleet management policies;

- iv. the review and recommendation of proposed legislation concerning fleet management;

- v. the development of operating and performance standards for fleet vehicles and establishment of minimum preventive maintenance requirements;

- vi. the development and maintenance of an operator's manual for fleet vehicles. This manual establishes minimum preventive maintenance procedures and instructions for the completion of the Daily Vehicle Usage Log (DOA form MV-3). It will include procedures for the safe operation of fleet vehicles and accident-reporting procedures as established by the Division of Administration, Office of Risk Management;

- vii. the development and maintenance of a directory of state fuel depots;

- viii. the development and maintenance of a directory of the agency transportation coordinators;

- ix. the development of performance evaluation standards for the Fleet Management Program;

- x. the definition and revision as required of the operational methods and procedures of the Fleet Management Program;

- xi. the recommendation of a plan for obtaining the resources needed by the Fleet Management Program to meet the goals and objectives of the program;

- b. annual planning for the Fleet Management Program. The state fleet manager shall be responsible for:

- i. the assessment of state fleet vehicles. Annually, the state fleet manager shall calculate the break-even mileage and shall use this calculation to determine, after consultation with agency transportation coordinators, whether to retain, replace, or dispose of vehicles without replacement;

- ii. the reevaluation of the rate by which employees are reimbursed for using privately owned automobiles to travel on state business;

- iii. the annual evaluation of specifications for the purchase of fleet vehicles. The state fleet manager shall recommend to the director of state purchasing changes in the specifications for the purchase of new vehicles based on the previous year's experience with fleet operations. The Office of State Purchasing shall then develop said specifications and establish procedures for the purchase of new vehicles by

state agencies. These specifications shall exclude luxury automobiles;

c. non-essential options may not be added by the agency to the automobile after the purchase or lease of said motor vehicle except at the employees own expense and shall become the property of the state. The commissioner of administration shall authorize the purchase of any luxury or full-size motor vehicle for personal assignment by a statewide elected official other than the governor and lieutenant governor, such official shall first submit the request to the Joint Legislative Committee on the Budget for approval, as provided by R.S. 39:362.1.

2. Program Operations. The effective and efficient utilization and operation of the fleet vehicles requires the cooperation of the state fleet manager and all agencies within state government. Each agency head is ultimately responsible for the operation of the Fleet Management Program within the respective agency. Each agency head shall designate one individual as the agency transportation coordinator. The agency head shall submit the name, position, mailing address, and telephone number of this person to the state fleet manager by July 1, 1986 and update as changes occur. In order to more efficiently fulfill the responsibilities outlined in the rules and regulations, each agency head, with notification of and acknowledgement from the state fleet manager may designate appropriate employees in smaller organizational units as agency transportation coordinators. The successful operation of the Fleet Management Program is dependent on the following division of responsibilities.

a. Dissemination of Division of Administration Rules and Regulations. It shall be the responsibility of the state fleet manager to function as primary liaison with the agency transportation coordinators and to disseminate to the coordinators all statewide fleet management rules and regulations.

b. Vehicle Receiving

i. It shall be the responsibility of the Office of State Purchasing to insure delivery of all newly purchased state-owned fleet vehicles to Louisiana Property Assistance, except: state trooper cars, undercover cars, and DOTD vehicles.

ii. Upon delivery of newly purchased state-owned fleet vehicles to Louisiana Property Assistance, it shall be the responsibility of the state fleet manager to insure that:

(a). the vehicles are inspected for compliance with purchasing specifications;

(b). the vehicles are inspected to determine the condition of the vehicles at delivery;

(c). an operator's manual is inserted into each vehicle which will include all procedures for the safe operation of fleet vehicles and accident reporting procedures as established by the Division of Administration, Office of Risk Management as well as minimum preventive

maintenance procedures and instructions for the completion of the Daily Vehicle Usage Log (DOA form MV-3);

(d). the appropriate state identification is affixed to all fleet vehicles prior to their leaving the agency premises of Louisiana Property Assistance.

iii. It shall be the responsibility of the agency transportation coordinator to apply to the Department of Public Safety for vehicle license plates and to notify the state fleet manager, within 45 days of receipt, of both the license number and agency property tag number assigned to a new vehicle and any subsequent number changes which may occur.

c. Vehicle Disposal. Upon determination by the agency head that a vehicle is ready for disposal or determination by the commissioner that an under-utilized vehicle is subject to disposal without replacement, the vehicle shall be disposed of in accordance with Louisiana state law.

i. It shall be the responsibility of the agency property manager to prepare and forward to Louisiana Property Assistance Agency the State Property Transfer Form (DOA BF-11) requesting disposal of the vehicle.

ii. Upon receipt of the DOA form BF-11, the director of the Louisiana Property Assistance Agency shall be responsible for the review of the form and approval or disapproval.

iii. Upon notification from Louisiana Property Assistance that the transfer has been approved, the agency property manager shall notify the agency transportation coordinator who shall be responsible for the transfer of the vehicle to Louisiana Property Assistance.

iv. The state fleet manager shall establish procedures for the transfer of under-utilized vehicles to surplus.

d. Vehicle Assignment

i. No person may be authorized to operate or travel in a fleet vehicle unless that person is a state employee as defined in §101.D.14 above.

ii. No state employee of any agency may be assigned to operate a pool fleet vehicle or a personally assigned vehicle without the respective agency having on file a completed, signed and checked Louisiana State Employee Driver Safety Program Authorization/History form (DA 2054). The agency transportation driving coordinator shall be responsible for maintaining a file on all signed and completed DOA forms (DA 2054).

iii. No state vehicle owned or leased shall be used by a public or private individual for other than performing official state business. The personal use of a state-owned or leased vehicle is prohibited with the exception of home storage commute miles if approved by the Commissioner of Administration via the DOA form MV-2.

iv. Personal assignment of fleet vehicles is not permitted without specific approval from the Commissioner

## GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

of Administration via the DOA form MV-2. Criteria which merit request for personal assignment include:

(a). a state employee in a position which requires, in performance of assigned duties, that the employee drive in excess of the break-even mileage as established by the Commissioner of Administration. This mileage should accrue consistently throughout the year, not sporadically month to month;

(b). a state employee in a position of law enforcement who has the power to arrest and uses this power in the regular performance of his/her duties;

(c). a state employee in a position which requires, in performance of assigned duties, regular and unscheduled use of a special use vehicle or a vehicle with special equipment installed (e.g., hazardous waste spill investigation equipment, bar lights for use in emergency situations, handicapped driver equipment, etc.);

(d). statewide elected officials, the governor's executive counsel, the Commissioner of Administration, secretaries of executive departments, presidents and chancellors of state universities and colleges, and their equivalent in the judicial and legislative branches of government and vehicles purchased and assigned to the offices of statewide elected officials;

(NOTE: These will be approved pending submission of the requests on properly completed DAMV-2 forms in order to assure proper record keeping.)

(e). additional exceptions as may be granted by the Commissioner of Administration and the Joint Legislative Committee on the budget. Individual requests for such exceptions must be submitted in writing to the state fleet manager along with accompanying documentation which shows a history of need for the use of a fleet vehicle. The state fleet manager shall forward requests with recommendations to the Commissioner of Administration. All requests must be signed by the agency head and the agency transportation coordinator.

v. It shall be the responsibility of the agency transportation coordinator to insure that the Personal Assignment Agreement (DOA form MV-2) is completed, signed and approved by the commissioner prior to the personal assignment of a vehicle.

vi. Annually, it shall be the responsibility of the agency transportation coordinator to insure that a Personal Assignment Agreement (DOA form MV-2) is completed and forwarded to the state fleet manager by May 1 and is signed and approved by the commissioner in order to continue the personal assignment into the new fiscal year beginning July 1. Any personal assignment approved by the commissioner during the year shall expire June 30 and renewal will require submission of a Personal Assignment Agreement (DOA form MV-2) as described above. As an alternative to submitting individual MV-2 forms for employees who are requesting renewal of personal assignment and/or home storage approval for the next fiscal year, the state fleet manager may accept a listing of those employees who are currently

approved for personal assignment and/or home storage for update purposes. In order to be approved, the listing must consist of only those names of employees who have been previously approved on an individual MV-2 form, with current and correct information, and is on file with the state fleet manager and the originating agency. Any changes to the original information on the MV-2 form must be submitted on a new MV-2 form for approval at the time of the change. This list shall consist of the name of the employee, social security number of the employee, and vehicle identification number of the vehicle that is personally assigned and/or home stored. The list must be approved by the agency transportation coordinator and the agency head prior to submission to State Fleet Management.

vii. It shall be the responsibility of the agency transportation coordinator to insure that a personally assigned vehicle shall be made available for official use by other state employees when it would otherwise not be used and that such use is noted on the Daily Vehicle Usage Log (DOA form MV-3).

