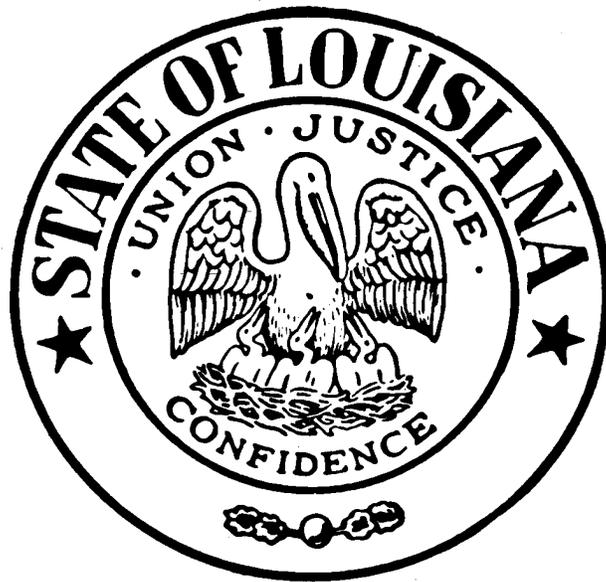


# **Purchasing Rules and Regulations**



**State of Louisiana  
Office of State Purchasing**

Revised April 2011

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### GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

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## Title 34

# GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

## Part I. Purchasing

### Subpart 1. Central Purchasing Procedures

#### Chapter 3. Specifications

##### §301. General Purpose and Policies

###### A. Definition and Purpose

1. *Specification*—any description of the physical functional, or performance characteristics, or of the nature of a supply, service, construction or major repair item. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or construction item for delivery. Unless the context requires otherwise, the terms *specification* and *purchase description* are used interchangeably throughout these regulations.

2. The purpose of a specification is to serve as a basis for obtaining a supply, service, or major repair item adequate and suitable for the state's needs in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs. It is the policy of the state that specifications permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the state's requirements.

3. All definitions as listed in R.S. 39:1556 and R.S. 39:1591 will apply.

B. Nonrestrictiveness. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or major repair item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that is not practicable to use a less restrictive specification.

C. Preference for Commercially Available Products. It is the general policy of this state to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided, to the extent practicable.

D. Escalation and De-Escalation Clauses. Bid specifications may contemplate a fixed escalation or de-escalation in accordance with a recognized escalation index.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

##### §303. Availability of Documents

A. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection pursuant to R.S. 44.1.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

##### §305. Authority to Prepare Specifications

A. Statutory Authority of the Chief Procurement Officer and State Agencies. The chief procurement officer is authorized to prepare specifications in accordance with R.S. 39:1652, subject to the authority granted purchasing agencies in R.S. 39:1653 of the Louisiana Procurement Code.

B. Delegation of Authority to State Agencies. The chief procurement officer may delegate in writing the authority to prepare and utilize specifications to purchasing agencies and using agencies for any type of supplies, services, or major repairs provided such delegations may be revoked by the chief procurement officer.

###### C. Authority to Contract for Preparation of Specifications

1. A contract to prepare specifications for state use in procurement of supplies or services may be entered into when a written determination is made by the chief procurement officer, or the head of a purchasing agency authorized to prepare such specifications, that there will be no substantial conflict of interest involved and it is otherwise in the best interest of the state.

2. Whenever specifications are prepared by other than state personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this regulation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

**§307. Procedures for the Development of Specifications**

**A. Provisions of General Application**

1. Application of Section. This Section applies to all persons who may prepare a specification for state use, including the chief procurement officer, the head of a purchasing agency, the head of a using agency, the designees of such officers, and also consultants, architects, engineers, designers, and other draftsmen of specifications used for public contracts.

2. Specification of Alternates May Be Included. To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repair items where two or more design, functional, or performance criteria will satisfactorily meet the state's requirements.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

**§309. Definitions and Use**

**A. Proprietary Specifications**

1. Definition. *Proprietary Specification*—a specification that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

2. Use

a. Since use of a proprietary specification is restrictive, it may be used only when the chief procurement officer or the head of a purchasing agency makes a written determination that only the identified brand name item or items will satisfy the state's needs.

b. Some examples of circumstances which could necessitate proprietary procurement are:

i. revolving fund purchases for resale, such as groceries, canned good, packing house products, drug sundries, candy, tobacco and other similar items;

ii. revolving fund purchases of foods for cafeterias, dining halls or dormitories;

iii. standard replacement parts such as automobiles, machinery, and equipment;

iv. repairs to automobiles, machinery, equipment, etc.

3. Competition. The procurement officer shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made under Chapter 9 (Sole Source Procurement) of this Part.

4. Reports. The chief procurement officer shall submit reports to the commissioner or cabinet department head within 90 days after the end of the fiscal year stating:

- a. any brand name contracts used;
- b. the number of suppliers solicited;
- c. the identity of these suppliers;
- d. the supplier awarded the contract; and
- e. the contract price.

**B. Brand Name or Equal Specification**

1. Definition. A specification that cites brand names, model number, or other identifications as representing quality and performance called for, and inviting bids on comparable items or products of any manufacturer.

2. Use. Some examples of circumstances which could necessitate the use of brand name or equal specifications are:

a. no specification for a common or general use item or qualified products list is available; or

b. time does not permit the preparation of another form of specification, not including a brand name specification; or

c. the nature of the product or the nature of the state's requirements makes use of a brand name or equal specification suitable for the procurement; or

d. use of a brand name or equal specification is in the state's best interest;

e. specifications shall seek to designate as many different brands as are practicable as "or equal" references and shall state that substantially equivalent products to those designated will be considered for award.

3. Competition

a. Where a brand name or equal specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

b. Unless the chief procurement officer or the head of a purchasing or using agency authorized to finally approve specifications determines that the essential characteristics of the brand name included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design, functional, or performance characteristics which are required.

**C. Qualified Products List**

1. Definition. *Qualified Products List*—a specification developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable as eligible to be offered on the next Invitation for Bids; on Approved Brands List.

