APPENDIX G

Chapter 17, Louisiana Procurement Code

State of Louisiana

Certification Checklist

Prepared by

LOUISIANA
Office of
COMMUNITY
DEVELOPMENT

PROCUREMENT CODE (R.S.39:1551...)

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LOUISIANA REVISED STATUTES 39

CHAPTER 17.
LOUISIANA PROCUREMENT CODE

PART I. GENERAL PROVISIONS

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

§ 1551. Short title

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

§ 1552. Purposes; rules of construction

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

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

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

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

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

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

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

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

§ 1553. Construction

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

B. Obligation of good faith. Every contract or duty within this Chapter imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned

and the observance of reasonable commercial standards of fair dealing.

§ 1554. Application of this Chapter

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

B. Application to state procurement. Except as provided in Subsections C and D below, this Chapter shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies except as otherwise specified in Subsection F below, by this state, acting through a governmental body defined herein, under any contract for supplies, services, or major repairs defined herein, except that this Chapter shall not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in Part VII (Intergovernmental Relations). Notwithstanding any other provision of this Chapter, the provisions of R.S. 38:2181 through R.S. 38:2316 shall govern the procurement of construction and the selection of architects, engineers, and landscape architects by governmental bodies of this state, and R.S. 38:2181 through R.S. 38:2316 shall not apply to any procurement of supplies, services, or major repairs by the state except that the provisions of R.S. 38:2301 shall be applicable to major repairs.

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

D. Exclusions.

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

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

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

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

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

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

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

(4) This Chapter shall not be applicable to any hospital owned or operated by the state through the Department of Health and Hospitals for the purchase of supplies, materials, and equipment from a qualified group purchasing organization if the Department of Health and Hospitals, with the concurrence of the division of administration, has determined that the cost is less than the state procurement prices, and that it is in the best interest of the state to purchase the supplies, materials, and equipment from the qualified group purchasing

organization.

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

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

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

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

(2) Additionally, all political subdivisions which are not subject to this Chapter may adopt the provisions of R.S. 39:1598.1 and its accompany regulations.

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

G. Applicable to Department of Public Safety and Corrections.

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

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

(a) The used agricultural and industrial equipment shall be purchased by the secretary within the price range set by the director of state purchasing in his statement of written approval for the purchase which must be obtained by the secretary prior to purchase.

(b) The secretary shall certify in writing to the director of state purchasing all of the following:

(I) The price for which the used equipment may be obtained.

(ii) The plan for maintenance and repair of the equipment and the cost thereof.

(iii) The savings that will accrue to the state because of the purchase of the used equipment.

(iv) 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.

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

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

§ 1554.1. Federal block grants

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

SUBPART B.
DEFINITIONS

§ 1556. Definitions

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

(1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

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

(3) "Chief procurement officer" means the state director of purchasing and the directors of purchasing of the departments exempt from central purchasing by R.S. 39:1572.

(4) "Contract" means all types of state agreements, regardless of what they may be called, for the purchase of supplies, services, or major repairs. It includes awards and notices of award; contracts of a fixed-

price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.

(5) "Contract modification" means 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.

(6) "Contractor" means any person having a contract with a governmental body.

(7) "Data" means recorded information, regardless of form or characteristic.

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

(9) "Designee" means a duly authorized representative of a person holding a superior position.

(10) "Governmental body" means any department, office, division, commission, council, board, bureau, committee, institution, agency, government corporation, or other establishment or official of the executive or judicial branches of state government.

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

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

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

(14) "May" denotes the permissive.

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

(16) "Practicable" means that which can be done or put into practice; feasible.

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

(18) "Procurement officer" means any person authorized by a governmental body, in accordance with procedures prescribed by regulations, to enter into and administer contracts and make written determinations

and findings with respect thereto. The term also includes an authorized representative acting within the limits of authority.

(19) "Purchase request" means that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by this Chapter.

(20) "Purchasing agency" means any governmental body which is authorized by this Chapter or its implementing regulations, or by way of delegation from the state director of purchasing, to contract on its own behalf rather than through the central contracting authority of the central purchasing agency.

(21) "Qualified group purchasing organization" means a service organization, whether for profit or not, with a membership of at least fifteen hospitals within the United States, which contracts with suppliers for supplies and materials used in hospitals and makes such contracts available to its members.

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

(23) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include:

(a) Employment agreements or collective bargaining agreements.

(b) Personal, professional, consultant, or social services as provided by R.S. 39:1481 through R.S. 39:1526.

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

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

(24) "Shall" denotes the imperative.

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

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

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

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

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

SUBPART C.
RECORDS; PUBLIC ACCESS

§ 1557. Public access to procurement information

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

§ 1557.1 Change orders, recordation

Each change order to a contract which adds an amount of ten percent or more of the original contract amount and which additional amount is at least ten thousand dollars or all change orders to a contract aggregating to an amount of twenty percent or more of the original contract amount and which additional amount is at least ten thousand dollars shall be recorded by the governmental body which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done or where the entity is domiciled not later thirty days after the date of the change order which requires that the recordation take place. In addition, the original contract shall be recorded together with the amendments or other revisions if not previously recorded. The provisions of this Section shall not apply to the office of facility planning and control and the office of state purchasing.

§ 1558. Determinations

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

PART II. PURCHASING ORGANIZATION

SUBPART A.
DIVISION OF ADMINISTRATION

§ 1561. Authority and duties of the commissioner of administration

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

B. The commissioner shall consider and decide matters of policy within the provisions of this Chapter including those referred to him by the state director of purchasing. The commissioner shall have the power to audit and review the implementation of the procurement regulations and the requirements of this Chapter.

SUBPART B.

CENTRAL PURCHASING AGENCY

§ 1562. Central purchasing agency; creation

There is hereby created, within the division of administration, the Central Purchasing Agency, headed by the State Director of Purchasing, hereinafter referred to as "the director".

§ 1563. Appointment and qualifications

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

§ 1564. Authority of the state director of purchasing

A. Central procurement officer of the state. The director shall serve as the central procurement officer of the state.

B. Power to adopt rules. Consistent with the provisions of this Chapter, the director may adopt rules governing the internal procedures of the central purchasing agency.

C. Duties. Except as otherwise specifically provided in this Chapter, the director shall, within the limitations of regulations promulgated by the commissioner:

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

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

(3) Establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and major repairs.

§ 1565. Duties of the attorney general

The attorney general shall be the chief legal adviser to the director.

§ 1566. Appointment of assistants and other employees; delegation of authority by the state director of purchasing

Subject to the provisions of the Article X, Section 7 of the Louisiana Constitution of 1974, the director may employ and supervise such assistants and other persons as may be necessary and may delegate authority to such designees or to any governmental body as the director may deem appropriate within the limitations of state law and the state procurement regulations.

§ 1567. Reporting requirements

The director shall prepare any reports that the commissioner of administration may deem necessary and shall deliver such reports to such recipients as the commissioner may designate. As provided in R.S. 44:1 et seq.,

such reports shall be available to the public upon request. However, nothing in this Section shall require any policy or management board of public higher education or any institution under their jurisdiction to prepare or submit a monthly report on items purchased from state contracts or on contract item usage to the director. The quarterly report listing purchases for under five thousand dollars and the annual report for purchases above five thousand dollars on all items purchased from state contracts, shall be sufficient to meet the requirements of this Section.

SUBPART C.
CENTRALIZATION OF PUBLIC PROCUREMENT

§ 1571. Centralization of procurement authority

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

§ 1572. Exemptions

A. **Exemption from central purchasing and regulations of commissioner.** Procurement of the following items or by the following governmental bodies shall not be required through the central purchasing agency, but shall nevertheless be subject to the requirements of this Chapter and such regulations as may be promulgated by the head of such governmental body:

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

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

(3), (4) Repealed by Acts 2008, No. 62, §, eff. June 5, 2008.

B. Exemptions from central purchasing only. Unless otherwise ordered by regulation of the commissioner with approval of the governor, the following governmental bodies shall not be required to conduct procurement through the central purchasing agency, but shall nevertheless be subject to the requirements of this Chapter and the regulations promulgated by the commissioner:

(1) Louisiana State University System.

(2) Southern University System.

(3) Board of Trustees of State Colleges and Universities System.

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

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

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

(7) Louisiana Community and Technical College System.