e. Vehicle Storage and Commuting Policies. Each fleet vehicle shall have a designated overnight storage site on property owned or leased by the state regardless of whether the vehicle is personally assigned or a pool vehicle, except as provided in §103.A.2.e.i below.

i. Home storage of fleet vehicles is prohibited unless required and/or permitted and approved by the Commissioner of Administration via the DOA form MV-2. Criteria which merit request for home storage include:

(a). law enforcement officers with the power of arrest who use this power in the regular performance of daily job duties and whose home storage of a fleet vehicle is deemed by their agency head to be in the best interest of public safety and law enforcement (required);

(b). employees for whom the provision of transportation to and from the workplace is a condition of employment as approved at the time of employment by the Commissioner of Administration (required);

(c). employees whose job duties require the use of special use vehicles or vehicles with special equipment installed outside of normal working hours and for whom home storage of such vehicles can be documented as either cost effective to the state or necessary to protect the safety and/or health of the public (required);

(d). statewide elected officials, the governor's executive counsel, the Commissioner of Administration, secretaries of executive departments, presidents or chancellors of state universities and colleges, and their equivalent in the judicial and legislative branches of government (permitted);

(e). additional exceptions as may be decided by the Commissioner of Administration and the Joint Legislative Committee on the budget. Individual requests for such exceptions must be submitted in writing to the state fleet manager along with documentation which demonstrates that home storage is in the best interest of the state. The state

fleet manager shall forward requests with recommendations to the Commissioner of Administration. All requests for exceptions must be signed by the agency head and the agency transportation coordinator (required/permitted).

ii. It shall be the responsibility of the agency transportation coordinator to insure that the Home Storage Agreement (DOA form MV-2) is completed, signed, and approved by the commissioner prior to allowance of home storage of any fleet vehicle.

iii. Annually, it shall be the responsibility of the agency transportation coordinator to insure that a Home Storage Agreement form (DOA form MV-2) is completed and forwarded to the state fleet manager by May 1 and is signed and approved by the commissioner in order to continue home storage into the new fiscal year beginning July 1. Any home storage approved by the commissioner during the year shall expire June 30 and renewal will require submission of a Home Storage Agreement (DOA form MV-2) as described above. As an alternative to submitting individual MV-2 forms for employees who are requesting renewal of personal assignment and/or home storage approval for the next fiscal year, the state fleet manager may accept a listing of those employees who are currently approved for personal assignment and/or home storage for update purposes. In order to be approved, the listing must consist of only those names of employees who have been previously approved on an individual MV-2 form, with current and correct information, and is on file with the state fleet manager and the originating agency. Any changes to the original information on the MV-2 form must be submitted on a new MV-2 form for approval at the time of the change. This list shall consist of the name of the employee, Social Security Number of the employee, and vehicle identification number of the vehicle that is personally assigned and/or home stored. The list must be approved by the agency transportation coordinator and the agency head prior to submission to State Fleet Management.

iv. It shall be the responsibility of the agency transportation coordinator to insure that a vehicle approved for home storage shall be made available for official use by other state employees when it would otherwise not be in use by the employee for whom storage is approved and that such use is noted on the Daily Vehicle Usage Log (DOA form MV-3).

f. Vehicle Operations. It shall be the responsibility of the agency transportation coordinator to insure that:

i. all drivers of fleet vehicles are familiar with and are in compliance with the procedures for safe operation of fleet vehicles, minimum preventive maintenance procedures, accident reporting procedures, and the completion of the Daily Vehicle Usage Log (DOA form MV-3) as set forth in the Fleet Vehicle Operator's Manual;

ii. any state employee that operates a fleet vehicle has a valid state license to operate that vehicle and has on file a completed and signed Louisiana State Employee Driver Safety Program Authorization/Driving History form

(DA 2054) and, when applicable, a Personal Assignment and/or Home Storage agreement (DOA form MV-2);

iii. all daily vehicle usage logs (DOA form MV-3) for both personally assigned and pool vehicles are approved by the appropriate supervisor and received by the agency transportation coordinator by the third working day of the month following the month to which the report pertains. The approving supervisor is responsible for auditing each respective DOA form MV-3. MV-3 data may be submitted monthly via magnetic media provided the information is formatted as required by the Division of Administration and the agency has received prior approval from the state fleet manager to submit data in this manner;

iv. preventive maintenance is performed on all fleet vehicles and recorded on the Preventive Maintenance Record (DOA form MV-4) or a maintenance form approved by the state fleet manager;

v. any additional duties which are required to monitor the utilization of fleet vehicles and to insure their most efficient and effective use shall be performed;

vi. when fuel is not available from a state-operated facility, self-service facilities shall be used for all purchases of fuel for state-owned or leased vehicles when utilizing commercial stations.

g. Maintenance of Files and Records

i. It shall be the responsibility of the agency transportation coordinator to insure that:

(a). a completed and signed Louisiana State Employee Driver Safety Program Authorization/Driving History form (DA 2054) is on file at the agency for every driver of fleet vehicles;

(b). all Personal Assignment and/or Home Storage Agreements (DOA form MV-2) are completed and forwarded to the state fleet manager for approval prior to the assignment of a personal vehicle to an employee, or the allowance of home storage and annually by May 1 thereafter;

(c). all Daily Vehicle Usage Logs (DOA form MV-3) containing accurate information on miles traveled, repair/maintenance costs, and operating costs, are completed, approved, and forwarded to the state fleet manager by the thirtieth day following the end of the month to which the report pertains;

(d). records are kept on all mileage reimbursement to state employees that have used privately owned vehicles to travel on state business. This reimbursement information shall be reported monthly to the state fleet manager no later than the thirtieth day following the end of the month to which the report pertains. A more extensive report on mileage reimbursement shall be filed with the state fleet manager for each fiscal year by the thirtieth day following the end of the fiscal year;

(e). an annual report is submitted to the state fleet manager by September 30 of each year containing the

following information for the preceding fiscal year concerning each aircraft owned or leased by the agency: type of aircraft, make, model, year, primary user, if any, mileage traveled or hours of use, annual rental or lease cost, if not purchased, or the purchase price;

(f). current and complete records concerning preventive maintenance (DOA form MV-4) on each fleet vehicle assigned to, owned by or used by the agency are completed and maintained in an agency file after review by the agency transportation coordinator for deficiencies.

ii. It shall be the responsibility of the Louisiana property assistance director and state fleet manager to insure that the following files are maintained and updated at the state level based on information supplied by the agency property managers and the agency transportation coordinators:

- (a). the fixed asset file;
- (b). the daily vehicle usage log file;
- (c). the personal assignment/home storage file;
- (d). the employee mileage reimbursement file.

h. Management Reporting. The state fleet manager shall be responsible for the preparation of the Commissioner of Administration's quarterly and annual reports on the status of fleet vehicles and aircraft to the Legislature. The reports shall present the information required by R.S. 39:362 and 363.

3. Program Control. It shall be the responsibility of the state fleet manager to insure that control is maintained over the operation of the Fleet Management Program.

a. Inventory. It shall be the responsibility of the state fleet manager to require all agency transportation coordinators to conduct an annual audit of the master listing of fleet vehicles for their respective agencies. The information provided will be used to verify that the vehicle information in fleet management's records correctly reflects the actual vehicles used by the agency and the pertinent characteristics of each fleet vehicle, and to verify the accuracy of records on personal assignment and home storage of fleet vehicles.

b. Monitor Policy Compliance. It shall be the responsibility of the state fleet manager to conduct random audits to verify agency compliance with the statewide policies regarding:

- i. personal assignment of fleet vehicles;
- ii. home storage of fleet vehicles;
- iii. employee mileage reimbursement for use of privately owned vehicles on state business;
- iv. minimum preventive maintenance standards as set forth in the Fleet Vehicle Operator's Manual.

c. Review Department Requests for Exception to Policy. All requests for exceptions to these rules and regulations shall be in writing and signed by the agency head

and the agency transportation coordinator and shall be forwarded with accompanying documentation to the state fleet manager. It shall be the responsibility of the state fleet manager to review all such requests for exceptions and forward the request with recommendations to the Commissioner of Administration.

d. Potential Abuse Investigation. It shall be the responsibility of the state fleet manager to insure that all reports of abuses in the use of state fleet vehicles are fully investigated. The state fleet manager shall, with cooperation of the appropriate agency transportation coordinator:

- i. receive and initiate a file on each abuse complaint;
- ii. gather facts about each case;
- iii. initiate appropriate action;
- iv. note completion of the investigation and action taken in the file;
- v. maintain the file on reported cases of abuse.

4. Program Evaluation. It shall be the responsibility of the state fleet manager to regularly evaluate the Fleet Management Program. The state fleet manager shall be responsible for:

- a. preparing budgetary requests and monitoring expenses of the Fleet Management Program;
- b. planning and conducting operational audits of agency fleet management programs and reporting all findings to the legislative auditor;
- c. planning and conducting all special projects. The state fleet manager shall be responsible for planning and conducting all projects designed to investigate problems within the state fleet management program or problems discovered during the operational audit of agency fleet management programs and developing solutions for these problems.