2. Use. A qualified products list may be developed with the approval of the chief procurement officer, or the head of a purchasing or using agency authorized to develop qualified products lists, when testing or examination of the supplies or major repair items prior to issuance of the solicitation is desirable or necessary in order to best satisfy state requirements.

3. Comments, Final Approval, Revisions, and Cancellation. Comments on final approval of, and revisions to the proposed criteria and methodology for establishing and maintaining a qualified products list, and the cancellation thereof, shall follow the procedures of Subparagraphs D.3.b-e of this Section applicable to specifications for common or general use items.

4. Solicitation

a. When developing a qualified products list, a representative group of potential suppliers shall be solicited in writing to submit products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer its products for consideration.

b. Inclusion on a qualified products list shall be based on results of tests or examinations conducted in accordance with prior published requirements.

D. Common or General Use Item

1. Definition. *Specification for a Common or General Use Item*—a specification which has been developed and approved for repeated use in procurement in accordance with the provisions of R.S. 39:1651.A and B.

2. Use. If a specification for a common or general use item has been developed or a qualified products list has been developed for a particular supply, service, or major repair item, or need, it shall be used unless the chief procurement officer or the head of a purchasing agency makes a written determination that its use is not in the state's best interest and that another specification shall be used.

3. Special Additional Procedures

a. Preparation and Utilization. A specification for common or general use shall, to the extent practicable, be prepared to be utilized:

i. when a supply, service, or major repair item is used in common by several using agencies or used repeatedly by one using agency, and the characteristics of the supply, service, or major repair item as commercially produced or provided remain relatively stable while the frequency or volume of procurement is significant;

ii. where the state's recurring needs require uniquely designed or specially produced items; or

iii. when the chief procurement officer, or the head of a purchasing or using agency authorized to prepare such specifications, finds it to be in the state's best interest.

b. In the event a using agency requests the preparation of a specification for a common or general use

item, the chief procurement officer shall prepare such a specification if such officer determines the conditions in Clauses 3.a.i-iii have been met.

c. Comments on the Draft. The chief procurement officer, or the head of a purchasing or using agency preparing a specification for a common or general use item, shall provide an opportunity to comment on the draft specification to the using agencies, and as reasonable a number of manufacturers and suppliers as such officer deems appropriate.

d. Final Approval. Final approval of a proposed specification for a common or general use item shall be given only by the chief procurement officer, or by the head of a purchasing or using agency authorized to give such approval.

e. Revisions. Revisions to specifications for common or general use items which do not change the technical elements of the specifications but which are necessary for clarification may be made upon approval of the chief procurement officer, or the head of a purchasing or using agency authorized to approve such specifications. Interim revisions to fit the requirements for a particular procurement which change the technical elements of the specification may be made by the chief procurement officer, or the head of a purchasing or using agency authorized to approve such a specification. All other revisions shall be made in accordance with Subparagraphs D.3.a-d of this Section.

f. Cancellation. A specification for a common or general use item may be canceled by the chief procurement officer, or by the head of a purchasing or using agency authorized to give final approval to such specifications.

E. Use of Functional or Performance Descriptions. State agencies should emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the state to the extent practicable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

## Chapter 5. Competitive Sealed Bidding

### §501. Content of the Invitation for Bids

#### A. Invitation for Bids

1. Purchases where the estimated cost is over \$5,000 shall be made by sending out written Invitations for Bids to at least five responsible bidders, and if feasible, use should be made of state purchasing's computerized vendor list. Purchases where the estimated cost is over \$25,000 shall be advertised in accordance with R.S. 39:1594. All advertisements or written invitations for bids shall contain general descriptions of the classes of commodities on which bids are solicited and shall state:

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- a. the date and time when bids will be received, opened and publicly read;
- b. the names and locations of the state agencies for which the purchases are to be made;
- c. where and how specifications and bid forms may be obtained.

2. The Invitation for Bids shall be on the state's standard forms containing all pertinent information and shall be full and complete including specifications, quantities, units, packaging and number of containers to the case.

B. Content. The Invitation for Bids shall include the following:

1. the purchase description, evaluation factors, delivery or performance schedule, and inspection and acceptance requirements not included in the purchase description; and

2. the contract terms and conditions, including warranty and bonding or other security requirements, as applicable.

C. Incorporation by Reference. The Invitation for Bids may incorporate documents by reference provided that the Invitation for Bids specifies where such documents can be obtained.

D. Special Conditions. If any special conditions are to apply to a particular contract, they shall be included in the Invitation for Bid.

E. Types of Purchases. Purchases are made in two different ways.

1. Open Market—a purchase made other than under a schedule or term contract.

2. Term Contracting—a technique by which a source of supply is established for a specific period of time. Term contracts are usually based on indefinite quantities to be ordered "as needed", although such contracts can specify definite quantities with deliveries extended over the contract period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995).

### §503. Bidding Time

A. Bidding time is the period of time between the date of distribution of the Invitation for Bids and the date set for opening of bids. In each case, bidding time will be set to provide bidders a reasonable time to prepare their bids. For bids over \$25,000, a minimum of 21 days should be provided unless the chief procurement officer or his designee deems that a shorter time is necessary for a particular procurement. However, in no case shall the bidding time be less than 10 days, except as provided in R.S. 39:1598 and Chapter 11 of these rules and regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995).

### §505. Addenda Modifying Invitation for Bids

A. Addenda modifying invitation for bids shall not be issued within a period of three working days prior to the advertised time for the opening of bids, excluding Saturdays, Sundays and any other legal holidays. If the necessity arises to issue an addendum modifying an Invitation for Bid within the three working day period prior to the advertised time for the opening of bids, then the opening of bids shall be extended exactly one week, without the requirement of re-advertising. Addenda shall be sent to all prospective bidders known to have received an Invitation for Bid.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995).

### §507. Bidder Submissions

A. Bid Forms. All written bids, unless otherwise provided for, must be submitted on, and in accordance with, forms provided, properly signed. Bids submitted in the following manner will not be accepted:

1. bid contains no signature indicating an intent to be bound;
2. bid filled out in pencil; and bids must be received at the address specified in the Invitation for Bids prior to bid opening time in order to be considered.

#### B. Bid Samples and Descriptive Literature

1. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, packaging, or operation of an item which enables the state to consider whether the item meets its specifications and needs.