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

SUBPART D.
STATE PROCUREMENT REGULATIONS

§ 1581. State procurement regulations

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

(1) Regulations promulgated by the secretary of the Department of Transportation and Development governing procurement by that department, for procurement of materials and supplies that will become a component part of any road, highway, bridge, or appurtenance thereto.

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

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

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

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

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

SUBPART E.
COORDINATION, TRAINING, AND EDUCATION

§ 1586. Relationship with using agencies

The commissioner and the director shall maintain a close and cooperative relationship with the using agencies. The director shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to matters affecting such using agency. Any using agency may at any time make recommendations to the commissioner or the director, and the commissioner or director may at any time make recommendations to any using agency.

§ 1587. Procurement advisory council; other advisory groups

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

B. Other advisory groups. The director may appoint advisory groups to assist with respect to specifications and procurement in specific areas and with respect to any other matters within the authority of the director.

C. Drug procurement advisory council. The commissioner shall establish a Drug Procurement Advisory Council which shall be composed of persons from the division of administration and from using agencies of drugs procured by the division and persons qualified in the fields of medicine and pharmacy. The council shall advise the commissioner with respect to the procurement of drugs for any using agency by generic contract, as further provided in R.S. 39:1594.1.

PART III. SOURCE SELECTION AND CONTRACT FORMATION

SUBPART A.
DEFINITIONS

§ 1591. Definitions of terms used in this Part

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

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

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

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

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

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

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

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

(6) "Resident business" means 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.

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

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

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

SUBPART B.
METHODS OF SOURCE SELECTION

§ 1593. Methods of source selection

A. Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding, pursuant to R.S. 39:1594, except as provided in R.S. 39:1593.1 and R.S. 39:1595 through 1598.

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

C. (1) Notwithstanding any other provision of this Section to the contrary, with the approval of the commissioner and the written determination by the director of state purchasing that the best interests of the state would be served, a competitive request for proposals process as provided in this Subsection may be used in the following circumstances:

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

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

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

before the last day that proposals will be accepted.

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

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

(c) Written or oral discussions shall be conducted with all responsible offerers who submit proposals determined in writing to be reasonably susceptible of being selected for award. Discussions shall not disclose any information derived from proposals submitted by competing offers. Discussions need not be conducted:

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

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

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

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

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

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

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

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

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

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

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

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

(vii) Remedies for default.

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

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

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

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

§ 1593.1 Group purchasing

A. The Louisiana State University Health Sciences Center may contract with a group purchasing organization through a competitive request for proposals process for medical and laboratory supplies and medical equipment required for the purpose of diagnosis or direct treatment of a patient by a health care provider in a hospital or clinic setting.

B. Prior to the award of the such contract, the proposed contract shall be approved by the commissioner of administration provided he determines the total cost to be less than the state procurement prices and that the contract is in the best interest of the state.

C. No later than sixty days after a purchasing agency submits a proposed contract to the commissioner for approval, the commissioner shall notify the purchasing agency in writing as to whether the proposed contract has been approved or rejected. If the commissioner does not timely notify the purchasing agency of his decision, the request for approval on the proposed contract shall be deemed to have been approved. The commissioner shall not unreasonably withhold his approval.

§ 1594. Competitive sealed bidding

A. Conditions for use. Contracts exceeding the amount provided by R.S. 39:1596 shall be awarded by competitive sealed bidding.

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

C. Public notice.

(1) Adequate public notice of the invitation for bids shall be given at least ten days prior to the date set forth therein for the opening of bids on all matters except those made for housing of state agencies, their personnel, operations, equipment, or activities pursuant to R.S. 39:1643, for which such notice shall be given at least twenty days prior to the opening of bids. Notice shall be in writing and to persons in a position to furnish the supplies, services, or major repairs required, as shown by its records, and by advertising if the amount of

the purchase is twenty-five thousand dollars or more.

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

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

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

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

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

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

(a) 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.

(b) 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.

(c) 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.

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

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

E. Bid evaluation.

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

in the invitation for bids.

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

(a) Location of the proposed space.

(b) Condition of the proposed space.

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

(d) Timeliness of availability of the proposed space.

F. 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 regulations.

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

H. Resident business preference. 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 in quality.

I. Exemption.

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

(2) Purchases of raw materials and supplies used in the manufacturing process by the Department of Public Safety and Corrections, division of prison enterprises, with the approval of the director of state purchasing, shall be exempt from the provisions of this Section and shall be procured through the use of written bids.

§ 1594.1. Contracts for drugs

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

emergencies.

§ 1594.2. Right to reject bids from Communist countries

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

§ 1594.3. limitations on consultants competing for contracts

A. Any person contracting with an agency for the purposes of developing bidding documents, requests for proposals, 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 shall further be prohibited from participating as subcontractors related to the award of that procurement.

B. For the purposes of this Section, the following activities shall not be considered 'developing bidding documents, requests for proposals, 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.

1595. Preference for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana; exceptions

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

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

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

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

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

B. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases agricultural or forestry products, including meat, seafood, produce, eggs, paper or paper products under the provisions of this Chapter shall procure or purchase Louisiana products provided all of the following conditions are met:

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

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

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

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

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

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

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

(4)(a) Seafood shall be:

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

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

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

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

(6) Paper and paper products shall be manufactured or converted in Louisiana. For the purposes of this Paragraph, "manufactured" shall mean the process of making a product suitable for use from raw materials by hand or by machinery, and "converted" shall mean the process of converting roll stock into a sheeted and fully packaged product in a full-time converting operation. For paper supplied in wrapped reams, each carton and each individual ream shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper is manufactured or converted. For paper and paper products supplied in bulk or in other forms, the smallest unit of packaging shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper or paper product is manufactured or converted.

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

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

E. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase domesticated or wild catfish which are processed in Louisiana but grown outside of Louisiana and

which are equal in quality to domesticated or wild catfish which are processed outside of Louisiana provided the cost of the domesticated or wild catfish which are processed in Louisiana does not exceed the cost of the domesticated or wild catfish which are processed outside of Louisiana by more than seven percent.

F. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase produce processed in Louisiana but grown outside of Louisiana and which is equal in quality to produce processed and grown outside of Louisiana, provided the cost of the produce processed in Louisiana does not exceed the cost of the produce processed outside of Louisiana by more than seven percent.

G. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Chapter shall procure or purchase eggs or crawfish which are further processed in Louisiana under the grading service of the Louisiana Department of Agriculture and Forestry and which are equal in quality to other eggs or crawfish, provided the cost of the further processed eggs or crawfish does not exceed the cost of other eggs or crawfish by more than seven percent.

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

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

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

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

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

J. Notwithstanding any other provision of this Section to the contrary, such preference shall not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed or refined in Louisiana for sale as an expanded clay aggregate form different than its original state. No provision of this Subsection shall affect the preferences applicable to brick manufacturers.

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

§ 1595.1. Preference in awarding contracts

A. In the awarding of contracts by any public entity, except contracts for the construction, maintenance, or repair of highways and streets, and contracts financed in whole or in part by contributions or loans from any agency of the United States government, where both in-state and out-of-state vendors are bidding, in-state vendors shall be given a preference in the same manner that any of the out-of-state vendors would be given on a comparative bid in their own state. If one party to a joint venture is qualified under this Section as a vendor domiciled in Louisiana, this qualification shall extend to all parties to the joint venture. For the purpose of this

Section, a foreign corporation which was qualified to do business in the state of Louisiana in the manner required by law more than six months prior to the advertising of bids on a contract shall be considered to be a vendor domiciled in the state of Louisiana for the purpose of awarding the contract.

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

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

§ 1595.2. Preference in letting contracts for public work

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

(a) Preference shall be given to contractors domiciled in the state of Louisiana over contractors domiciled in a state that provides for a preference in favor of contractors domiciled in that state over contractors domiciled in the state of Louisiana for the same type of work; and

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

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

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

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

§ 1595.3. Preference in awarding contracts for certain services

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

NOTE: § 1595.3 as reenacted by Acts 2000, 1st Ex. Sess., No. 123, § 4, eff. If the provisions of Section 2 of Act 123 are held invalid by a court:

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

§ 1595.4. Preference for goods manufactured, or services performed, by sheltered workshops;

definitions; coordinating council

A. Every governmental body shall give a preference in its purchasing practices to goods manufactured and services performed by severely handicapped individuals in state-operated and state-supported sheltered workshops.