5. All other responsibilities involving the planning, operation, control, and evaluation of the Fleet Management Program not herein specifically retained by the Commissioner of Administration and the commissioner's designee, the state fleet manager, are hereby granted the respective agency heads. All such agency responsibilities must be conducted using methods and procedures consistent with the overall mission and objectives of the program established by the commissioner and in accord with these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:361-363 and R. S. 39:1761-1771.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 13:15 (January 1987), amended by the Office of the Governor, Division of Administration, Property Assistance Agency, LR 13:742 (December 1987), amended LR 23:300 (March 1997), LR 38:1588 (July 2012).



**§105. Nonexclusion**

A. These regulations supersede and replace PPM 63 (LAC 4:V.Chapter 25) and all other previous regulations and exceptional permissions, both written and verbal. Any exclusion request shall be submitted to the commissioner through the state fleet manager for consideration. Any

exclusion from these regulations must be approved in writing by the commissioner.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:361-363.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, LR 13:19 (January 1987).



## Title 34

# GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

## Part XIII. University Pilot Procurement Code

### Chapter 3. Purpose, Applicability and Definitions

#### §301. Purpose and Legislative Authority

A. Goal. It is the goal of the university to procure goods and services in a manner that is open, fair, encourages competition, and affords vendors equal opportunities to compete.

B. Purpose. The purpose of this *University Pilot Procurement Code* is to establish parameters of a procurement program designed to support and facilitate the instructional, research and public service missions of the university by applying best methods and business practices to the procurement of goods and services and to structure other business arrangements by the university. This *University Pilot Procurement Code* is intended to promote the development and use of procurement processes which promote the pursuit of excellence and the best interests of the university while maintaining the highest possible integrity, broad based competition, fair and equal treatment of the business community and increased economies and efficiencies for the university.

C. Communication. The university will communicate and collaborate with the division of administration, other state colleges and universities and other public entities when mutual benefit can be obtained.

D. Authority. This *University Pilot Procurement Code* is adopted in compliance with the Louisiana Administrative Procedure Act (R.S. 49:950-999.25) and pursuant to the Louisiana Granting Resources and Autonomy for Diplomas Act (R.S. 17:3139-3139.7 as amended by Act 749 of 2014) and administrative approval granted by the Joint Legislative Committee on the Budget.

E. Implementation. Implementation of the *University Pilot Procurement Code* is subject to approval by the management board and shall be adopted in compliance with the Louisiana Administrative Procedure Act (R.S. 49:950-999.25) and pursuant to the Louisiana Granting Resources and Autonomy for Diplomas Act (R.S. 17:3139-3139.7. as amended by Act 749 of 2014) and administrative approval granted by the Joint Legislative Committee on the Budget.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:542 (March 2015).

#### §303. Applicability

A. Applicability. This *University Pilot Procurement Code*, together with established management board policies, applies to the acquisition by the university of all goods and services paid with public funds, and shall, as authorized by R.S. 17:3139.5.5.c.i, be used in place of these Louisiana procurement laws: R.S. 39:15.3, R.S. 39:196 through R.S. 39:200, R.S. 39:1481 through R.S. 39:1526, and R.S. 39:1551 through R.S. 39:1755.

B. Revenue Producing Enterprises. This *University Pilot Procurement Code* also applies to transactions with no expenditure of public funds where university facilities, personnel or services will be utilized for revenue producing enterprises with other individuals or entities that will generate income for the university, consistent with established management board policies.

C. Other Institutions. Other institutions under the same postsecondary education management board as the initial qualifying institution may utilize this pilot procurement code, provided the procurement is conducted under the auspices of a shared services model managed by the initial qualifying institution.

D. Revocation. If the university's autonomy to use this *University Pilot Procurement Code* should be revoked by the Board of Regents or the Division of Administration pursuant to R.S. 17:3139.3 or R.S. 17:3139.5.6, the university shall end use of these pilot provisions in keeping with the revocation notice and shall resume procurements pursuant to applicable law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:542 (March 2015).

#### §305. Definitions

*Aggrieved Party*—a person who files a written protest in connection with the solicitation or award or the issuance of a written notice of intent to award a contract under the *University Pilot Procurement Code* and has or may have a pecuniary or other property interest in the award of the contract.

*Anti-Competitive Practices*—a practice among bidders or offerors which reduces or eliminates competition or restrains trade. An *anti-competitive practice* can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from business actions which have the effect of restraining trade, such as controlling the resale price of products.

*Award*—the acceptance of a bid or proposal; the presentation of a purchase agreement or contract to a selected respondent.

*Best and Final Offer (BAFO)*—in a competitive negotiation, the final proposal submitted by a respondent after negotiations have been completed and which contains the respondent's most favorable terms in response to the solicitation.

*CEO*—the most senior administrator for the university system governed by the management board, also referred to as *president*.

*Chancellor*—the chief administrative head of the institution of higher education, whether identified by this or some other title in the university's organization chart, also referred to as *president*.

*Chief Financial Officer (CFO)*—the most senior university executive responsible for financial controls for the university, whether identified by this or some other title in the university's organization chart. The CFO or designee has specified responsibilities under this *University Pilot Procurement Code*.

*Chief Procurement Officer (CPO)*—as used in this *University Pilot Procurement Code* is the director of procurement for the university and does not refer to the chief procurement officer for the state of Louisiana.

*Client Services*—services provided directly to university clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

*Collusion*—see *anti-competitive practices*.

*Common or General Use Item*—a specification which has been developed and approved for repeated use in procurements in accordance with the provisions of R.S. 39:1651(A) and (B).

*Competitive Negotiation*—a step toward a contract involving back and forth communication regarding costs and other criteria between the evaluation team and respondents who have been found suitable for award of a contract pursuant to evaluation of responses to a solicitation.

*Competitive Reverse Auction (CRA)*—a competitive online solicitation process conducted for goods and/or services in which respondents compete against each other online, in real time, in an open and interactive environment.

*Competitive Sealed Bidding*—the receipt of bids protected from inspection prior to bid opening. Bids may be received in any manner specified in the solicitation for bids including receipt by mail, by direct delivery, or through any secure electronic interactive environment permitted by rule or regulation.

*Consultant*—an independent individual or firm contracting with the university to perform a service or render an opinion or recommendation according to the *consultant's* methods and without being subject to the control of the

university except as to the result of the work. The university monitors progress under the contract and authorizes payment.

*Contract*—all types of university agreements; sponsored agreements including but not limited to purchase orders, for the procurement or disposal of goods and services and the generation of revenue for the university by the use of university facilities, personnel or services; *contract* shall not include:

1. *contracts* or appointments for employment;
2. licensing of university's intellectual property specially regulated by the management board;
3. cooperative endeavor agreements.

*Contract Controversy*—a disagreement that may arise between the university and a contractor regarding the interpretation, application or breach of contract terms. This includes, without limitation, controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

*Contract Modification*—any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

*Contractor*—any individual or entity having a contract with the university.

*Cooperative Buying Organization (CBO)*—a public or private organization that offers goods or services to subscribing public or private procurement units from vendors located in the United States who have agreed to uniform terms, conditions and pricing in accordance with an agreement entered into by the participants pursuant to a competitive award process.

*Cooperative Purchasing*—procurement conducted by or on behalf of more than one public procurement unit or by a public procurement unit with an external procurement activity or by a private procurement unit.

*Electronic Signature*—an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

*Emergency Procurement*—a purchase made after a written determination by the CPO that:

1. there exists an emergency condition which creates a threat to public health, welfare, safety, or public property, or conservation of public resources;
2. the emergency condition creates an immediate and serious need for goods or services that cannot be met through normal procurement methods.

*Evaluation Team*—a group of individuals designated to conduct interviews and negotiations during the evaluation of responses to a solicitation. The team members may be requested to provide scores for solicitations reviewed.

*Firm, Fixed Price Contract*—a contract where the total amount to be paid to the contractor is fixed and is not subject to adjustment by reason of the cost experience of the contractor. The term includes contracts where the unit price is set but the total price varies because actual quantities purchased deviate from the quantities estimated to be purchased. The term also includes contracts where the price may be adjusted in accordance with a contractually established price adjustment provision which is not based upon the contractor's costs.

*General Services Administration (GSA) Contract Schedules*—long-term government-wide contracts awarded by the U.S. General Services Administration to commercial entities to provide government procurement access to a broad spectrum of commercial goods and services at volume discount pricing.

*Goods*—all property, including but not limited to, equipment, materials, supplies, insurance, license agreements for software and leases on real property excluding a permanent interest in land, all consistent with established management board policies. *Goods* are not services.