2. Bid Sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

3. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

4. The Invitation for Bids shall state whether bid samples or descriptive literature should be submitted. Unsolicited bid samples may not be returned.

5. When required, samples must be received not later than the time set or specified for bid opening, free of expense to the state. Samples should be marked plainly with name and address of bidder, bid number and opening date of bid, also memorandum indicating whether bidder desires return of sample or samples. Providing they have not been used or made useless through tests, when requested, samples submitted will be returned at bidder's risk and expense. All samples submitted are subject to mutilation as the result of

tests by the agency. Failure to submit samples within time allowed will result in disqualification or nonconsideration of bid.

C. Conditional Bids. Conditional bids are subject to rejection in whole or in part. A conditional bid may be accepted if the condition is not a substantial deviation from the Invitation for Bid.

D. All or Part. Bids may be considered for all or part of total quantities.

E. Bids Binding. Unless otherwise specified, all formal bids shall be binding for a minimum of 30 calendar days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the state may award to this bidder after this period has expired, or after the period specified in the formal bid has expired.

F. Net Prices. Bid prices, unless otherwise specified, must be net including transportation and handling charges prepaid by contractor to destination.

G. Taxes. Vendor is responsible for including all applicable taxes in the bid price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:328 (July 1982), amended LR 21:566 (June 1995).

#### **§509. Bidder Lists**

A. Bidder lists may be compiled to provide the state with the names of businesses that may be interested in competing for various types of state contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible in respect to a particular procurement or otherwise capable of successfully performing a state contract.

B. Where feasible, use should be made of the state purchasing's computerized vendor list. It shall be the responsibility of the bidder to confirm that his company is in the appropriate bid category.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

#### **§511. Pre-Bid Conferences**

A. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an Invitation for Bids and shall be advertised if over \$25,000 and attendance is mandatory. The conference should be held long enough after the Invitation for Bids has been issued to allow bidders to become familiar with it, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids. Nothing stated at the pre-bid conference shall change the Invitation for Bids unless a change is made by written addenda as provided in §505.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

#### **§515. Pre-Opening Modification or Withdrawal of Bids**

A. Procedure. Bids may be modified or withdrawn by written, telegraphic or fax notice received at the address designated in the Invitation for Bids prior to the time set for bid opening, as recorded by date stamp at the purchasing agency.

B. Withdrawal of Bids. A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of opening. If a bidder withdraws a bid, all bid documents shall remain the property of the state, unless return is requested in writing.

C. Disposition of Bid Security. Bid security, if any, shall be returned to the bidder if requested when withdrawal of the bid is permitted.

D. Records. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

#### **§517. Late Bids**

A. Formal bids and addenda thereto, received at the address designated in the Invitation for Bids after time specified for bid opening will not be considered, whether delayed in the mail or for any other causes whatsoever. If a bid is delayed by actions of the agency handling the solicitation, and this delay prejudices a vendor, then the agency shall cancel the solicitation and re-bid. In no case will late bids be accepted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

#### **§519. Receipt, Opening and Recording of Bids**

A. Receipt. Upon receipt, all bids and modifications will be time-stamped but not opened. They shall be stored in a secure place until bid opening time.

##### **B. Opening and Recording**

1. Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the Invitation for Bids. The names of the bidders and the bid price shall be read aloud or otherwise made available and shall be recorded.

2. The opened bids shall be available for public inspection, in accordance with R.S. 44:Chapter I.

C. Postponed Openings—Exceptions. In the event that bids are scheduled to be opened on a day that is a federal holiday, or if the governor by proclamation creates an unscheduled holiday, or for any cause that exists that creates a nonworking day, bids scheduled to be opened on that day shall be opened on the next working day at the same address and time specified in the Invitation for Bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1992), amended LR 21:566 (June 1995).

**§521. Mistakes in Bids**

A. Correction or Withdrawal of Bids. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders, and such actions may be taken only to the extent permitted under these regulations. A request to withdraw a bid after the bid opening must be made within three business days after bid opening, and supported in writing. If it is determined that the error is patently obvious, then the bid may be withdrawn, and if a bid guaranty was required it shall be returned to the bidder.

B. Minor Informalities. Minor informalities are matters of form rather than substance which are evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is not significant. The chief procurement officer or the head of a purchasing agency may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include, but are not limited to, the failure of a bidder to:

1. return the number of signed bids required by the Invitation for Bids;
2. sign the bid, but only if the unsigned bid is accompanied by other signed material indicating the bidder's intent to be bound;
3. sign or initial write-overs, or corrections in bids;
4. get an agency's certification that a mandatory job-site visit was made; and
5. return nonmandatory pages of the bid proposal.

C. Mistakes Where Intended Bid is Evident. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn. Some examples of mistakes that may be clearly evident on the face of the bid document are typographical errors, errors in extending unit prices, unit prices placed in the extended amount column, and failure to return an addendum provided there is evidence that the addendum was received. When an error is made in extending total prices the unit bid price will govern. Under no circumstances will a unit bid price be altered or corrected unless it is obvious that a unit price is submitted in a

different unit of measure than shown on the bid form and the bidder's extended total verifies that the unit bid price was submitted using a wrong unit of measure, then the unit price may be changed to correspond with the correct unit of measure.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:329 (July 1982), amended LR 21:566 (June 1995).

**§523. Bid Guaranty and Bond**

A. Bid Guaranty

1. When specified in the Invitation for Bids, a bid bond, cashier's check, or certified check, made payable to the Department of the Treasury of the State of Louisiana, for the amount specified, must accompany each bid.

2. If a bid bond is used, it shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A-rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide.

B. Performance Bond

1. Any performance bond furnished shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the *Federal Register*, or by a Louisiana domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

2. No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A- rating by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

3. In addition, any performance bond furnished shall be written by a surety or insurance company that is currently licensed to do business in the state of Louisiana. If a performance bond has been required, the requirement cannot be waived, unless otherwise allowed by Louisiana statutes.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

**§525. General Guaranty**

A. At a minimum, the state shall require that the contractor submit to the following guarantees.

1. Hold the state, its agents and employees harmless against any liability for negligent acts or omissions by the contractor.