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

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

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

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

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

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

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

(a) Is incorporated under the Louisiana Nonprofit Corporation Law and operated in the interests of severely handicapped individuals, and the income of which does not inure in whole or in part to the benefit of any shareholder or other private individual, and

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

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

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

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

(7) "State-supported sheltered workshop" means a sheltered workshop funded in whole or in part by the

state and staffed by personnel from a qualified nonprofit agency for the severely handicapped.

§ 1595.5. Preference for items purchased from Louisiana retailers

This version of Subsection (A) effective July 1, 2000. See Acts 2000, 1st Ex. Sess., No. 123, § 2.

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

This version of Subsection (A) effective if the provisions of § 2 of Act 123 are held invalid by a court. See Acts 2000, 1st Ex. Sess., No. 123, § 4.

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

B. A retail dealer shall qualify for the preference if the dealer can show that he has paid Louisiana corporate income, corporate franchise, and inventory taxes or any combination thereof during the previous twelve-month period.

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

§ 1595.6. Preference for steel rolled in Louisiana

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

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

§ 1595.7. Preference for items manufactured in the United States; definitions

A. This Section may be cited as the "Procurement of Domestic Products Act".
B. As used in this Section, the following definitions shall apply:

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

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

C. In the event a contract is not entered into for products purchased under the provisions of R.S. 39:1595, each procurement officer, purchasing agent, or similar official who procures or purchases materials, supplies, products, provisions, or equipment under the provisions of this Chapter may purchase such materials, supplies, products, provision or equipment which are manufactured in the United States, and which are equal in quality to other materials, supplies, products, provisions, or equipment, provided that all of the following conditions are met:

(1) The cost of such items does not exceed the cost of other items which are manufactured outside the United States by more than five percent.
(2) The vendor of such items agrees to sell the items at the same price as the lowest bid offered on such items.
(3) In cases where more than one bidder offers items manufactured in the United States which are within five percent of the lowest bid, the bidder offering the lowest bid on such items is entitled to accept the price of the lowest bid made on such items.
(4) The vendor certifies that such items are manufactured in the United States.

The office of state purchasing may promulgate rules and regulations for the implementation of this Section in accordance with the Administrative Procedure Act.

§ 1596. Small purchases

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

§ 1597. Sole source procurements

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

§ 1598. Emergency procurements

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

B. Written quotations. Every effort shall be made to obtain quotations from three or more vendors when supplies, services, or major repairs are to be purchased on an emergency basis, except for standard equipment parts for which prices are established. Immediate purchasing shall be discouraged as much as is practicable. When supplies, services, or major repairs are urgently required and time does not permit the obtaining of written quotations, the procurement officer may obtain quotations by telephoning or otherwise, but such quotations shall be made on the relative purchase requisitions. So far as practicable, quotations shall be secured from institutions of the state as provided by law.

C. Determination required. The Chief Procurement Officer shall make a written determination of the basis

of the emergency that includes the facts and circumstances leading to the conclusion that such procurement was necessary as well as a written determination detailing the steps taken prior to selecting a particular contractor and the basis for the final selection.

The written determination shall be included in the contract file either prior to contracting or as soon thereafter as practicable.

SUBPART B-1. CERTAIN AUCTION METHODS

§ 1598.1 Reverse Auction

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

(2) For purposes of this Subpart, "reverse auction" means a competitive online solicitation process on the Internet for materials, supplies, services, products, or equipment in which vendors compete against each other online in real time in an open and interactive environment.

B. Prior to the implementation of this Subpart, the state director of purchasing shall develop policies, procedures, and promulgate regulations, in accordance with the Administrative Procedure Act. Such policies and procedures may require that:

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

(2) Vendors shall be prequalified prior to placing bids and allow only bidders who are prequalified to submit bids.

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

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

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

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

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

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

C. Adequate public notice for the purchase of materials, supplies, services, or equipment using a reverse auction shall be given as follows:

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

(2) In the case of any purchase to meet the needs of a single budget unit, the advertisement shall be

published also in a newspaper of general circulation printed in the parish in which the budget unit is situated, or, if there is not a newspaper printed in the parish, in a newspaper printed in the nearest parish that has a general circulation in the parish in which the budget unit is situated.

SUBPART C.
CANCELLATION OF INVITATIONS FOR BIDS OR REQUESTS FOR PROPOSALS

§ 1599. Cancellation of invitations for bids or requests for proposals

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

SUBPART D.
QUALIFICATIONS AND DUTIES

§ 1601. Responsibility of bidders and offerors

A. A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. The unreasonable failure of a bidder or offeror promptly to supply information in connection with such an inquiry may be grounds for a determination of no responsibility with respect to such bidder or offeror.

B. Whenever the Chief Procurement Officer, Commissioner or head of a governmental body with such authority proposes to disqualify the lowest bidder on bids of $5,000 or more such individual shall:

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

(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.

§ 1602. Prequalification of suppliers

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

§ 1603. Cost or pricing data

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

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

(2) Pricing of any change order or contract modification which is expected to exceed an amount

established by regulations.

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

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

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

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

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

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

SUBPART E.
TYPES OF CONTRACTS

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

The cost-plus-a-percentage-of-cost system of contracting shall not be used.

§ 1612. Cost-reimbursement contracts

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

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

§ 1613. Use of other types of contracts

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

§ 1614. Approval of accounting system

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

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

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

§ 1615. Multiyear contracts

A. Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for periods of not more than five years, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years 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. Any lease or similar agreement affecting the allocation of space in the state capitol shall have the prior approval of the Legislative Budgetary Control Council if it extends for more than one year. A report of all multiyear contracts shall be provided to the Joint Legislative Committee on the Budget no later than ninety days after the end of each fiscal year.

B. Determination prior to use. Prior to the utilization of a multiyear contract, 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.

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

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

D. Educational Institutions excepted.

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

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

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

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

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

§ 1616. Installment-purchase contract

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

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

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

(3) Each contract shall contain an annual appropriation dependency clause which shall provide that the continuation of the contract is contingent upon the continuation of an 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 or if a veto or reduction of appropriation of funds necessitates the discontinuance of the contract, the contract shall terminate on the last day of the fiscal year for which funds were appropriated, in accordance with R.S. 39:1615(C).

(4) Such contracts shall also conform to any other requirements which may be established by the central purchasing agency through rules and regulations, promulgated in accordance with law.

SUBPART F.
INSPECTION OF PLANT AND AUDIT OF RECORDS

§ 1621. Right to inspect plant

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

§ 1622. Right to audit records

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

B. Contract audit. The state 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.

SUBPART G.

DETERMINATIONS AND REPORTS

§ 1625. Finality of determinations

The determinations required by R.S. 39:1595(A)[1], R.S. 39: 1595(E)[1], R.S. 39:1597, R.S. 39:1598(C), R.S. 39:1599, R.S. 39:1601, R.S. 39:1603(C), R.S. 39:1612(A), R.S. 39:1613, and R.S. 39:1614 are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

§ 1626. Reporting of suspected collusive bidding or negotiations

A. Notification to the attorney general. When for any reason collusion is suspected among any bidders or offerors, a written notice of the relevant facts shall be transmitted to the attorney general.

B. Retention of all documents. All documents involved in any procurement in which collusion is suspected shall be retained for a minimum of six years or until the attorney general gives written notice that they may be destroyed, whichever period is longer. All retained documents shall be made available to the attorney general or a designee upon request and proper receipt therefor.

§ 1627. Record of certain procurement actions

The chief procurement officer shall retain all contracts made under R.S. 39:1597 or R.S. 39:1598 for a minimum of six years.

SUBPART H.
INSURANCE

§ 1631. Direct purchase of insurance

Notwithstanding the provisions of R.S. 22:1171[1] or any other law to the contrary, the state may purchase insurance policies covering any property or insurable interests or activities of the state directly from insurers or underwriters, without the necessity for signature or countersignature of such policies as provided by R.S. 22:1171[1], and in lieu thereof such policy shall be signed by an official or designated representative of the company issuing the policy. The insurers or underwriters making such direct sales to the state shall reduce the policy premiums by the amount of the commissions, which would have been paid, as required by R.S. 22:1171[1], but for the provisions of this Section. However, if any such insurance policy is purchased in accordance with the provisions of R.S. 22:1171[1], the agent may credit any portion of the commission to the state, through the division of administration. The state shall be advised of the amount of any such rebate at the time the agent furnishes a bid for such policy to the state, and the amount of such rebate shall be taken into consideration in determining the cost of such policy.