*Intergovernmental or Interagency Contracts*—contracts or agreements in which each of the parties is a governmental entity or between subdivisions or institutions under their jurisdiction.

*Invitation to Bid (ITB)*—a solicitation, whether attached or incorporated by reference, utilized for soliciting bids to provide goods or services in accordance with this *University Pilot Procurement Code*.

*Items for Resale*—goods or services purchased by the university for retail sale to students, employees or the public.

*Lease of Facilities*—contracts for the lease or rental of space by or for the university shall require the authorization of the CPO. A lease or rental of more than 5,000 square feet in a privately owned building shall be awarded by use of an ITB or RFP as determined by procurement policies and approved by the CPO. Amendment of a *lease of facilities* shall be made only after approval by the CPO.

*Management Board*—the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

*Multi-Step Bids or Proposals*—a solicitation involving two competitive steps, combining the elements of both competitive sealed bids and competitive sealed proposals. The first step may require the submission of technical and price proposals with only the technical proposal being evaluated and scored. The second step involves the consideration of price proposals of those firms that have achieved the highest technical scores.

*Negotiation*—conferring, discussing, or bargaining to reach agreement in business transactions on a potential procurement.

*Office of State Purchasing Contracts*—contracts entered into by the Louisiana Office of State Purchasing and made available to other Louisiana procurement units.

*President*—the most senior administrator for the university system governed by the management board, also referred to as *CEO*.

*Procurement*—the process by which the ownership or use of goods or services is acquired. Also includes all functions that pertain to the obtaining of goods and services, including but not limited to description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

*Procurement Policies*—policies shall generally describe requirements for selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. *Procurement policies* may address other issues related to procurement and to revenue generating contracts.

*Professional Services*—work rendered by an independent contractor who has a professed knowledge of a particular aspect of learning or science and its practical application. A profession is a vocation founded on advanced specialized study and training which enables its practitioner to provide particular services.

*Proprietary Specifications*—a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

*Protest*—a written objection by a potential aggrieved party to a solicitation or award of contract, with the intention of receiving a remedial result. *Protests* must be filed in accordance with this *University Pilot Procurement Code* (UPPC).

*Public Funds*—legislatively appropriated funds, interagency transfers, statutory dedication, federal appropriations, self-generated funds, gifts and funds received by the university by grant or other method from governmental or private sources and which may be used to advance the missions of the university.

*Request for Proposals (RFP)*—a solicitation for proposals to supply services or a combination of services and goods where weighted criteria are the basis for award. An *RFP* may also be used for a solicitation for lease of facilities.

*Request for Quotation (RFQ)*—a solicitation for use in procurements that includes a description of the goods or services specified and requests that a potential vendor respond with price and other information by a designated time and date. Evaluation and recommendation for award are based on the quotation which offers the best price, quality, delivery and services from a respondent with a satisfactory record for performance and reliability.

*Request for Quote and Qualifications (RFQQ)*—a solicitation the university has identified the need and the services to resolve it and is looking for a firm's qualifications and costs or fees to provide the identified services.

*Respondent*—an individual or entity that submits a response to a solicitation.

*Responsible Respondent*—a business entity or individual determined to be fully capable of meeting all requirements of the solicitation and subsequent contract and which has the personnel, financial and technical resources to perform as will be contractually required. A *responsible respondent* must be able to fully document in advance the ability to provide good faith performance.

*Responsive Respondent*—an individual or business entity that has submitted a bid/proposal/offer that fully conforms in all material respects to the requirements of the solicitation.

*Services*—the furnishing of labor, time or effort by a vendor which may involve, to a lesser degree, the delivery or supply of a product, incidental to the required performance.

*Shared Service Model*—the provision of a service or function by one part of an organization or group where that service or function had previously been found in more than one part of the organization or group. Funding and resourcing of the service is shared and the providing department effectively becomes an internal service provider.

*Signature*—a manual or electronic *signature*. See also *electronic signature*.

*Small Purchases*—procurements not exceeding \$5,000 or an amount as determined by the management board to be in the best interest of the university or to offset volatile economic conditions may be made in accordance with *small purchase* procedures, except that procurement requirements shall not be artificially divided so as to constitute a *small purchase* under this definition.

*Sole Source Procurement*—a purchase made when there is only one source for a good or service and only one vendor or supplier has the sole ability to meet the requirements of the procurement.

*Solicitation*—an ITB, RFP, RFQ, RFQQ, CRA, SFO or an electronic posting, document or any other communication used to obtain responses for the purpose of entering into a contract.

*Solicitation for Offers (SFO)*—a solicitation for a contract that will produce revenue or other significant benefit for the university.

*University*—Louisiana State University and Agricultural and Mechanical College, located at Baton Rouge and designated as the premier flagship university for the state, an institution of the Louisiana State University System and under the supervision and management of the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College.

*University Pilot Procurement Code (UPPC)*—the rules adopted pursuant to the authority granted by R.S. 17:3139.5.5.c.i, for use by the initial qualifying institution and those institutions operating under the auspices of a shared services model managed by the qualifying institution,

in lieu of state procurement statutes when the university procures goods or services or enters other contracts.

*Used Equipment*—pre-owned or rebuilt/remanufactured/refurbished equipment that may be offered for purchase.

*Vendor*—a supplier or seller of goods or services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:542 (March 2015).

### **§307. Delegation and Revocation of Purchasing Authority to Departments**

A. Supervision. The CPO shall supervise assistants and other personnel as may be necessary for the efficient operation of university procurement.

B. Delegation. For the efficient operation of the university the CPO may delegate, in writing with the approval of the CFO or designee, to university deans, directors, or department heads, or their formally designated agents, authority to procure on behalf of their administrative units in keeping with this UPPC.

C. Compliance. The CPO will ensure where delegation or authorization to university deans, directors, or department heads, or their formally designated agents, authority to procure on behalf of their administrative units, that the UPPC, procurement procedures and ethical practices are followed to effectively mitigate potential risks to the university.

D. Revocation. The CPO may change, limit, expand or reverse such delegations at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:545 (March 2015).

## **Chapter 5. Competitive Solicitations**

### **§501. Types of Competitive Methods**

A. Determination. The CPO shall determine the appropriate solicitation methods to be used in procuring goods and services for the university. Among those methods are:

1. invitation to bid (ITB);
2. request for proposals (RFP);
3. request for quotation (RFQ);
4. request for quote and qualifications (RFQQ);
5. competitive reverse auction (CRA);
6. best and final offer (BAFO);
7. solicitation for offers (SFO);
8. competitive negotiation;

9. cooperative buying organizations (CBO);
10. multi-step bids or proposals.

B. Other Procurement Methods. Other procurement methods may be utilized where there is a written determination by the CPO and the CFO or designee that it is in the best interest of university to do so.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:545 (March 2015).

### **§503. Addenda Modifying Solicitations**

A. Modifications to ITB or RFP. An addendum modifying an ITB or RFP shall not be issued during the 72 hours excluding Saturdays, Sundays, and holidays preceding the response submission deadline unless the time for submitting responses is extended for at least one week.

B. Modifications to RFQ or RFQQ. An addendum modifying an RFQ or RFQQ shall not be issued during the 24 hours excluding Saturdays, Sundays, and postal holidays preceding the response submission deadline unless the time for submitting responses is extended for at least 24 hours.

C. Distribution of Addendum. Addendum(s) shall be sent to all prospective respondents known to have received a solicitation. Notification of addenda may also be made by posting on electronic bulletin boards, publication in appropriate newspapers and trade journals, email and postal notices to potential vendors, and by other means determined by the CPO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:545 (March 2015).

### **§505. Competitive Thresholds**

A. Procurements. Single procurements of goods or services utilized within a twelve month period estimated to cost less than \$50,000 shall be made using procedures determined by the CPO. Procurement of goods and services utilized within a 12-month period estimated to cost in excess of \$50,000 or an amount as determined by the management board to be in the best interest of the university or to offset volatile economic conditions shall be made using the competitive methods set forth by the CPO unless exempt elsewhere in this UPPC.

B. Information Technology. Single procurements of information technology software, installation, license, modifications, integration, training, hosted software, software subscriptions, support, etc. and hardware/software maintenance estimated to cost less than \$100,000 during a 12-month period shall be made using procedures determined by the CPO. Procurement of information technology software and hardware/software maintenance estimated to cost in excess of \$100,000 or an amount as determined by

the management board to be in the best interest of the university or to offset volatile economic conditions during a 12 month period shall be made using the competitive methods set forth by the CPO unless exempt elsewhere in this UPPC.

C. Professional Services. Procurements of professional services shall be made using procedures determined by the CPO. These include services that are rendered by an independent contractor who has a professed knowledge of some department of learning or science used in practical applications to the affairs of others or in the practice of an art founded on it, which independent contractors shall include and not be limited to lawyers, doctors, dentists, psychologists, advance practice nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, claims adjusters, pharmacists, visiting professors and scientists.