2. Hold the state, its agents and employees harmless against any liability for infringement of any copyright or patent arising from performance of this contract.

3. Protect the state against latent defective material or workmanship and to repair or replace any damages or marring occasioned in transit.

4. Pay for all necessary permits, licenses and fees and give all notices and comply with all laws, ordinances, rules and regulations of the city or town in which the installation is to be made or the contract to be performed, and of the state of Louisiana.

B. The contractor may propose substitute guarantees which provide greater protection to the state.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

**§527. Bid Evaluation and Award**

A. General. The contract is to be awarded "to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the Invitation for Bids." See R.S. 39:1594.G (Competitive Sealed Bidding, Award) of the Louisiana Procurement Code. The Invitation for Bids shall set forth the requirements and criteria which will be used to determine the lowest responsive bidder. No bid shall be evaluated for any requirements or criteria that are not disclosed in the Invitation for Bids.

B. Responsibility and Responsiveness

*Responsive Bidder*—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.

*Responsible Bidder or Offeror*—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.

C. Product Acceptability

1. The Invitation for Bids shall set forth the evaluation criteria to be used in determining product acceptability. It may require the submission of bid samples, descriptive literature, technical data, or other material. It may also provide for:

a. inspection or testing of a product prior to award for such characteristics as quality or workmanship;

b. examination of such elements as appearance, finish, taste, or feel; or

c. other examinations to determine whether the product conforms with any other purchase description requirements, such as unit packaging. If bidder changes the unit or packaging, and it is determined that the change prejudices other bidders, then the bid for the changed item shall be rejected.

2. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the Invitation for Bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

D. Determination of Lowest Bidder

1. Following determination of product acceptability as set forth in Subsection C of this Section, if any is required, bids will be evaluated to determine which bidder offers the lowest cost to the state in accordance with the evaluation criteria set forth in the Invitation for Bids. Only objectively measurable criteria which are set forth in the Invitation for Bids shall be applied in determining the lowest bidder. Examples of such criteria include but are not limited to transportation cost, and ownership or life-cycle cost formula. Evaluation factors need not be precise predictors of actual future costs, but to the extent possible, such evaluation factors shall:

a. be reasonable estimates based upon information the state has available concerning future use; and

b. treat all bids equitably.

E. Restrictions. A contract may not be awarded to a bidder submitting a higher quality item than that required by the Invitation for Bids unless the bid is also the lowest bid as determined under Subsection D of this Section. Further, this Section does not permit negotiation with any bidder.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

**§529. Tie Bids**

A. Definition

*Tie Bids*—low responsive bids from responsible bidders that are identical in price and which meet all requirements and criteria set forth in the Invitation for Bids.

B. Resident Business Preference

1. In state contracts awarded by competitive sealed bidding, resident businesses shall be preferred to nonresident businesses where there is a tie bid and where there will be no sacrifice or loss of quality.

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2. *Resident Business*—one authorized to do and doing business under the laws of this state, which either:

- a. maintains its principal place in business in the state; or
- b. employs a minimum of two employees who are residents of the state.

C. Award. In the discretion of the chief procurement officer or the head of a purchasing agency, award shall be made in any manner that will discourage tie bids. A written determination justifying the manner of award must be made. This would include, but is not limited to, consideration of such factors as resident business, proximity, past performance, delivery, completeness of bid proposal. Tie bids over \$10,000 must be reported to the attorney general. (See Chapter 23—Reporting of Suspected Collusive Bidding or Negotiations).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

### §531. Awarding of Bids

A. Rejection of Bids. The right is reserved to reject any or all bids in whole or in part, and to award by items, parts of items, or by any group of items specified. Also, the right is reserved to waive technical defects when the best interest of the state thereby will be served.

B. Information on Bid Results. Information pertaining to results of bids may be secured by visiting the agency, except weekends and holidays, during normal working hours, or by complying with §535.

#### C. Cash Discounts

1. Open Market Purchases and Definite Quantity Term Contracts. All cash discounts will be taken. However, cash discounts will only be considered in determining an award on terms for 30 days or more and at least 1 percent.

2. Indefinite Quantity Term Contracts. Cash discounts will be accepted and taken but will not be considered in determining awards.

D. Increase or Decrease in Quantities. Unless otherwise specified in the Invitation for Bids, the state reserves the right to increase or decrease the quantities of any item or items shown in the bid by 10 percent.

E. Availability of Funds. A contract shall be deemed executory only to the extent of appropriations available to each agency for the purchase of such articles.

#### F. All or None Bids

1. A business may limit a bid on acceptance of the whole bid, whereupon the state shall not thereafter reject part of such bid and award on the remainder. An award shall be made to the "all or none" bid only if it is the overall low bid on all items, or those items bid.

2. Overall low bid shall be that bid whose total bid, including all items bid, is the lowest dollar amount; be it an individual's bid or a computation of all low bids on individual items of those bids that are not conditioned "all or none."

a. Open Market Purchases. When multiple items are contained on any solicitation and the state chooses to make an item or group award in order to save the state the cost of issuing a different purchase order, an award may be made to a vendor on that item if the total bid for said item is \$1,000 or less, and the difference between the low bidder and the bidder receiving the award is \$100 or less.

b. An "all or none" bid may be awarded in a similar fashion, to save the state the cost of issuing another purchase order, if the difference in the overall cost between the vendors is \$100 or less and no single item exceeds \$1,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

### §533. Documentation of Award

A. Following award, a record showing the basis for determining the successful bidder, including reasons for rejecting any nonresponsive bids, shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995).

### §535. Publicizing Awards

A. Written notice of award shall be sent to the successful bidder. In procurement over \$25,000, each unsuccessful bidder shall be notified of the award provided that he submitted with his bid a self-addressed stamped envelope requesting this information. Notice of award shall be made a part of the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995).

### §537. Assignments

A. No contract or purchase order or proceeds thereof may be assigned, sublet or transferred without written consent of the commissioner. This does not include agencies exempt in R.S. 39:1572.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:330 (July 1982), amended LR 21:566 (June 1995).