§ 1632. 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 state of Louisiana, all or any portion of the commission derived from the sale of insurance to the state; 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 commissioner of administration. In any such instance where the sharing of a commission on state insurance is authorized, it shall be only with a bona fide insurance agent. Whoever violates the provisions of this Section shall, upon conviction, be fined not less than one thousand dollars nor more than five thousand dollars and shall be imprisoned for not more than two years.

§ 1633. Authorization constitutes public record

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

SUBPART I.
ACQUISITION OF HOUSING SPACE

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

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

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

(1) When a contract or agreement for the lease or rental of space for the housing of state agencies, their personnel, operation, equipment, or activities, shall pertain to more than one building or facility or shall pertain to a building or facility which is to house more than one state agency, their personnel, operation, equipment, or activities, such contract or agreement may be made in the name of the state and executed by the commissioner of administration, rather than in the name of and by an authorized representative or a representative body of the state agency or agencies to be housed in such building or buildings or facility or facilities.

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

C. Definition of "agency." The definition of "agency" stated in R.S. 39:2(1) shall be the sole definition of the term "state agency" employed in connection with the acquisition of housing space in this and following Sections, 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 this Section shall be applicable to an agency of the state.

D. Applicability. The provisions of this Subpart shall be applicable to all agencies meeting the definition of R.S. 39:2(1) established by the laws of Louisiana.

E. Repealed by Acts 1988, No. 919, § 3.

F. Repealed by Acts 1997, No. 600, § 1.

§ 1642. Uniform space standards; Inventory and evaluation of budget unit space utilization

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

charges.

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

C. Evaluation of space utilization. The division of administration shall evaluate the utilization of all leased space on a continuing basis to determine the feasibility of locating state agencies in buildings to be purchased and/or constructed by the state.

§ 1643. Advertisement and award of lease bids

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

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

§ 1644. Amendment of leases

A. (1) An existing lease for office or warehouse space 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, unless there are less than three, offerors who submit written proposals. Such proposals shall be solicited by advertising as in R.S. 39:1594(C).

(2) If it is determined by the commissioner of administration or his designee, after the evaluation of these proposals and discussions with the current lessor, that to renew the present lease would be in the best interest of the state, the renewal of an existing lease may be renegotiated or the commissioner may enter into a lease with one of these offerors if determined to be in the state's best interest. 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.

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

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

D. In the event alterations or modifications of space currently under lease are required to meet changed operating requirements, a lease may be amended. Such lease amendment may, with approval of the division of administration, provide an adjustment in monthly lease payments not to exceed twenty-five percent of the original annual lease price per square foot, sufficient to reimburse the lessor for paying for the leasehold improvements; provided, however, that any adjustment in monthly lease payments shall also require the

approval of the Joint Legislative Committee on the Budget and the continuance of an adjustment in excess of the current lease shall be further contingent on the appropriation of funds therefor in the following fiscal year.

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

SUBPART J.
ACQUISITION OF USED EQUIPMENT

§ 1645. Procurement of used equipment

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

B. (1) The used equipment shall be purchased by the head of the agency, college, or university, within the price range set by the director of state purchasing or the directors of purchasing at colleges and universities, in a statement of written approval for the purchase which must be obtained by the head of the agency, college, or university, prior to the purchase.

(2) The head of the agency, college, or university, shall certify in writing to the director of state purchasing, or the directors of purchasing at colleges and universities, 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.

SUBPART K. ACQUISITION OF MOTOR VEHICLES

§ 1646 Acquisition of motor vehicles, minimum requirements for fuel efficiency; exceptions

A. Any purchase or lease of a motor vehicle by an agency which is covered by this Chapter shall be made in accordance with the provisions of this Subpart. Such vehicles shall have, at the time of acquisition, a fuel efficiency rating of no less than eighteen miles per gallon for city driving and no less than twenty-eight miles per gallon for highway driving, or a combined city/highway average of twenty-four miles per gallon.

B. For purposes of this Subpart, "motor vehicle" shall include the following vehicles as they are specified or defined in administrative rule or regulation prescribed by the commissioner of administration pursuant to Part XIII of Chapter 1 of Title 39 of the Louisiana Revised Statutes of 1950: alternative fuel vehicle, sedan, and station wagon.

C. For purposes of this Subpart, "motor vehicle" shall not include the following:

(1) A vehicle to be used by law enforcement personnel, certified first responders and emergency

personnel when required for the performance of their duties, or a vehicle used in the conduct of military activities.

(2) A vehicle to be used by any state employee when written authorization for such purchase has been provided by the department head to the commissioner of administration and approved by him, or a vehicle to be used by an employee of a political subdivision of the state when the governing authority of the political subdivision authorizes such purchase.

PART IV. SPECIFICATIONS

SUBPART A.
SPECIFICATIONS

§ 1651. Duties of the commissioner of administration

A. The commissioner shall promulgate regulations governing the preparation, maintenance, and content of specifications for supplies, services, and major repairs required by the state.

B. As used in this Part, the term "specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or major repair. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or major repair for delivery.

§ 1651.1 Shrimp specifications

Notwithstanding any other provision of law to the contrary, regulations promulgated by the commissioner of administration or other purchasing entity, governing the purchase or use of shrimp shall require that the bid specify the count size of such shrimp and not specify size as "jumbo", "extra large", "medium", "small" or any other similar term or nomenclature used in the shrimping industry.

§ 1652. Duties of the chief procurement officer

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

§ 1653. Exempted items

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

§ 1654. Relationship with using agencies

The director shall obtain advice and assistance from personnel of using agencies in the determination of needs and development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications, subject to regulations.

§ 1655. Maximum practicable competition

A. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the needs of the state, and shall not be unduly restrictive. A specification may be

drafted which describes a product which is proprietary to one company only where:

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

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

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

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

B. Except in Paragraph (2) of this Section, whenever such proprietary specifications are used, the specifications shall clearly state that they are used only to denote the quality standard of supplies, services, or major repairs desired and that they do not restrict bidders to the specific brand, make, manufacturer, or specification named; that they are used only to set forth and convey to prospective bidders the general style, type, character, and quality of supplies, services, or major repairs desired; and that equivalent supplies, services, or major repairs will be acceptable.

§ 1656. Escalation clause

Bid specifications may contemplate a fixed escalation or deescalation in accordance with the United States Bureau of Labor Statistics, Consumer Price Index and Wholesale Price Index. Bids based on specifications which are subject to a recognized escalation index shall be legal and valid.

§ 1657. Specifications prepared by architects and engineers

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

PART IV. SPECIFICATIONS

SUBPART A.
SPECIFICATIONS

§ 1658. Mandatory information requirement for contracts let without competition under the authority of an executive order

A. The provisions of this Section shall apply to any contract for state procurement of goods or services which is subject to the provisions of Chapter 17 of this Title, hereinafter referred to as "state procurement law", which contract is let without competition pursuant to an executive order issued by authority granted under the Louisiana Homeland Security and Emergency Assistance and Disaster Act, which order grants exceptions to the requirements of state procurement law. Such provisions shall apply to contracts which have been or will be let without competition pursuant to executive orders related to Hurricane Katrina or Rita which granted exceptions to the requirements of state procurement law.

B. (1) For any contract subject to the provisions of this Section, the information cited in Subparagraphs (a) through (d) of this Paragraph shall be submitted by the primary contractor to the office of state purchasing. The following information shall be submitted, in a format to be determined by such agencies, no later than forty-five

days after the effective date of the contract, or forty-five days after June 29, 2006, whichever is later:

(a) The name of the primary contractor.

(b) The amount of the contract.

(c) The name of each subcontractor.

(d) The amount of each subcontract.

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

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

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

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

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

§ 1659 Purchase of prostheses, orthoses, posthetic services, and orthotic services by a state agency from an accredited facility

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

PART V.
MODIFICATION AND TERMINATION OF CONTRACTS FOR SUPPLIES, SERVICES, AND MAJOR REPAIRS

§ 1661. Contract clauses; administration

A. Contract clauses. Regulations may permit or require the inclusion of clauses providing for equitable adjustments in prices, time for performance, or other contract provisions, as appropriate, covering the following subjects:

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

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

(b) Method of shipment or packing; or

(c) Place of delivery.