D. Specialty Services by Individuals. Procurement of services rendered by individuals which require the use of graphic artists, sculptors, musicians, entertainers, photographers, and writers or which require the use of highly technical or unique individual skills or talents, such as, but not limited to, paramedics, therapists, handwriting analysts, foreign representatives, expert speakers, trainers within a continuing education program and expert witnesses for adjudications or other court proceedings shall be made using procedures determined by the CPO.

E. Artificial Division. Under no circumstances may a procurement requirement be artificially divided so as to avoid the application of competitive thresholds under this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:545 (March 2015).

### **§507. Procurement of Insurance and Related Services**

A. Contracts for Insurance. Contracts entered into by the university for the purchase of insurance or for obtaining services related to the operation of an insurance program shall be awarded in accordance with the provisions of this UPPC. Determination of the appropriate competitive method shall be made by the CPO.

B. The university shall contract for consulting services with one or more licensed insurance producers. Such contract(s) may authorize one or more producers to advise the university regarding the insurance program and to procure insurance on behalf of the university.

C. System-Wide Programs of Self-Insurance. Unless specifically authorized in advance, in writing, by the CEO or president for the university system governed by the management board, the provisions of this section shall not apply to any procurement related to any system-wide program of self-insurance or any other system-wide insurance or other employment benefit related programs.

D. Splitting of Commissions Prohibited. It shall be unlawful for an agent to split, pass on, or share with any person, group, organization, or other agent, except the university, all or any portion of the commission derived from the sale of insurance to the university; except that on policies involving properties or exposure in more than one geographic area of the state, said commission may be split, shared, or passed on if authorized in writing by the CPO. In any such instance where the sharing of a commission on university insurance is authorized, it shall be only with a bona fide insurance agent.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:546 (March 2015).

### §509. Specifications

A. Nonrestrictive Specifications. Specifications shall be developed in a manner which is most likely to result in the broadest possible competition while securing quality goods and services which meet the needs and expectations of the university. To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repairs items where two or more design, functional, or performance criteria will satisfactorily meet the university's requirements.

B. Proprietary Specifications. Proprietary specifications may be used only pursuant to the written approval of the CPO upon a determination that such use is in the best interest of the university.

C. Use of Existing Specification. If a specification for a common or general use item has been developed and adopted in accordance with university standards or a qualified products list has been developed and adopted in accordance with university standards for a particular supply, service, or major repair item, or need, it shall be used unless the CPO makes a written determination that its use is not in the university's best interest.

D. Bid or Performance Guaranty. Solicitations may include requirements for bid and/or performance guaranty.

1. Bid Guaranty. When specified in the solicitation for bids or advertisement for bids, a bond or certified check, made payable to the university, in the amount and in accordance with the specifications in the solicitation for bids, must accompany each bid.

2. Performance Bond. When required, the successful bidder must furnish a satisfactory bond of a surety company licensed to do business in Louisiana with all fees current, made payable to the university in a sum equal to the amount and in accordance with the specifications in the solicitation for bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and

Mechanical College, Office of Procurement and Property Management, LR 41:546 (March 2015).

### §511. Public Notice for Procurements; Submission Deadline

A. Public Notification. Public notification of solicitations for bids/proposals/offers/auctions/quotations shall be made through a centralized electronic interactive environment. The notice for each solicitation shall contain the name, address, email address and telephone number of the university contact person from whom detailed information may be obtained, shall describe the goods or services sought, and shall designate the forms to be used and the date, time and place for the receipt of bids/proposals/offers/auctions/quotations.

B. Time for Reasonable Notification. Notification of a solicitation shall allow a reasonable time for responses given the nature and complexity of the solicitation. Notification of solicitations may also be made by posting on electronic bulletin boards, publication in appropriate newspapers and trade journals, email and postal notices to potential vendors, and by other means determined by the CPO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:546 (March 2015), amended LR 41:1119 (June 2015).

### §515. Receipt and Recording of Responses

A. Receipt of Solicitation Response. Responses to solicitations shall be received in the manner specified including receipt by mail, direct delivery, or through any secure electronic interactive environment permitted pursuant to the Louisiana Uniform Electronic Transaction Act.

B. Designated Place of Response. A response received at the designated place after the submission deadline shall not be considered whether delayed in transmission or for any cause whatsoever. In no case will late responses be considered.

C. Response Time. Responses to solicitations must be received at the time and place and in the format prescribed in the solicitation.

D. Delay of Response. If a receipt of a response is delayed by action of the university and this delay prejudices a respondent, the university shall cancel and reissue the solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:546 (March 2015).

### §517. Bid Submission Authority for Sealed Bids

A. Evidence of agency, corporate, or partnership authority may be required for submission of a bid to the university based on the type and complexity of the



solicitation. If so required, the authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the following conditions are met.

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

2. The signature on the bid is that of an authorized representative of the corporation, partnership, or other legal entity and the bid is accompanied by a corporate resolution, certification as to the corporate principal, or other documents indicating authority which are acceptable to the public entity.

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

B. Bids Binding. Unless otherwise specified all bids shall be binding for a minimum of 30 days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the university may award to this bidder after this period has expired or the period as specified in the bid.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:547 (March 2015).

### **§519. Mistakes in Responses**

A. Errors in Responses. Patent errors in responses to solicitations supported by clear and convincing evidence may be corrected by the university or may be withdrawn, if such correction or withdrawal does not prejudice other respondents and such actions may be taken.

B. Minor Informalities. Minor informalities are a matter of form rather than substance which are evident from the solicitation documents or insignificant mistakes that can be waived or corrected without prejudice to other respondents. The CPO may waive such informalities or allow the respondent to correct them depending on which is in the best interest of the university.

C. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid may be corrected to the intended bid and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors. When an error is made in extending total prices, the unit bid price will

govern. Under no circumstances will a unit bid price be altered or corrected.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:547 (March 2015).

### **§521. Cancellation of Solicitations**

A. Cancellation of Solicitation. A solicitation may be cancelled, prior to execution of a contract, by the CPO at any time when it is deemed in the best interest of the university.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:547 (March 2015).

### **§523. Withdrawal of Bids or Proposals**

A. Withdrawal of Bid or Proposal. A bid or proposal which contains a patently obvious, unintentional and substantial mechanical, clerical or mathematical error or unintentionally omits a substantial quantity of goods or services called for in the solicitation may be withdrawn by the respondent if clear and convincing sworn, written evidence of such error or omission is furnished to the university prior to award.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:547 (March 2015).

### **§525. Exceptions to the Competitive Solicitation Process**

A. Exceptions. Exceptions to the competitive solicitation processes, when deemed in the best interest of the university, as the following, but not limited to:

1. equipment or vehicle repairs and repair parts from an authorized dealer or original equipment manufacturer;
2. equipment moves by the original equipment manufacturer or authorized dealer to ensure equipment operation to original equipment manufacturer specifications, calibration, warranty, etc.;
3. vehicle body repairs covered by insurance recovery and in accordance with insurance requirements;
4. livestock procured at public auction;
5. livestock sperm and ova;
6. working class animals trained to perform special tasks, including, but not limited to, narcotics detection, bomb detection, arson investigation and rescue techniques;
7. publications and/or copyrighted materials procured directly from the publisher or copyright holder;

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8. publications and/or copyrighted materials procured by libraries or text rental stores from either subscription services or wholesale dealers which distribute for publishers and/or copyright holders;

9. publications of articles, manuscripts, etc. in professional scientific, research, or educational journals/media and/or the procurement of reprints;

10. royalties and license fees for use rights to intellectual property, such as, but not limited to: patents, trademarks, service marks, copyrights, music, artistic works, trade secrets, industrial designs, domain names, etc.;

11. public utilities and services provided by local governments;

12. prosthetic devices, implantable devices and devices for physical restoration;

13. educational training and related resources used to enhance the performance of university employees and good standing of state agencies, including memberships in and accreditations by professional societies and organizations;

14. materials, supplies, exhibitor fees and exhibit booths for conferences, seminars and workshops or similar events (business, educational, promotional activities) which enhance economic development or further the university's mission, duties and/or functions, with the approval of the CPO or equivalent;

15. food, material and supplies for teaching and training where procuring, preparing and serving of food are part of the prescribed course;

16. shipping charges and associated overseas screening and broker fees between international and domestic origins and destinations;

17. parcel services, including but not limited to Federal Express, United Parcel services, Airborne Express and Express Mail;

18. advertising where the CPO certifies that specific media is required to reach target audiences;

19. scientific and laboratory supplies, equipment and services for scientific research when procured by the university for laboratory, educational or scientific research; not to exceed \$50,000 per transaction;

20. procurement or rental of mailing lists;

21. art exhibitions, rentals and/or loan agreements and associated costs of curatorial fees, transportation and installation;

22. instructors for continuing education courses taught on an as-needed basis;

23. procurement of services from subcontractors named in federal, state and private sponsored agreements when the grant award is received in which a portion of the services is subcontracted;

24. services paid for with federal funds provided specifically for such purposes;

25. used equipment and antique procurements;

26. Office of State Purchasing contracts or state master agreements;

27. procurements from GSA contract schedules;

28. intergovernmental or interagency contracts;

29. procurement of items for resale;

30. renewal of document storage facilities;

31. dues, registrations and membership fees;

32. analysis of research specimens necessary to preserve continuity of science;

33. goods or services purchased in foreign countries;

34. contracts for employee benefit plans as authorized by law;

35. client services;

36. procurements not exceeding the amounts established by the management board may be made in accordance with small purchase procedures, except that procurement requirements shall not be artificially divided so as to constitute a small purchase;

37. web-based or subscription services;

38. services provided by expert witnesses;

39. renewal of termite service contracts.