**§539. Deliveries**

A. Extension of Time. Any extension of time on delivery or project completion time must be requested in writing by the vendor and accepted or rejected in writing by the purchasing department. Such extension is applicable only to the particular item or shipment affected.

B. Additional Charges. No delivery charges shall be added to invoices except when express delivery is substituted on an order for less expensive methods specified in contract. In such cases, when requested by the agency, the difference between freight or mail and express charges may be added to the invoice.

C. Weight Checking. Deliveries shall be subject to reweighing on official scales designated by the state. Payments shall be made on the basis of net weight of materials delivered.

D. Rejection of Deliveries, Payment for Used Portion. Payment for any used portion of delivery found (as a result of tests or otherwise) to be inferior to specifications or contract requirements, will be made by the state on an adjusted price basis, using the procedures outlined in R.S. 39:1673.

E. Contracts—Reduction in Prices. All state agencies will receive the benefit of any reduction in price on any unshipped portion of any commodity contract. In the event the contractor reduces his price to any one state agency or political subdivision of the state, or makes a general reduction in price, all state agencies being supplied under these contracts are automatically entitled to the lower price; and the contractor shall rebate to all state agencies in a proportional amount. Also, in the event the total purchases of all state agencies of any items covered by the contract entitle the state to a greater quantity discount, the state shall receive the quantity discount appropriated the total amount of actual purchases made by all state agencies. All price reductions made by any supplier under these contracts, designed for the benefit of any state agency, shall be made directly to Purchasing, Division of Administration. Also, the state agencies shall report any offer of a reduction in contract price to Purchasing, and the right is reserved to accept or reject such offers; but the best interest of the state as a whole will always be considered.

F. Invoices. Upon delivery of each order and its acceptance by the state agency, the supplier shall bill the state agency by means of invoice and the invoice shall make reference to the purchase order number, contract award number, and/or purchase requisition number. All invoices shall be submitted by the supplier on the supplier's own invoice forms, in duplicate, directly to the accounting office of the state agency as required by the purchase order.

**G. Payment**

1. After receipt and acceptance of order and receipt of valid invoice, payment will be made by the state agency within 30 days. Payment will be made at the respective unit prices shown on the bid or price schedule, less any

percentages off list price, less federal excise tax (unless otherwise specified), less cash discount earned.

2. If a state agency without reasonable cause fails to make any payment due within 90 days of the due date prescribed by contract, the state agency shall pay a penalty in accordance with R.S. 39:1695.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

**Chapter 7. Small Purchases****§701. Small Purchases**

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

B. Any person who intentionally violates this Part will be penalized in accordance with R.S. 39:1679.

C. See appropriate Executive Order entitled "Small Purchases."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995).

**Chapter 9. Sole Source Procurement****§901. Application**

A. These provisions shall apply to all sole source procurement unless emergency conditions exist as defined in Chapter 11 (Emergency Procurement) of these regulations.

B. R.S. 39:1597 of the Louisiana Procurement Code provides in pertinent part:

"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."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982), amended LR 21:566 (June 1995).

**§905. Conditions for Use of Sole Source Procurement****A. Determination**

1. The determination as to whether a procurement shall be made as a sole source shall be made by the chief procurement officer, or head of a purchasing agency. Such determination shall be in writing. Such officer may specify the application of such determination and its duration. In cases of reasonable doubt, competition should be solicited.

Any request by a using agency that a procurement be restricted to one potential contractor shall be accompanied by an explanation as to why no other will be suitable or acceptable to meet the need.

2. Sole source procurement is permissible only if a requirement is available from a single supplier. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder or offeror for that item. Examples of circumstances which could necessitate sole source procurement are:

- a. where the compatibility of equipment, accessories, or replacement parts is the paramount consideration;
- b. where a sole supplier's item is needed for trial use or testing;
- c. procurement of items for resale;
- d. procurement of public utility services;
- e. registered breeding stock may be purchased on a selective basis without bids, after approval as to price and quality of such stock by the Commissioner of Agriculture and a specialist of Louisiana State University to be designated by the head of the College of Agriculture;
- f. other livestock may be purchased on a selective basis without bids after approval as to health by the Commissioner of Agriculture, provided that the cost per head does not exceed \$1,500. Any livestock purchases above this amount must have prior approval of the chief procurement officer.

**B. Purchase of Antiques, Used or Demonstrator Equipment**

1. Any agency may procure any equipment which is used or which has been previously purchased by an individual or corporation where the procurement officer has determined that the procurement of said equipment is cost effective to the state.

2. The used equipment shall be purchased by the head of the agency within the price range set by the director of state purchasing in his statement of written approval for the purchase which must be obtained by the head of the agency prior to the purchase.

3. The head of the agency shall certify in writing to the director of state purchasing all of the following:

- a. the price for which the used equipment may be obtained;
- b. the plan for maintenance and repair of the equipment and the cost thereof;
- c. the savings that will accrue to the state because of the purchase of the used equipment;
- d. the fact that following the procedures set out in the Louisiana Procurement Code will result in the loss of the opportunity to purchase the equipment.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:331 (July 1982) amended LR 21:566 (June 1995).

**§907. Record of Sole Source Procurement**

A. A record of sole source procurement shall be maintained that lists:

1. each contractor's name;
2. the amount and type of each contract;
3. a listing of the supplies, services, or major repairs procured under each contract; and
4. the identification number of each contract file.

B. The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

**Chapter 11. Emergency Procurement**

**§1101. Application**

A. The provisions of this Section apply to every procurement made under emergency conditions that will not permit other source selection methods to be used.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995).

**§1103. Definition of Emergency Conditions**

A. An emergency condition is a situation which creates a threat to public health, welfare, safety, or public property such as may arise by reason of floods, epidemics, riots, equipment failures, or such other reason as may be proclaimed by the chief procurement officer. The existence of such condition creates an immediate and serious need for supplies, services, or major repairs that cannot be met through normal procurement methods and the lack of which would seriously threaten:

1. the functioning of Louisiana government;
2. the preservation or protection of property; or
3. the health or safety of any person.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

**§1105. Scope of Emergency Procurement**

A. Emergency procurement shall be limited to only those supplies, services, or major repair items necessary to meet the emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995).