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

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

B. Additional contract clauses. Regulations may permit or require the inclusion in state contracts 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, and

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

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

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

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

PART VI. LEGAL AND CONTRACTUAL REMEDIES

SUBPART A.
PRE-LITIGATION RESOLUTION OF CONTROVERSIES

§ 1671. Authority to resolve protested solicitations and awards

A. Right to protest. Any person who is aggrieved in connection with the solicitation or award of a contract shall protest to the chief procurement officer. Protests with respect to a solicitation shall be submitted in writing

at least two days prior to the opening of bids on all matters except housing of state agencies, their personnel, operations, equipment, or activities pursuant to R.S. 39:1643 for which such protest shall be submitted at least ten days prior to the opening of bids. Protests with respect to the award of a contract shall be submitted in writing within fourteen days after contract award.

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

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

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

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

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

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

(1) The decision is fraudulent; or

(2) The person adversely affected by the decision has timely appealed administratively to the Commissioner in accordance with R.S. 39:1683.

F. Stay of procurements during protests. In the event of a timely protest under Subsection A of this Section, the state shall not proceed further with the solicitation or with the awarding of the 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 by the chief procurement officer, no court shall enjoin progress under the award except after notice and hearing.

G. Award of costs to protestants. In addition to any other relief, when the protest is administratively or judicially sustained and the protesting bidder or offeror should have been awarded the contract but is not, the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees, provided that any administrative determination of such costs shall be subject to the written concurrence of the attorney general.

H. Promulgation of regulations. The state director of purchasing is hereby authorized to promulgate regulations relative to protests, in accordance with the Administrative Procedure Act, to implement the provisions of R.S. 39:15981.

§ 1672. Authority to debar or suspend

A. Applicability. This Section applies to a 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 a debarment.

B. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer shall have authority to suspend or debar a person for cause from

consideration for award of contracts, provided that doing so is in the best interests of the state. The causes for debarment are set forth in Subsection C of this Section. The chief procurement officer may suspend a person from consideration for award of contracts if he determines that there is probable cause to believe that such person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding six months. The authority to debar or suspend shall be exercised in accordance with regulations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) The decision is fraudulent; or

(2) The debarred or suspended person has timely appealed administratively to the commissioner in

accordance with R.S. 39:1684.

§ 1673. Authority to resolve contract and breach of contract controversies

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

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

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

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

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

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

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

(1) The decision is fraudulent; or

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

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

SUBPART B.
SOLICITATIONS OR AWARDS IN VIOLATION OF LAW

§ 1676. Applicability of this Subpart

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

§ 1677. Remedies prior to an award

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

§ 1678. Remedies after an award

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

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

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

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

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

§ 1678.1. Damages

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

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

C. The provisions of R.S. 49.965.1 shall not apply to actions instituted pursuant to the provisions of this Chapter.

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

E. In no event shall damages awarded by the chief procurement officer, his designee, any hearing officer or any court include attorney's 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.

§ 1679. Violations; penalties

A. No person shall intentionally violate the Louisiana Procurement Code or any rule or regulation promulgated by the commissioner of administration with respect to purchasing.

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

SUBPART C.
ADMINISTRATIVE APPEALS PROCEDURES

§ 1681. Authority of the commissioner of administration

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

§ 1682. Exempted departments

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

§ 1683. Protest of solicitations or awards

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

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

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

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

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

(1) The decision is fraudulent; or

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

§ 1684. Suspension or debarment proceedings

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

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

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

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

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

(1) The decision is fraudulent; or

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

§ 1685. Contract and breach of contract controversies

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

B. Time limitation on filing an appeal. The aggrieved contractor shall file its appeal with the commissioner within fourteen days of the receipt of the determination under R.S. 39:1673(C).

C. Decision. The commissioner shall decide within fourteen days the contract or breach of contract controversy. Any prior determination by the director or his designee shall not be final or conclusive.

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

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

(1) The decision is fraudulent; or

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

SUBPART D.
ACTIONS BY OR AGAINST THE STATE; PRESCRIPTION

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

A. Solicitation and award of contracts. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. 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 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, 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 state and a contractor who contracts with the state, 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. Limited finality for administrative determinations. In any judicial action under this Section, factual or legal determination by employees, agents, or other persons appointed by the state shall have no finality and shall not be conclusive, notwithstanding any contract provision, regulation, or rule of law to the contrary, except to the extent provided in: R.S. 39:1625, R.S. 39:1671(E), R.S. 39:1672(F), R.S. 39:1673(E), R.S. 39:1683(E),

R.S. 39:1684(E), and R.S. 39:1685(E).

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.

§ 1692. Commencement of actions

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

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

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

SUBPART E.
DELINQUENT PAYMENT PENALTIES

§ 1695. Late payment to business; penalty paid by state agency

A. If a state agency without reasonable cause fails to make any payment due within ninety days of the due date prescribed by contract, to a business awarded a contract with the state agency to supply equipment, supplies, materials, or textbooks, or to provide services, the state agency shall pay, in addition to the payment, interest on the amount due at the rate established pursuant to Civil Code Article 2924(B)(3) per year, from the ninety-first day after the due date prescribed by the contract. In applying this Section to a claim related in any way to an entitlement program, payment for claims shall be due ninety days after a claim is received by the state.

B. If it is determined by the state agency that additional evidence of the validity of the claim for payment is required, such evidence shall be requested within ten working days from the date the bill is received by the state agency. In instances where additional evidence is required, the bill shall be reviewed and payment or rejection made within thirty days from receipt of the evidence requested in the office of the paying agency.

C. Any penalty required to be paid by a state agency pursuant to this Section shall be disbursed upon warrants drawn by the state agency upon that agency's operating expenses budget.

§ 1696. Reporting requirements

A. Whenever a state agency is required by R.S. 39:1695 to pay a penalty, it shall be presumed that the fault is that of the head of the state agency and, in such cases, the head of the state agency shall submit to the Joint Legislative Committee on the Budget at its next regular meeting following the payment of such a penalty a report on the actions taken to correct the problem.

B. Any state agency which requests that the legislature make a supplemental appropriation for the agency shall identify at the time of the request what part of the amount is necessitated because of any penalties imposed by R.S. 39:1695.

§ 1697. Disputed claims

A. In cases where a state agency states that payment is late due to reasonable cause, and said claim is disputed by the business owed payment, upon the request of a representative of the business the Joint Legislative Committee on the Budget shall determine whether or not the circumstances constitute "reasonable cause" as used in R.S. 39:1695.

B. No state agency shall be required to pay a penalty if it has submitted a warrant to the state treasurer at least thirty days prior to the due date prescribed by the contract.

PART VII. INTERGOVERNMENTAL RELATIONS

SUBPART A.
DEFINITIONS

§ 1701. Definitions of terms used in this Part

(1) "Cooperative purchasing" means 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.

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

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

(4) "Private procurement unit" means any independent institution of higher education in this state.

(5) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(6) "State public procurement unit" means the central purchasing agency and any other purchasing agency of this state.

SUBPART B.
COOPERATIVE PURCHASING

§ 1702. Cooperative purchasing authorized; participation in federal General Services Administration vendor list

A. (1) Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any supplies, services, major repairs, or construction with one or more public procurement units or external procurement activities or one or more private procurement units in accordance with an agreement entered into between the participants. Such 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.

(2) Any public procurement unit may procure materials, supplies, and equipment from federal General Services Administration supply schedules in accordance with rules and regulations which may be adopted by the central purchasing agency of the division of administration. Such purchases need not comply with the competitive bidding requirements of this Chapter. However, such materials, supplies, or equipment shall not be purchased at a price higher than the price of the same item listed on any available state purchasing contract.

(3) Any public procurement unit may procure materials, supplies, equipment, and services related to homeland security from federal General Services Administration supply schedules. Such purchases shall:

(a) Utilize a Louisiana distributor.

(b) Use the competitive ordering procedures of the federal General Services Administration.

(c) Receive prior approval from the director of the Governor's Office of Homeland Security and Emergency Preparedness[1], or his designee.