B. Emergency Procurements. Emergency procurements shall be made using the most competitive process available consistent with the need for responding to the emergency. Reasonable efforts under the circumstances shall be made to obtain quotations from three or more vendors when goods or services are to be purchased on an emergency basis. Emergency procurement shall be limited to only those goods and services necessary to meet the emergency.

### C. Cooperative Purchasing Agreements

1. The CPO may approve a single purchase or approve ongoing participation in a cooperative purchasing agreement as a University-wide price agreement. The CPO has the final authority to approve the university's participation in cooperative purchasing agreements.

2. If it is in the best interests of the university after considering:

a. the competitiveness of pricing under the contract;

b. the competitiveness of the solicitation and award process;

c. the efficiencies and cost savings of using the contract.

3. The university may participate in, conduct, sponsor or administer a cooperative purchasing agreement.

4. A report of all group purchasing or cooperative purchasing contracts by each institution authorized under these provisions shall be provided to the Joint Legislative

Committee on the Budget no later than 90 days after the end of each fiscal year. Such report shall, at a minimum, include a measurement of the savings derived from the utilization of the group purchasing or cooperative purchasing process.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:547 (March 2015).

## Chapter 6. Reverse Auctions

### §603. Application

A. Where the university utilizes the reverse auction process on behalf of a single institution, the CPO shall:

1. determine it is in the best interest of the university to use electronic online bidding;
2. determine specifications and terms and conditions for the procurement.

B. When applicable, prequalified products for a particular solicitation shall be announced seven days prior to the beginning of the auction.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:548 (March 2015).

### §605. Addenda Modifying a Reverse Auction

A. It is the responsibility of the bidder to obtain any solicitation amendment(s) if the solicitation and addenda are posted on an electronic internet-based system for posting bid opportunities.

B. An addendum modifying a reverse auction shall not be issued during the 72 hours excluding Saturdays, Sundays, and postal holidays preceding the opening date and time unless the opening date and time is extended for at least one week.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:549 (March 2015).

### §615. Public Viewing of Auction Event

A. The public may view the internet auction event which will be conducted such that the names of the bidders will not be disclosed until after the completion of the auction, at which time the event record will be available to the public.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:549 (March 2015).

## Chapter 7. Veterans and Small Entrepreneurships

### §701. Initiatives for Veterans and Small Entrepreneurships

A. Hudson and Veterans' Initiatives. Procurement procedures shall establish the means for implementation of the Hudson and Veterans' Initiatives as required by R.S. 39:2001-2008 and R.S. 39:2171-2179 respectively. Whenever deemed by the CPO as in the best interests of the university, solicitations may include reserved points potential respondents certified as small and emerging business (R.S. 51:941), or a small entrepreneurship (R.S. 39:2006) or a veteran or service-connected disabled veteran-owned small entrepreneurship (R.S. 39:21).

B. The CPO may waive the requirement of obtaining three or more quotes when purchases do not exceed \$50,000 per transaction from a small entrepreneurship certified under either the Hudson or Veteran Initiative when price is determined to be reasonable, in their sole discretion.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:549 (March 2015).

## Chapter 9. Revenue Generating Solicitations and Contracts

### §901. Revenue Generating Contracts

A. Solicitations. Contracts or franchises by the university which will generate income or other significant benefit for the university and which will result in an exclusive right for the contracting party to provide goods or services, using university facilities, personnel or services shall be awarded by the use of an open competitive process which is approved by the CPO and the CFO or designee and consistent with management board policies. Such competitive process shall allow reasonable time for potential respondents to prepare responses given the nature and complexity of the responses solicited.

B. Exception to Competition. When it is determined by the CPO, with the written concurrence of the CFO or designee, consistent with established management board policies, that circumstances support the award of a revenue generating contract without competition, such a contract may be entered. Contracts by which services produced by the university are made available to entities outside the university need not be competitively awarded but shall be made on a basis that assures the recovery of costs associated with providing those services and a reasonable return to the university. Such contracts shall be structured in a manner which enhances opportunities for instruction, research, public service and other objectives of the university.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:549 (March 2015).

## Chapter 11. Contracts with University or State Employees

### §1103. Contracts with University or State Employees

A. Faculty of Other Universities. Contracts between the issuing university and a faculty member of any other university shall be subject to the policies and procedures promulgated by each respective university and the management boards having authority over the respective institution of higher education where the faculty member is employed. Such agreement shall be subject to the written approval of the chancellor of the university which employs the faculty member, and written notification of the agreement and approval shall be provided to the appropriate management board.

B. Faculty or Staff of the University. Contracts between university and any of its own employees, or between university and any other employee of the State of Louisiana or any of its political subdivisions, shall be consistent with the *Louisiana Code of Governmental Ethics*, the *Code of Ethics* for procurement as defined in LAC 34:XIII.Chapter 23, Civil Service rules, other applicable laws and regulations, and established management board policies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:549 (March 2015).

## Chapter 13. Evaluation and Award of Competitive Solicitations

### §1302. Evaluation and Award

A. Responses. Responses to solicitations shall be evaluated in keeping with the criteria, specifications, terms and conditions set forth in the solicitation.

B. Lowest Cost. Unless otherwise specified in the solicitation an award based on a solicitation shall be to the responsible respondent whose bid is responsive to the terms, conditions and specifications and which offers the lowest cost to the university.

C. Highest Score. An award based upon an RFP shall be to the responsible respondent whose proposal was scored highest by an evaluation team based on the weighted criteria set forth in the RFP after completion of all steps of the evaluation process set forth in the RFP, taking into consideration price and the evaluation factors set forth in the RFP.

D. Greatest Return. The award based on an SFO which results in an exclusive right or franchise for the use of university facilities or services shall be made to the

respondent that meets the terms and conditions of the solicitation and offers the greatest return to the university.

E. Notice. Written notice of the award of a contract shall be provided to all respondents requesting such notice and shall be made a part of the procurement file.

F. Tie Bids. Tie bids occur when responsive bids from responsible respondents are identical in price and meet all requirements and criteria set forth in the solicitation and are susceptible of award. When there is a tie between an out-of-state and Louisiana respondent, preference will be given to the Louisiana respondent. The CPO shall make an award when tie bids are received in any manner that will discourage tie bids. A written determination justifying the manner of award must be made.

G. Subsequent Award. In the event any contractor fails to fulfill or comply with the terms of any contract, the CPO may award the contract to the next lowest responsible respondent to the solicitation which resulted in the contract, subject to acceptance by that respondent, and may hold the defaulting contractor responsible for the difference in cost.

H. Independent Price Determination. Every solicitation shall provide that by submitting a bid or offer, the respondent certifies that the price submitted was independently arrived at without collusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:549 (March 2015).

### §1305. Right to Reject

A. Rejection. The university reserves the right to reject any or all responses to a solicitation in whole or in part and to award by items, parts of items or by any group of items specified. Also, the right is reserved to waive any technical defects when the best interest of the university will be served.

B. The university reserves the right to reject any or all responses to a solicitation from respondents that are an entity, or are principal individuals within an entity, which has been convicted of a felony or any misdemeanor involving moral turpitude.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:550 (March 2015).

### §1307. Responsibility of Bidders and Proposers

A. A reasonable inquiry to determine the responsibility of a bidder or proposer may be conducted. The unreasonable failure of a bidder or proposer promptly to supply information in connection with such an inquiry may be grounds for a determination of non-responsibility with respect to such bidder or proposer.

B. Whenever the CPO proposes to disqualify the lowest bidder, the university shall:

1. give written notice of the proposed disqualification to such bidder and include all reasons for the proposed disqualification;
2. give such bidder who is proposed to be disqualified, a reasonable opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

C. Except as otherwise provided by law, information furnished by a proposer pursuant to this Section may not be disclosed outside of the university without prior written consent of notice to the proposer.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:550 (March 2015).