**§1107. Authority to Make Emergency Procurement**

A. Any state agency may make emergency procurement of up to \$5,000 when an emergency condition arises and the need cannot be met through normal procurement methods, provided that whenever practical, approval by the chief procurement officer shall be obtained prior to the procurement. Prior to all such emergency procurement of \$5,000 or more, the chief procurement officer, head of a state agency, or either officer's designee shall approve the procurement. Fax requests should be submitted if time permits, and must contain adequate justification for the emergency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

**§1109. Source Selection Methods**

A. General. The source selection method used shall be selected with a view to the end of assuring that the required supplies, services, or major repair items are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained. Any offer accepted shall be confirmed in writing.

B. After Unsuccessful Competitive Sealed Bidding. Competitive sealed bidding is unsuccessful when bids received pursuant to an Invitation for Bids are unreasonable, noncompetitive, or the low bid exceeds available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids. If emergency conditions exist after or are brought about by an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995).

**§1111. Determination and Record of Emergency Procurement**

A. Determination. The procurement officer or the agency official responsible for procurement shall make a written determination stating the basis for an emergency procurement and for the selection of a particular contractor. Such determination shall be sent promptly to the chief procurement officer.

**B. Record**

1. A record of emergency procurement shall be maintained that lists:

- a. each contractor's name;
- b. the amount and type of each contract;
- c. a listing of the supplies, services, or major repairs procured under each contract; and
- d. the identification number of each contract file.

2. The record for the previous fiscal year shall be submitted to the legislature at the beginning of the legislative session.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), repromulgated LR 21:566 (June 1995).

**Chapter 13. Cancellation of Solicitations; Rejection of Bids or Proposals**

**§1301. Scope**

A. The provisions of this Section shall govern the cancellation of solicitations issued by the state and rejections of bids or proposals in whole or in part.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

**§1303. Policy**

A. Solicitations should only be issued when there is a funded, valid need unless the solicitation states that it is for informational purposes only. Preparing and distributing a solicitation requires the expenditure of state time and funds. Businesses likewise incur expense in examining and responding to solicitations. Therefore, although issuance of a solicitation does not compel award of a contract, a solicitation is to be canceled only when it is in the state's best interests.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing Office, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

**§1305. Cancellation of Solicitations—Notice**

A. Each solicitation issued by the state shall state that the solicitation may be canceled as provided in these regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:332 (July 1982), amended LR 21:566 (June 1995).

**§1307. Reasons for Cancellation**

A. A solicitation may be canceled in whole or in part when the chief procurement officer or the head of a purchasing agency determines in writing that such action is in the state's best interest for reasons including but not limited to:

1. the state no longer requires the supplies, services, or major repairs;
2. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
3. ambiguous or otherwise inadequate specifications were part of the solicitation;
4. the solicitation did not provide for consideration of all factors of significant cost to the state;
5. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
6. all otherwise acceptable bids received are at unreasonable prices; or
7. there is reason to believe that the bids or proposals may not have been independently arrived at in open competition, may have been collusive, or may have been submitted in bad faith.

B. When a solicitation is canceled prior to opening, a notice of cancellation shall be sent to all businesses solicited. When a solicitation or item is canceled after bids are opened, a notice of cancellation should be sent to all bidders if the amount canceled exceeds the "Small Purchases" Executive Order.

C. The notice of cancellation shall:

1. identify the solicitation;
2. briefly explain the reason for cancellation; and
3. where appropriate, explain that an opportunity will be given to compete on any re-solicitation or any future procurement of similar supplies, services, or major repairs.

D. Documentation. The reasons for cancellation shall be made a part of the procurement file and available for public inspection.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

**§1309. Rejection of Individual Bids or Proposals**

A. General. This Subsection applies to rejections of individual bids in whole or in part.

B. Notice in Solicitation. Each solicitation issued by the state shall provide that any bid may be rejected in whole or in part when in the best interests of the state as provided in these regulations.

C. Reasons for Rejection. As used in this Section "bid" means any bid submitted in competitive sealed bidding and includes submissions under Chapter 7 (Small Purchases). Reasons for rejecting a bid include but are not limited to:

1. the business that submitted the bid is nonresponsive as determined under §1511 of these regulations;
2. the bid is not responsive, that is, it does not conform in all substantive respects to the Invitation for Bids. (See Chapter 5 of these regulations); or
3. the supply, service, or major repair items is unacceptable, that is, it fails to meet the specifications or permissible alternates or other acceptability criteria set forth in the Invitation for Bids. See Chapter 5, §527.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

**§1311. Disposition of Bids or Proposals**

A. When bids or proposals are rejected, or a solicitation is canceled after bids have been opened, the bids shall be retained in the procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

**Chapter 15. Responsibility and Prequalification**

**§1501. Definitions**

*Responsible Bidder or Offeror*—a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance. See R.S. 39:1591(7) and R.S. 39:1601 of the Louisiana Procurement Code. For the purpose of these regulations, "capability" as used in this definition means capability at the time of award of the contract, unless otherwise specified in the Invitation for Bid.

*Solicitation*—an Invitation for Bids, or any other document, such as a request for quotations and requests for proposals issued by the state for the purpose of soliciting offers to perform a state contract.

*Suppliers*—as used in R.S. 39:1602 (Prequalification of Suppliers) of the Louisiana Procurement Code, means prospective bidders or offerors.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

**§1503. Application**

A. A determination of responsibility or nonresponsibility shall be governed by this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995).

**§1505. Standards of Responsibility****A. Standards**

1. Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, whether a prospective contractor:

a. has the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability of meeting all contractual requirements;

b. has a satisfactory record of performance;

c. has a satisfactory record of integrity;

d. has qualified legally to contract with the state; and

e. has supplied the necessary information in connection with the inquiry concerning responsibility.

2. Nothing herein shall prevent the procurement officer from establishing additional responsibility standards, provided that these additional standards are set forth in the solicitation.

B. Information Pertaining to Responsibility. The prospective contractor shall supply information requested by the procurement officer concerning the responsibility of such contractor. If such contractor fails to supply the requested information, the procurement officer shall base the determination of responsibility upon any available information or may find the prospective contractor nonresponsible if such failure is unreasonable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995).