B. (1) A private procurement unit acquiring supplies through cooperative purchasing shall acquire such supplies for its own use and not for the purpose of resale in competition with private enterprise.

(2) A private procurement unit shall certify to the vendor with each order that the supplies covered thereby are to be acquired for its own use and not for the purpose of resale in competition with private enterprise and shall provide a copy of such certification to the Central Purchasing Agency within the Division of Administration.

(3) Upon certification by the Commissioner of Administration that the purchase of one or more types of supplies by a private procurement unit under this Section may adversely affect the interests of the state by impeding the ability of the Division of Administration to attract responsible bidders for such supplies, the governor shall have the authority to limit or eliminate the right of a private procurement unit to purchase such types of supplies to the extent necessary to eliminate the adverse effect on the state.

C. No use shall be made of federal General Services Administration supply schedules under the provisions of this Section without the participation of a Louisiana licensed dealer or distributor.

[1]See Acts 2001, 1st Ex. Sess., No. 35, §8, which changes the term "State Office of Homeland Security and emergency Preparedness" to "Governor's Office of Homeland Security and Emergency Preparedness" and §10, which provides for the termination of the Act and the reversion to the law in effect prior to the Act on July 1, 2010.

§ 1703. Sale, acquisition, or use of supplies by a public procurement unit

Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external procurement activity independent of the requirements of Part III of this Chapter or of Title 38.

§ 1704. Cooperative use of supplies or services

Any public procurement unit may enter into an agreement, independent of the requirements of Part III of this Chapter or Title 38, with any other public procurement unit or external procurement activity for the cooperative use of supplies or services, under the terms agreed upon between the parties.

§ 1705. Joint use of facilities

Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procurement unit or an external procurement activity under the terms agreed upon between the parties.

§ 1706. Supply of personnel, information, and technical services

A. Supply of personnel. Any public procurement unit is authorized, in its discretion, upon written request from another public procurement unit or external procurement activity, to provide personnel to the requesting public procurement unit or external procurement activity. The public procurement unit or external procurement activity making the request shall pay the public procurement unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

B. Supply of services. The informational, technical, and other services of any public procurement unit may be made available to any other public procurement unit or external procurement activity provided that the requirements of the public procurement unit tendering the services shall have precedence over the requesting public procurement unit or external procurement activity. The requesting public procurement unit or external procurement activity shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

C. State information services. Upon request, the chief procurement officer may make available to public procurement units the following services, among others:

(1) Standard forms.

(2) Printed manuals.

(3) Product specifications and standards.

(4) Quality assurance testing services and methods.

(5) Qualified products lists.

(6) Source information.

(7) Common use commodities listings.

(8) Supplier prequalification information.

(9) Supplier performance ratings.

(10) Debarred and suspended bidders lists.

(11) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and

(12) Contracts or published summaries thereof, including price and time of delivery information.

D. State technical services. The state, through the chief procurement officer may provide the following

technical services, among others:

(1) Development of products specifications.

(2) Development of quality assurance test methods, including receiving, inspection, and acceptance procedures.

(3) Use of state product testing and inspection facilities; and

(4) Use of state personnel training programs.

E. Fees. The chief procurement officer may enter into contractual arrangements and publish a schedule of fees for the services provided under Subsections C and D of this Section.

§ 1707. Use of payments received by a supplying public procurement unit

All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit as authorized by law.

§ 1708. Public procurement units in compliance with code requirements

Where the public procurement unit or external procurement activity administering a cooperative purchase complies with the requirements of this Chapter, any public procurement unit participating in such a purchase shall be deemed to have complied with this Chapter. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing this Chapter.

§ 1709. Review of procurement requirements

To the extent possible, the chief procurement officer shall collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, major repairs, or construction being procured or used by state public procurement units. The chief procurement officer may also collect such information from local public procurement units.

§ 1710. Local governing authorities; purchases from local vendors, payment of certain costs

When a local governing authority purchases an item at the state bid price through a local vendor, the local governing authority may pay to the local vendor the costs for shipping, preparation, and delivery of the item, provided that these costs shall not exceed the state bid price by seven percent on purchases up to ten thousand dollars, five percent on purchases over ten thousand dollars and up to twenty thousand dollars, and three percent on purchases over twenty thousand dollars.

SUBPART C.
CONTRACT CONTROVERSIES

§ 1716. Contract controversies

Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with Part VI of this Chapter, where

the administering public procurement unit is a state public procurement unit or otherwise subject to Part VI.

PART VIII. ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES AND WOMEN OWNED BUSINESSES

§ 1731. Short title

The provisions of this Part shall be known and may be cited as the Louisiana Small Business Procurement Act.

§ 1732. Definitions of terms used in this Part

As used in this Part, the following words and phrases shall have the meaning ascribed to them in this Section, except as otherwise may be provided or unless a different meaning is plainly required by the context:

(1) "Small business" means a small business as defined by the Small Business Administration of the United States Government which for purposes of size eligibility or other factors meets the applicable criteria set forth in 13 Code of Federal Regulations, Part 121, as amended, and which has its principal place of business in Louisiana.

(2) "Dominant in its field of operation" means exercising a controlling or major influence in a business activity in which a number of businesses are engaged. In determining if a business is dominant, the following criteria, among others, shall be considered: number of employees; volume of business; financial resources; competitive status or position; ownership or control of materials, processes, patents, license agreements, and facilities; sales territory; and nature of business activity.

(3) "Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least twenty percent owned by a business dominant in that field of operation, or by partners, officers, directors, majority shareholders, or their equivalent of a business dominant in that field of operation.

(4) "Socially or economically disadvantaged person" means a person who has been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic disadvantage. This disadvantage may arise from cultural, social or economic circumstances or background or physical location.

(5) "Women owned business" means a business that is at least 51 percent owned by a woman or women who also control and operate it. "Control" in this context means exercising the power to make policy decisions. "Operate" in this context means being actively involved in the day-to-day management. In determining whether a business is 51 percent owned by a woman or women, the percent ownership of the woman or women shall not be diminished because she is part of a community property regime.

(6) "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall include those services covered by Chapter 16 of Title 39 of the Louisiana Revised Statutes of 1950 and services performed by an architect, engineer, or landscape architect as provided by Part VII of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950. This term shall not include collective bargaining agreements.

§ 1733. Procurement from small businesses

A. Set aside. The commissioner of the division of administration shall for each fiscal year designate and set aside for awarding to small businesses, an amount not to exceed ten percent of the value of anticipated total

state procurement of goods and services excluding construction. The commissioner shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses. In making his annual designation of set aside procurements the commissioner shall attempt to vary the included procurements so that a variety of goods and services produced by different small businesses shall be set aside each year. The failure of the commissioner to set aside particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal solicitation and bidding processes.

B. Contract procedure. The commissioner shall establish a contract procedure in accordance with law, for the awarding of a procurement contract under the set aside program established in this Part. Surety bonds guaranteed by the federal small business administration shall be acceptable security for a construction award under this Part.

C. Responsibility of bidder or offeror. Before making a set aside award, the commissioner shall evaluate whether the small business scheduled to receive the award is able to perform the set aside contract. This determination shall include consideration of production and financial capacity and technical competence.

D. Preference to disadvantaged persons. At least ten percent of the value of the procurements designated for set aside awards shall be awarded, if possible to businesses owned and operated by socially or economically disadvantaged persons. In the event small businesses owned and operated by socially or economically disadvantaged persons are unable to perform at least ten percent of the set aside awards, then the commissioner shall award the balance of the set aside contracts to other small businesses.

E. Preference to women. At least ten percent of the value of the procurements designated for set aside awards shall be awarded, if possible, to businesses owned and operated by women. In the event small businesses owned and operated by women are unable to perform at least ten percent of the set aside awards, then the commissioner shall award the balance of the set aside contracts to other small businesses.

F. Award of contracts after unsuccessful set aside procedures. In the event that the provisions of this Part do not operate to extend a contract award to a small business, the award shall be placed pursuant to the existing solicitation and award provisions established by law. The commissioner shall thereupon designate and set aside for small businesses additional state procurements corresponding in approximate value to the contract unable to be awarded pursuant to the provisions of this Part.

G. Conflict with other code provisions. All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other procurement matters shall apply as consistent to procurements set aside for small businesses. In the event of conflict with other rules, the provisions of this Part shall govern.