## Chapter 15. Disputes and Contract Controversies

### §1503. Dispute Resolution

A. Authority of CPO. The CPO is authorized to resolve protests and contract controversies. Detailed procedures will be regarding calculation of deadline dates, methods of transmitting protests and contract controversies, and similar administrative matters.

#### B. Protests

1. All protests to a solicitation shall be filed in writing with the CPO no later than three days prior to the response submission deadline, excluding Saturdays, Sundays, and postal holidays. All protests to the award of a contract shall be filed with the CPO no later than seven days after the issuance of the notification of award.

2. The CPO shall render a written decision regarding a protest within 14 days, excluding Saturdays, Sundays, and postal holidays after receipt of the protest and any subsequently submitted information. A written decision shall be furnished to the aggrieved party and other interested parties.

3. In the event of a timely protest relating to a solicitation or the award of a contract, university shall not proceed with the solicitation or the award of a contract unless the CPO makes a written determination that the award of the contract without delay is necessary to protect substantial interests of the university.

4. Protest Bonds. Bonds may be required, and must have been included in the solicitation, when the university determines that the harm from delay of implementation of a contract could adversely affect the operations of the university.

#### C. Contract Controversies

1. All contract controversies shall be filed with the CPO no later than seven days after either the termination of the contract or the event giving rise to the controversy, whichever is later.

2. The CPO shall render a written decision regarding a contract controversy within seven days, excluding Saturdays, Sundays and postal holidays. After all parties to the controversy have had a reasonable opportunity to state in writing their position on the issues involved and their responses to the positions of other parties to the controversy, a written decision shall be furnished to the contractor.

D. Hearing. If the CPO determines that the issues involved in a protest or contract controversy are complex, obscure or would best be evaluated based on the testimony of the parties or others, the CPO may extend the relevant time periods or call for a hearing at which evidence may be received, a record created and a decision rendered by an independent hearing officer designated by the CPO. All interested parties shall be allowed to fully participate in such a hearing.

E. Decision of CPO. A decision of the CPO or a designated hearing officer regarding a protest or a contract controversy is final and conclusive except when:

1. the person or entity adversely affected has filed an appeal as provided in this Section.

F. Appeal. Any person or entity aggrieved by the decision of the CPO or hearing officer regarding a protest or a contract controversy may appeal the decision to the CFO or designee within seven days of receipt of the written decision. Review by the CFO or designee of the decision of the CPO or hearing officer shall be based on documents submitted by the CPO and the person or entity aggrieved by the decision or, if a hearing was conducted, upon the record created from the hearing.

G. Final Administrative Determination. The decision of the CFO or designee regarding an appeal brought under LAC 34:XIII.1503.F may not be appealed. The decision of the CEO or designee shall constitute the final administrative determination regarding the protest or contract controversy.

H. Judicial Review. Any person or entity adversely affected by the final administrative determination regarding a protest or contract controversy may seek judicial review of the administrative determination in the Nineteenth Judicial District Court in East Baton Rouge Parish, which review shall be based on the record compiled at the administrative level.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:550 (March 2015).

### §1507. Damages

A. Protest Damages. The CPO, or designee, any hearing officer, and any court properly hearing any matter arising out of any protest may award damages to the aggrieved party

when the protest brought by such aggrieved party is sustained and the aggrieved party should have been awarded the contract but was not. Such damages shall be limited exclusively to reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees.

B. Contract Damages. The CPO, or designee, any hearing officer, and any court properly hearing any matter arising out of any contract controversy may award damages to the contractor when the contract controversy brought by such contractor is sustained. Such damages shall be limited exclusively to the actual expenses reasonably incurred in performance of the contract.

C. Administrative Costs. Any administrative determination of costs or expenses recoverable pursuant to this section shall be final, subject to the discretionary review of the management board.

D. Limitations. In no event shall damages awarded by the CPO, or designee, any hearing officer, the CEO, or designee, or any court include attorney fees or any incidental, indirect, special, or consequential damages, including but not limited to loss of use, revenue or profit, whether reasonably certain or not.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:551 (March 2015).

## Chapter 16. Inspection and Audit of Records

### §1601. Right to Inspect

A. The university may, at reasonable times, inspect the 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 university.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:551 (March 2015).

### §1603. Right to Audit Records

A. Audit of Persons Submitting Cost or Pricing Data. The university may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data to the extent that such books and records relate to such cost or pricing data.

B. Contract Audit. The university shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five years from the date of

final payment under the prime contract and by the subcontractor for a period of five years from the date of final payment under the subcontract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:551 (March 2015).

## Chapter 17. Judicial Review of Administrative Determinations

### §1702. Venue for Actions by or against the University in Connection with Procurement

A. Solicitation and Award of Contracts. The Nineteenth Judicial District Court shall have exclusive venue over an action between the university 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. Such actions shall extend to all kinds of actions, whether for monetary damages or for declaratory, injunctive, or other equitable relief.

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

C. Actions under Contracts or for Breach of Contract. The Nineteenth Judicial District Court shall have exclusive venue over an action between the university and a contractor who contracts with the university, for any cause of action which arises under or by virtue of the contract, whether the action is on the contract or for a breach of the contract or whether the action is for declaratory, injunctive, or other equitable relief.

D. Finality for Administrative Determinations. In any judicial action under this section, factual or legal determinations by employees, agents, or other persons appointed by the university shall be final and conclusive unless they are clearly erroneous, arbitrary, capricious or contrary to law. Administrative decisions will be made pursuant to LAC 34:XIII.Chapter 15 and LAC 34:XIII.Chapter 21 unless the decision is fraudulent or the person or entity adversely affected by the decision has timely appealed administratively or judicially.

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

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:551 (March 2015).

## Chapter 19. Contracts

### §1902. Contract Clauses; Administration

A. Required Contract Clauses. Clauses providing for the following requirements may be included in contracts, except upon a written determination by the CPO, approved in writing by the CFO or designee that the interests of university are best served by omitting the clause. The interest of the university that may include the following:

1. termination of the contract for default;
2. the right to suspend or terminate a contract based on the absence of budgeted funds for the acquisition of goods or services;
3. prohibiting illegal discrimination by the contractor;
4. requiring that Louisiana law shall apply to all disputes, and that venue for any actions brought against university arising out of the contract shall be only in the Nineteenth Judicial District Court in East Baton Rouge Parish;
5. liquidated damages as appropriate;
6. specified reasons for delay or nonperformance;
7. termination of the contract in whole or in part for the convenience of the university;
8. for cost reimbursement-based contracts, an itemized budget;
9. a description of reports or other deliverables to be received, when applicable;
10. a schedule when reports or other deliverables are to be received, when applicable;
11. responsibility for payment of taxes, when applicable;
12. assignability of the contract or rights to payments under the contract;
13. indemnification;
14. payment terms in accordance to R.S. 13:4202(B) for the applicable time period.

B. Required Contract Clauses. Clauses providing for the following requirement shall be included in contracts.

1. All contracts will contain audit language to comply with R.S. 39:1629.1.

C. Contract Clauses. May permit or require the inclusion of clauses providing for appropriate equitable adjustments in prices, time for performance, or other contract provisions.

D. Documentation. If it is determined by the university that additional evidence of the validity of a claim for payment is required, such evidence shall be requested within 10 days, excluding Saturdays, Sundays and postal holidays from the receipt of the bill. In instances where additional evidence is required, the bill shall be reviewed and payment or rejection made within 30 days from receipt of the evidence requested by the university.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:552 (March 2015), amended LR 41:1120 (June 2015).

### §1904. Participation by Respondent Constitutes Consent

A. Express Consent. Participation by a respondent in any procurement process governed by this UPPC shall constitute express consent to the procedures, limitations, and other terms and conditions contained in this UPPC.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

**HISTORICAL NOTE:** Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:552 (March 2015).

### §1906. Multiyear Contracts

A. Term. Except as otherwise provided in this section, no contract for goods or services may be entered into for periods of more than ten years. Payment and performance obligations for fiscal years after the initial year shall be subject to the availability and appropriation of funds therefor. No contract shall be entered into for more than one year unless the length of the contract was clearly stated in the specifications included in the solicitation. With respect to all multiyear contracts, there shall be no provisions for a penalty to the university for the cancellation or early payment of the contract.

B. Sponsored Agreements or Joint Agreements. Contracts or amendments to existing or future agreements or amendments issued under the authority of sponsored agreements or joint agreements between the Board of Regents and federal agencies for research, educational, or infrastructure development activities, and contracts or amendments to existing contracts issued by university under the authority of sponsored agreements or joint agreements issued by federal agencies or private sponsored agreements, may be entered into for a period corresponding to the performance period of the contract or agreement.

C. Capital Investments/Gifts. A nonexclusive contract with a vendor who has made a gift to the university of equipment utilized for promoting products and university activities at a substantial cost to the vendor, and which covers products for resale within the institution, may be entered into for a period not to exceed 10 years.