**§1507. Ability to Meet Standards**

A. The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

1. evidence that such contractor possesses such necessary items;

2. acceptable plans to subcontract for such necessary items; or

3. a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995).

**§1509. Duty Concerning Responsibility**

A. Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), repromulgated LR 21:566 (June 1995).

**§1511. Written Determination of Nonresponsibility Required**

A. If a bidder or offeror who otherwise would have been awarded a contract of \$5,000 or more is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the chief procurement officer, or head of a purchasing agency. A copy of the determination shall be sent promptly to the nonresponsible bidder or offeror. The determination shall be made part of the procurement file.

B. Any such bidder who is proposed to be disqualified shall be given a reasonable opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:333 (July 1982), amended LR 21:566 (June 1995).

**Chapter 17. Types of Contracts****§1701. Centralization of Contracting Authority**

A. If the central purchasing agency has entered into a statewide competitive contract for supplies or services, all state governmental bodies, excluding those exempted from central purchasing by R.S. 39:1572.B., shall use such statewide competitive contracts when procuring such supplies or services unless given written exemption by the chief procurement officer. The following exceptions may be considered.

1. Functional differences, for example:

a. size available is not suitable because of space limitations;

b. compatibility with existing equipment.

2. Agency's need is so small that it cannot use the minimum order quantity in the contract.

3. Delivery of contract item does not meet agency's urgent requirement.

B. A lower local price is not justification for exception. The contract vendor has guaranteed prices for the term of the contract and is delivering the item to the agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995).

**§1703. Policy Regarding Selection of Contract Types**

A. The selection of an appropriate contract type depends on factors such as the nature of the supplies, services, or major repairs to be procured, the uncertainties which may be involved in contract performance, and the extent to which the state or the contractor is to assume the risk of the cost of performance of the contract.

B. The objective when selecting a contract type is to obtain the greatest value of supplies, services, or major repairs at the lowest overall cost to the state. In order to achieve this objective, the chief procurement officer, before choosing a contract type, should review those elements of the procurement which directly affect the cost and risk of performance and profit incentives bearing on the performance.

C. Among the factors to be considered in selecting any type of contract are:

1. the type and complexity of the supply, service, or major repair items being procured;
2. the difficulty of estimating performance costs such as the inability of the state to develop definitive specifications to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
3. the administrative costs to both parties;
4. the degree to which the state must provide technical coordination during the performance of the contract;
5. the effect of the choice of the type of contract on the amount of competition to be expected;
6. the stability of material or commodity market prices or wage levels;
7. the urgency of the requirement; and
8. the length of contract performance.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1591.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995).

**§1705. Cost-Plus-a-Percentage-of-Cost Contracts**

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), repromulgated LR 21:566 (June 1995).

**§1707. Types of Contracts**

A. Subject to the limitations of R.S. 39:1611 and 1612, any type of contract which will promote the best interest of the state may be used, provided that the chief procurement officer makes a written determination justifying the type of contract used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:334 (July 1982), amended LR 21:566 (June 1995).

**§1709. Use of Brand Name, LaMAS (Louisiana Multiple Award Schedule), and Multi-State Contracts**

A. The state reserves the right to create and use brand name, LaMAS, and multi-state contracts (hereinafter referred to as Louisiana Price Schedules for different brands of same or similar item(s)).

B. Where Louisiana Price Schedules ("LaPS") exist for same or similar item(s) and the procurement is above \$25,000, all eligible users of these contracts will utilize the following procedures.

1. Prepare a request for responses that may include, if applicable the following: (A request for response is an informal process used to make a best value determination)

- a. a performance-based statement of work that includes such things as:
  - i. the work to be performed;
  - ii. location of work;
  - iii. period of performance;
  - iv. deliverable schedule;
  - v. applicable performance standards;
  - vi. acceptance criteria;
  - vii. any special requirements (e.g., security clearances, special knowledge, etc.);
  - viii. the products required using a generic description of products and functions whenever possible;
- b. if necessary or applicable, a request for submittal of a project plan for performing the task and information on the contractor's experience and/or past performance performing similar tasks;
- c. a best value determination is one that considers, in addition to underlying contract pricing, such factors as:
  - i. probable life of the item selected;
  - ii. environmental and energy efficiency considerations;
  - iii. technical qualifications;

- iv. delivery terms;
  - v. warranty;
  - vi. maintenance availability;
  - vii. administrative costs;
  - viii. compatibility of an item within the user's environment; and
  - ix. user's familiarity with the item or service;
- d. a request for submittal of a firm-fixed total price for labor and/or products which are no higher than prices in the LaPS contract.

2. Submit the request for response to at least three LaPS contract holders, whenever available, offering functionally equivalent products and/or services that will meet the agency's needs.

3. Evaluate responses and select the contractor to receive the order.

a. After responses have been evaluated, the order shall be placed with the contractor that represents the best value that meets the agency's needs. The ordering agency should give preference to small-entrepreneurships or small and emerging businesses when two or more contractors can provide the services and/or products at the same firm-fixed total price.

b. The ordering agency shall document in the procurement file the evaluation of the contractors' responses that formed the basis for the selection. The documentation shall identify the contractor from which the services and/or products were purchased, the services and/or products purchased, and the cost of the resulting purchase order.

c. Purchases shall not be artificially divided to avoid the requirements of this section when recurring requirements for same products are known.

d. Nothing herein relieves a state agency from following Office of Information Technology requirements for submission of IT 10 requests, for annual IT budget requests, or mid-year budget adjustment requests.

e. A listing of all contracts applicable to this Section will be maintained on the Office of State Purchasing's website <http://www.doa.louisiana.gov/osp/osp.htm>

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 33:2650 (December 2007).