§ 1734. Assistance to small businesses

The commissioner of administration and the executive director of the Louisiana division of minority and women's business enterprise in the Department of Economic Development shall publicize the provisions of the set-aside program, attempt to locate small businesses able to perform set-aside procurement awards, and encourage participation. When the commissioner of administration determines that a small business is unable to perform under a set-aside contract, he shall so inform the secretary of economic development, who shall assist the small business in attempting to remedy the causes of the inability to perform a set-aside award. In assisting the small business, the executive director of the Louisiana division of minority and women's business enterprise, in cooperation with the commissioner of administration, shall use any management or financial assistance programs that may be available by or through the Louisiana division of minority and women's business enterprise or other state or governmental agencies.

§ 1735. Determination of disadvantaged

The commissioner of administration shall promulgate regulations, rules, standards, and procedures for certifying that small businesses and small businesses owned and operated by socially or economically disadvantaged persons are eligible to participate under the requirements of R.S. 39:1733 and 1734. The procedure for determination of eligibility may include self certification by a business, provided that the commissioner retains the ability to verify a self certification. The commissioner shall promulgate other regulations and rules as may be necessary to carry out the duties set forth in this Part.

§ 1736. Reports

The commissioner of administration shall submit an annual report to the governor and the legislature, with a copy thereof going to the Louisiana division of minority and women's business enterprise, indicating the progress being made toward the objectives and goals of this Part during each fiscal year. This report shall include the following information:

(1) The total dollar value and number of potential set-aside awards identified during this period and the percentage of total state procurement this figure reflects.

(2) The number of small businesses identified by and responding to the set-aside contracts actually awarded to small businesses, with appropriate designation as to the total number and value of set-aside contracts awarded to each small business, and the total number of small businesses that were awarded set-aside contracts.

(3) The total dollar value and number of set-aside contracts awarded to small businesses owned and operated by economically or socially disadvantaged persons, with appropriate designation as to the total number and value of set-aside contracts awarded to each small business, and the percentages of the total state procurements the figures of total dollar value and the number of set asides reflect

(4) The total dollar value and number of set-aside contracts awarded to small businesses owned and operated by women, with appropriate designation as to the total number and value of set-aside contracts awarded to each small business, and the percentages of the total state procurements the figures of total dollar value and the number of set asides reflect.

(5) The number of contracts which were designated and set aside but which were not awarded to a small business, the estimated total dollar value of these awards, the lowest offer or bid on each of these awards made by the small business, and the price at which these contracts were awarded pursuant to the normal procurement procedures.

§§ 1737, 1738 (Repealed)

Repealed by Acts 1992, No. 797, § 3, eff. July 1, 1992

PART IX. TELECOMMUNICATIONS PROCUREMENT

§ 1751. Application

A. The provisions of this Part shall be applicable to any agency, as defined in R.S. 36:3(1), within the executive branch of state government with respect to the procurement of all telecommunications systems and telecommunications services. However, nothing provided in this Part shall be construed to preempt the

authorities granted to the higher education boards in Article VIII of the Constitution of Louisiana.

B. The office of telecommunications management shall, subject to the provisions of this Part, have sole authority and responsibility for defining the specific telecommunications systems and telecommunications services to which the provisions of this Part shall be applicable. Rules and regulations shall be promulgated as may be necessary to carry out the provisions of this Part.

§ 1752. Definitions

For the purposes of this Part, the following words and phrases shall be defined as follows:

(1) "Agency" as used in this Part and in Part V of this Chapter 1 of this Title shall have the same meaning ascribed to it as provided in R.S. 36:3(1).

(2) "Competitive sealed bidding" means a method of procurement which strictly follows the requirements set forth in this Chapter except for such variations as are specifically established in this Part.

(3) "Local area network" means a limited distance data processing/communications network or system used to link computers and peripheral devices.

(4) "Multi-year contracts" are contracts for a term of more than one year, not to exceed ten years.

(5) "Procurement" means the selling, buying, purchasing, renting, leasing, or otherwise obtaining telecommunications systems or telecommunications services, or their related software, as well as all activities engaged in, resulting in, or expected to result in the selling, buying, purchasing, renting, leasing, or otherwise obtaining telecommunications systems, telecommunications services, or their related software by the state or its agencies.

(6) "Software" means computer programs and documentation essential to and necessary for a telecommunications system or telecommunications service to perform productive operations.

(7) "Telecommunications service contract" means a contract for the procurement of telecommunications services to include but not be limited to long distance, pay telephone, radio paging, and utility-type services such as local dial tone.

(8) "Telecommunications systems", which shall include telecommunications equipment and related services, and "telecommunications services" are limited to the equipment and services and means to provide:

(a) Telecommunications transmission facilities and services.

(b) Voice telecommunications systems and services.

(c) Local area network systems and services.

(d) Wide area network systems and services.

(e) Video systems and services, except those video systems and services specifically reserved to the Louisiana Educational Television Authority pursuant to R.S. 17:2501.

(f) Wireless systems and services to include, but not be limited to, cellular and personal

communications systems.

(g) Radio systems, to include but not be limited to two-way radio systems; however, the operational abilities and priorities of two-way communications of the departments in the executive branch shall not be impeded.

(h) Intercom and electro-mechanical paging systems.

(i) Any and all systems and services based on emerging and future telecommunications technologies relating to Subparagraphs (a) through (h) of this Paragraph.

(9) "Telecommunications systems contract" means a contract for the procurement of telecommunications systems including equipment and related services to include but not be limited to installation and maintenance.

(10) "Telecommunications systems lease contract" means a contract between a supplier of telecommunications systems and the division of administration, office of telecommunications management, or the procuring agency, through which telecommunications systems may be procured for a term which shall not exceed ten years. The contract may be either an operating lease, installment purchase, or a financed lease without a balloon payment.

(11) "Telecommunications transmission facility" means any transmission medium, switch, instrument, wiring system, or other facility which is used, in whole or in part, to provide any transmission.

(12) "Utility" means any telecommunications service provided by the office of telecommunications management and used in the essential operations of a state agency, such as local dial tone, wide area network, and local area network.

(13) "Wide area network" means a data processing/communications network or system generally utilizing common carrier facilities to link geographically dispersed local area networks to other local area networks or computer systems.

§ 1753. Types of contracts permitted

A. The types of contracts permitted in the procurement of telecommunications systems and telecommunications services are defined in this Part and the provisions of this Part supplement the provisions of R.S. 39:1551 through R.S. 39:1736.

B. The office of telecommunications management, through the state purchasing office, may, on behalf of any state agency, enter into telecommunications systems contracts in accordance with the following provisions:

(1) Contracts of this type shall be entered into through a request for proposals as defined in this Part. An invitation to bid format may be utilized with written approval from the director of the office of telecommunications management.

(2) The term of such contracts shall not exceed five years.

C. The office of telecommunications management, through the state purchasing office, may on behalf of any state agency, enter into telecommunications services contracts in accordance with the following provisions:

(1) Contracts of this type shall be entered into through a request for proposals as defined in this Part. An invitation to bid format may be utilized with written approval from the director of the office of telecommunications

management.

(2) The term of such contracts shall not exceed ten years.

D. The office of telecommunications management, through the state purchasing office, may on behalf of any state agency, enter into a telecommunications systems lease contract for an operating lease, installment purchase, or financed lease for telecommunications systems in accordance with the following provisions:

(1) All contracts of this type shall be entered into through a request for proposals as defined in this Part.

(2) The justification of such contracts must be approved by the office of telecommunications management prior to issuance of a request for proposals. Such justification shall identify and consider all cost factors relevant to that contract.

(3) The term of such contracts shall not exceed ten years, except financed contracts shall be for a term not to exceed the economic life of the system or ten years, whichever is less.

(4) Upon the advance written approval of the office of telecommunications management, state agencies may extend operating leases of telecommunications systems on a month-to-month basis for a period not to exceed one calendar year for the stated lease prices.

E. Notwithstanding the provisions of R.S. 39:1615 to the contrary, the use of a multi-year contract for telecommunications systems and telecommunications services shall be in accordance with rules and regulations and under the following conditions:

(1) The director of the office of telecommunications management shall approve in writing the use of a multi-year contract over one year, not to exceed three years.

(2) The director of the state purchasing office shall approve in writing the use of a multi-year contract over three years, not to exceed five years.