D. Term of Revenue Generating Contracts. Nothing in this Section shall limit the term of revenue generating contracts.

E. Exceptions. Notwithstanding the limitations set forth in this section, contracts of any type may be entered into for a longer term upon the express authorization of the management board, based on the written recommendation of the CPO and the chancellor that:

1. estimated, requirements cover the period of the contract and are reasonably firm and continuing; and

2. such a contract will serve the best interests of the university by encouraging effective competition or otherwise promoting economies in university procurement, which recommendation shall also state the estimated savings to be obtained by entering into a multiyear contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:552 (March 2015).

## Chapter 21. Respondent and Contractor Relations

### §2103. Contractor Communications

A. Registry. The business must be registered with the Louisiana Secretary of State's office.

B. Product Demonstrations. Potential respondents seeking to provide product demonstrations, presentations or exhibits to university personnel shall first request authorization to do so in writing to the CPO.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:553 (March 2015).

### §2105. Suspension Pending Debarment Investigation

A. Suspension. The CPO may issue a written determination to suspend a person or entity from doing business with the university pending an investigation to determine whether cause exists for debarment pursuant to *University Pilot Procurement Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:553 (March 2015).

### §2107. Debarment

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the CPO shall have authority to debar a person from consideration for the award of contracts. The decision to debar shall be based upon substantial evidence that a cause

for debarment or suspension under subsection B has occurred. In making the decision of whether to debar a person, the CPO shall take into consideration the seriousness of any violation and any mitigating factors. The CPO may suspend a person from consideration for an award of contracts for a period of up to three months if there is probable cause for debarment.

B. Causes. A person or entity may be debarred from further participation in contracts with the university on any of the following grounds:

1. conviction of the person or entity, or any of its officers, directors, principals, or key employees, of a criminal offense related to obtaining or attempting to obtain a contract with the university or the performance of a contract with the university;

2. conviction of the person or entity, or any of its officers, directors, principals, or key employees, of a criminal offense related to fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, or receiving stolen property, or any other offense involving moral turpitude;

3. conviction, or a civil finding of liability, of the person or entity or any of its officers, directors, principals, or key employees, of an offense under antitrust statutes of the United States, Louisiana, or any other state, for activities arising out of the submission of bids or proposals;

4. failure to perform in accordance with the terms of one or more contracts following notice of such failure, or a repeated failure to perform or of unsatisfactory performance of one or more contracts;

5. the person or entity is currently under debarment by any other government entity based upon a settlement, agreement or a final administrative or judicial determination issued by a federal, state or local governmental entity;

6. violation of any federal or state law regulating campaign contributions;

7. violations of any federal or state environmental law;

8. violation of any federal or state law regulating hours of labor, minimum wage standards or prevailing wage standards; discrimination in wages; or child labor violations;

9. violation of the Workers' Compensation Act;

10. violation of any federal or state law prohibiting discrimination in employment;

11. three or more occurrences where a person has been declared ineligible for a contract;

12. unsatisfactory performance, including, but not limited to, any of the following:

a. failure to comply with terms of a state or university contract or subcontract, including, but not limited to: willful failure to perform in accordance with the terms of one or more contracts, a history of failure to perform or unsatisfactory performance of one or more contracts;



- b. failure to complete the work in the time frame specified in the contract;
- c. being declared in default on prior work or project;
- d. failure to submit documents, information or forms as required by contract;
- e. making false statements or failing to provide information or otherwise to cooperate with the university, contracting agency, or other state authorities;
- f. discrimination in violation of laws or regulations in the conduct of business as a contractor;

13. any other act or omission indicating a lack of skill, ability, capacity, quality control, business integrity or business honesty that seriously and directly affects the present responsibility of a person as determined by the purchasing agency.

C. Hearing. When the CPO determines that a person or entity may have engaged in activities which are cause for debarment, a hearing shall be conducted by an independent hearing officer, designated by the CPO, in which evidence is received and a record created. The hearing officer shall issue a decision, including findings of fact and conclusions, based on the evidence produced in the hearing.

D. Effect. If the decision is to debar, the decision shall state the debarment period and inform the person or entity that no person representing the debarred person or entity during the debarment period may conduct business with the university and that any response to a solicitation received from the debarred person or entity during the debarment period will not be considered.

E. Administrative Review. A decision by the hearing officer to debar a person or entity may be appealed to the CFO or designee within seven days of receipt of the written decision on debarment. The CFO's review shall be based on the record created from the hearing.

F. Appeal. The decision of the CFO or designee may be appealed within seven days, excluding Saturdays, Sundays and postal holidays, after receipt of the decision of the CFO or designee to the chancellor. The decision of the chancellor shall constitute the final administrative determination regarding the debarment. The person or entity debarred may seek judicial review of the administrative determination in pursuant to the provisions of LAC 34: XIII. Chapter 15, which review shall be based on the record compiled at the administrative level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:553 (March 2015).

## Chapter 23. Ethics

### §2303. Integrity in Procurements

A. *Code of Ethics* and Ex Parte Communications. All parties involved in the procurement process, contract administration or contract performance are bound to act responsibly, fairly and in good faith. Any person acting for the university in the procurement process shall be held to the highest degree of integrity, honesty and trust and shall be bound by the *Louisiana Code of Governmental Ethics*, R.S. 49:1101 and the *Code of Ethics* for procurement which are in addition to applicable state laws, as follows:

1. give first consideration to the mission and policies of the university and the laws of the State of Louisiana;
2. strive to obtain maximum value for each dollar spent;
3. decline all personal gifts or gratuities;
4. grant equal consideration to all competitive suppliers;
5. believe in the dignity and worth of the service rendered by the Procurement Office, and the responsibilities assumed as trusted public servants;
6. conduct business with potential and current suppliers in good faith, devoid of intentional misrepresentation;
7. demand honesty in sales representation whether offered through the medium of a verbal, electronic or written statement, an advertisement, or a sample of the product;
8. receive the consent of originators of proprietary ideas and designs before using them for competitive purchasing purposes;
9. make every reasonable effort to negotiate an equitable and mutually agreeable settlement of any controversy with a supplier; and/or be willing to resolve major controversies, pursuant to the established policies of the university;
10. accord a prompt and courteous reception to all who call on legitimate business missions;
11. cooperate with trade, industrial and professional associations, and with governmental and private agencies for the purposes of promoting and developing sound business methods;
12. foster fair, ethical and legal trade practices;
13. identify and eliminate participation of any individual in operational situations where a conflict of interest may be involved;
14. resist encroachment on control of personnel in order to preserve integrity as procurement professional; seek or dispense no personal favors;
15. handle each procurement problem objectively and empathetically, without discrimination;

16. support the professional aims and objectives of the National Institute of Governmental Purchasing, Inc. and the National Association of Educational Procurement.

B. Procurement procedures shall provide for restrictions on ex parte communications which are appropriate to the circumstances.

C. Conflicts of Interest. In addition to the limitations of Subsection A of this Section, if the CPO has reason to believe that a conflict of interest may exist for university procurement or contract administration personnel, the CPO shall direct the parties involved to take appropriate steps to eliminate an actual, perceived, or potential conflict of interest and shall monitor compliance with these steps.

D. Collusion. When collusion is suspected among respondents to a solicitation, a written notice of the relevant facts shall be transmitted to the district attorney for the parish in which university is domiciled, the attorney general and the inspector general for investigation. All documents involved in any procurement in which collusion is suspected shall be retained for a minimum of six years or until the district attorney for the parish in which university is domiciled, the attorney general and inspector general give written notice that they may be destroyed, whichever period is longer. All retained documents shall be made available to the district attorney for the parish in which university is domiciled, the attorney general and inspector general or their designees upon request.

E. Limitations on Consultants Competing for Contracts. Any person or entity, and any parent or subsidiary business entity of any entity contracting with university for the purposes of developing an ITB, RFP, or any other type of solicitation related to a specific procurement shall be prohibited from bidding, proposing, or otherwise competing for award of that procurement. Such persons or entities shall also be prohibited from participating as subcontractors related to performance of a contract resulting from that procurement. For purposes of this Section, the following

activities shall not be considered developing an ITB, RFP, or any other type of solicitation:

1. architectural and engineering programming;
2. master planning;
3. budgeting;
4. feasibility analysis;
5. constructability review;
6. furnishing specification data or other product information;
7. any other services that do not establish selection qualifications or evaluation criteria for the procurement of an architect or engineer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:554 (March 2015).

## **Chapter 25. Management Board Authority**

### **§2503. Management Board Policies not Superseded**

A. Special Policies and Provisions of Management Board. Nothing in this UPPC shall abridge any policies and provisions established by a management board, through its bylaws or regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3139-3139.7 as amended by Act 749 of 2014.

HISTORICAL NOTE: Promulgated by the Board of Supervisors of Louisiana State University and Agricultural and Mechanical College, Office of Procurement and Property Management, LR 41:555 (March 2015).