(3) The commissioner of administration, or his designee, shall approve in writing the use of a multi-year contract over five years.

§ 1754. Methods of procurement

A. The office of telecommunications management, through the state purchasing office, may procure telecommunications systems and telecommunications services by a request for proposals to conform with the following requirements:

(1) Public notice of the request for proposals shall be the same as for an invitation to bid as provided in R.S. 39:1594(C).

(2)(a) The request for proposals shall indicate the relative importance of all evaluation factors and shall clearly define the work, service, or solution to be provided under the contract, the functional specifications, the criteria to be used in evaluating the proposals, and the time frames within which the work must be completed or the service provided.

(b) For telecommunications systems lease contracts, the request for proposals shall require that proposals contain a declaration as to the maximum price for which the system may be purchased following the termination of the lease contract. No other basis of evaluation shall be used except that set out in the request

for proposals

(3) The office of telecommunications management shall evaluate all proposals to determine the proposal most advantageous to the state, taking into consideration all evaluation criteria set forth in the request for proposals, and shall make a recommendation of award to the state purchasing office.

(4) The office of telecommunications management may request that the state purchasing office reject all proposals when it is deemed that such action is in the best interest of the state.

B. The office of telecommunications management may procure telecommunications systems and telecommunications services in accordance with the law or regulations, or both, which govern the state purchasing office, the division of administration.

§ 1755. General Provisions

The following general provisions shall apply to all procurements under this Part:

(1) No contracts entered into shall have an initial effective date earlier than the date on which such contract receives approval as required by this Part.

(2) All changes, modifications, and amendments to any contract hereunder shall be approved in advance by the office of telecommunications management and the state purchasing office, in addition to any other approvals required by law.

(3) Where written proposals or bids are submitted by vendors, the proposal or bid of the successful vendor shall be incorporated into the final contract consummated with that vendor.

(4) All contracts must contain the following annual appropriation dependency clause: "The continuation of this contract is contingent upon the continuation of an 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 a contract or if such appropriations is reduced by the veto of the governor or by any means provided in the appropriations act to prevent the total appropriations 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 last day of the fiscal year for which funds were appropriated."

(5) The provisions of this Part shall, with respect to the procurement of telecommunications systems or telecommunications services, supersede specifications of any contradictory or conflicting provisions of the following statutes: R.S. 38:2211 et seq. with respect to awarding of public contracts; and R.S. 39:1551 through 1736. The provisions of this Part do not relate to the procurement of services covered by R.S. 39:1481 through 1526.

§ 1758. Part X. REQUIREMENTS OF CONTRACTS - Repealed by Acts 2011, No. 343, §5.

[redacted]

[redacted]

[redacted]

[redacted]

of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

(10) Grantees and sub grantees will use time and material type contracts *only* -

(i) After a determination that no other contract is suitable, and

(ii) If the contract includes a ceiling price that the contractor exceeds at its own risk.

(11) Grantees and sub grantees alone will be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to source evaluation, protests, disputes, and claims. These standards do not relieve the grantee or sub grantee of any contractual responsibilities under its contracts. **Federal agencies will not substitute their judgment for that of the grantee or sub grantee unless the matter is primarily a Federal concern.** Violations of law will be referred to the local, State, or Federal authority having proper jurisdiction.

(12) Grantees and sub grantees will have protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding the protest to the awarding agency. A protester must exhaust all administrative remedies with the grantee and sub grantee before pursuing a protest with the Federal agency. Reviews of protests by the Federal agency will be limited to:

(i) Violations of Federal law or regulations and the standards of this section (violations of State or local law will be under the jurisdiction of State or local authorities) and

(ii) Violations of the grantee's or sub grantee's protest procedures for failure to review a complaint or protest. Protests received by the Federal agency other than those specified above will be referred to the grantee or sub grantee.

(c) Competition.

(1) All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of 85.36. Some of the situations considered to be restrictive of competition include but are not limited to:

(i) Placing unreasonable requirements on firms in order for them to qualify to do business,

(ii) Requiring unnecessary experience and excessive bonding,

(iii) Noncompetitive pricing practices between firms or between affiliated companies,

(iv) Noncompetitive awards to consultants that are on retainer contracts,

(v) Organizational conflicts of interest,

(vi) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and

(vii) Any arbitrary action in the procurement process.

(2) Grantees and sub grantees will conduct procurements in a manner that prohibits the use of statutory or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts State licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criteria provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.

(3) Grantees will have written selection procedures for procurement transactions. These procedures will ensure that all solicitations:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured, and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, **a brand name or equal description** may be used as a means to define the performance or other salient requirements of a procurement. **The specific features of the named brand which must be met by offerors shall be clearly** stated; and

(ii) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(4) Grantees and sub grantees will ensure that all pre qualified lists of persons, firms, or products which are

Comparison of Requirements of 2 CFR 200.318-326 to State of Louisiana Procurement Code

(Responsible entity for the State of Louisiana Procurement Code
Commissioner of the Louisiana Division of Administration
Code: R.S. 39:1551-1771)

Subdivision	Topic	State or Local Provision	Comments
200.318 (a)	General grantee procurement requirements	R.S. 39:1551-1771	
(b)	Contract administration system ensuring performance	R.S. 39:1569.1	
(b) (2)	Conflicts of interest/gifts	R.S. 42:1111-1121	The Louisiana Code of Government Ethics
(d)	Avoid purchase of unnecessary of duplicative items		Not in State Law
(d)	Encourage use of intergovernmental agreements	R.S. 39:1702-1709	
(f)	Encourage use of federal excess and surplus property		OCD will incorporate this principle in any appropriate competition documents or contracts.
(g)	Encourage use of value engineering clauses in construction contracts		Not a requirement that needs to be matched, but this is done by the State's Office of Facility Planning and Control
(h)	Award to responsible contractors	R.S. 39:1606	
(i)	Maintain procurement history needs	R.S. 39:1567, 1569	This is not specifically stated in 39:1518. R.S. 1554 F. reflects the use of Federal requirements not addressed.
(j)	Only use time and materials contracts in certain circumstances	R.S. 39:1611-1613	There is no specific mention of this in R.S. 39

Subdivision	Topic	State or Local Provision	Comments
(k)	Grantee not feds responsible for resolution of disputes and protests	R.S. 39:1671-1678; 1681-1685	
(k)	Protest and dispute resolution procedures	R.S. 39:1671-1678; 1681-1685	
200.319 (a)	Full and open competition	R.S. 39:1595	
(b)	Ban on geographic preferences		The State of Louisiana has geographical preferences but they are not used in CDBG procurement
(c)(1)	Written selection procedures that identify all requirements and do not unduly restrict competition	R.S. 39:1595	
(d)	Prequalification	R.S. 39:1506	
200.320 (b)	Small Purchase	R.S. 39:1596	
(c)	Bids	R.S. 39:1594	
(d)	Competitive Proposals	R.S. 39:1595	
(f)	Single Source	R.S. 39:1597	
(f)(2)	Emergency	R.S. 1598	
(f)(3)	Awarding agency authorizes noncompetitive	R.S. 1597	
(f)(4)	After solicitation, competition determined inadequate	R.S. 1597	
200.321 (a)	MWBE	R.S. 39:1731 and 1732	
200.323 (a)	Price and Cost Analysis	R.S. 39:1595	
200.324 (a)	Award Agency Review	R.S. 39:1621	
200.325	Bonds	R.S. 38:2216	
200.326	Contract terms, remedies for breach	R.S. 39:1568; 1671-78; 1681-85	
200.326	Contract terms, termination for cause and convenience	R.S. 39: 1625; 1628	
200.326	Contract terms, compliance with EO 11246	R.S. 39:1595 (B) (12)	These sections indicate the need to comply with Federal regulations

Subdivision	Topic	State or Local Provision	Comments
200.326 (i)(4)	Contract terms, Copland anti-kickback	Same as (i)(3)	Same as (i)(3)
200.326 (i)(5)	Contract terms, Davis Bacon	Same as (i)(3)	Same as (i)(3)
200.326 (i)(6)	Contract terms, compliance with work hours and safety standards act	Same as (i)(3)	Same as (i)(3)
200.326	Contract terms, energy efficiency	Same as (i)(3)	Same as (i)(3)