## Chapter 18. Progressive and Multiple Awards

### §1801. Progressive Award

A. A progressive award is an award of portions of a definite quantity requirement to more than one contractor. Each portion is for a definite quantity and the sum of the portions is the total definite quantity required. A progressive

award may be in the state's best interest when awards to more than one bidder or offeror for different amounts of the same item are needed to obtain the total quantity or the time or times of delivery required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

### §1803. Multiple Award

A. A multiple award is an award of an indefinite quantity contract for one or more similar supplies or services to more than one bidder or offeror, and the state is obligated to order all of its actual, normal requirements for the specified supplies or services from those contractors. A multiple award may be in the state's best interest when award to two or more bidders or offerors for similar products is needed for adequate delivery, service, or availability, or for product compatibility. In making a multiple award, care shall be exercised to protect and promote the principles of competitive solicitation. Multiple awards shall not be made when a single award will meet the state's needs without sacrifice of economy or service. Awards shall not be made for the purpose of dividing the business or avoiding the resolution of tie bids. Any such awards shall be limited to the least number of suppliers necessary to meet the valid requirements of using agencies. All eligible users of the contract shall be named in the solicitation, and it shall be mandatory that the requirements of such users that can be met under the contract be obtained in accordance with the contract, provided, that:

1. the state shall reserve the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract;

2. the state shall reserve the right to take bids separately if the chief procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring or special need of the state;

3. the contract shall allow the state to procure supplies produced, or services performed, incidental to the state's own programs, such as industries of correctional institutions and other similar industries, when such supplies or services satisfy the need.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

### §1805. Intent to Use

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

**§1807. Determination Required**

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

**Chapter 19. Multi-Year Contracts**

**§1901. Determination**

A. The multi-year method of contracting can be used to contract for more than one fiscal year when it has been determined in writing by the chief procurement officer that:

1. a multi-year contract will serve the best interests of the state by encouraging effective competition or otherwise prompting economies in state procurement; and
2. that the estimated requirements cover the period of the contract and are reasonably firm and continuing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

**§1903. Conditions for Use of Multi-Year Contracts**

A. The multi-year method of contracting may be used for:

1. contract performance which requires alteration in the contractor's facilities or operations involving high start-up costs;
2. contracts requiring uninterrupted services where the performance of such services involves high start-up costs, or where a changeover of service contractors involves high phase-in/phase-out costs during a transition period.

B. The following factors are among those relevant in determining if a multi-year contract may be used:

1. firms which are not willing or able to compete because of high start-up costs or capital investment in facility expansion will be encouraged to participate in the competition when they are assured of recouping such costs during the period of contract performance;
2. lower production costs because of larger quantity or service requirements, and substantial continuity of production or performance over a longer period of time can be expected to result in lower unit prices;
3. stabilization of the contractor's work force over a longer period of time may promote economy and consistent quality; or

4. the cost and burden of contract solicitation, award, and administration of the procurement may be reduced.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

**§1905. Multi-Year Contract Procedure**

A. Solicitation. The solicitation shall state:

1. the amount of supplies or services required for the proposed contract period;
2. whether a unit price discounted off of established catalog price shall be given for each supply or service, and that such unit prices or discount shall be the same throughout the contract (except to the extent price adjustments may be provided in the solicitation and resulting contract);
3. that the multi-year contract will be canceled only if funds are not appropriated or otherwise made available to support continuation of performance in any fiscal period succeeding the first; however, this does not affect either the state's rights or the contractor's rights under any other termination clause in the contract;
4. that the chief procurement officer must notify the contractor that the funds are, or are not, available for the continuation of the contract for each succeeding fiscal period;
5. how the multi-year contract award will be determined.

B. Evaluation and Award. The evaluation and award shall be made based on the total costs for the term as stated in the solicitation and permitted under the source selection method utilized.

C. Cancellation

1. *Cancellation*, as used in multi-year contracting, means the cancellation of the total requirements for the remaining portion of the contract because funds were not appropriated or otherwise made available.
2. Cancellation results when the procurement officer notifies the contractor of nonavailability of funds for contract performance for any subsequent fiscal period.

D. Multi-Year Contract Regulations Inapplicable. Section 1903 (Conditions for Use of Multi-Year Contracts) and §1905 (Multi-Year Contract Procedure) apply only to contracts for supplies or services described in this Section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

## Chapter 20. Leases of Movableables

### §2001. Description

A. A lease of movableables is a contract for the use of equipment under which title does not pass to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

### §2003. Use

A. A lease of movableables may be entered into provided:

1. it has been competitively bid in accordance with these rules and regulations, applicable executive orders, and policy and procedure memoranda;

2. it is in the best interest of the state;

3. all conditions for renewal and costs of termination are set forth in the lease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

### §2005. Lease with Purchase Option

A. Unless a requirement can be met only by the leased supply as determined in writing by an officer above the level of procurement officer, a purchase option in a lease may be exercised only if the lease containing the purchase option was awarded under competitive sealed bidding. Before exercising such an option the chief procurement officer shall:

1. investigate alternative means of procuring comparable supplies; and,

2. compare estimated costs and benefits associated with the alternative means and the exercise of such option, for example, the benefit of buying new state-of-the-art equipment compared to the estimated initial savings associated with exercise of a purchase option.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

## Chapter 21. Miscellaneous Provisions

### §2101. Contract Provisions

A. When a contract is to contain an option for renewal, extension, or purchase, notice of such provision shall be included in the solicitation. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at the state's discretion only, and shall be at the mutual agreement of the state and the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

### §2103. Exercise of Option

A. Before exercising any option for renewal, extension, or purchase, the chief procurement officer should attempt to ascertain whether a re-solicitation is practical, in terms of current market conditions and trends and cost factors, and would be more advantageous to the state than renewal or extension of the existing contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

### §2105. Goods Manufactured or Services Performed by Sheltered Workshops

A. R.S. 39:1595.4 provides in part that a preference shall be given by all governmental bodies in purchasing products and services from state supported sheltered workshops for persons with severe disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:337 (July 1982), amended LR 21:566 (June 1995).

## Chapter 22. Inspection of Plant and Supplies; Audit of Records

### §2201. Inspection

A. State contracts may provide that the state may inspect supplies and services at the contractor or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or after award, to contract requirements, and are therefore acceptable. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract and shall be performed so as not to unduly delay the work of the contractor or subcontractor. No inspector may change any provision of the specifications or the contract without written authorization of the procurement officer. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

B. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

### §2203. Audit of Records

A. The state may enter a contractor's or subcontractor's plant or place of business to:

1. audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to R.S. 39:1622; and

2. investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to R.S. 39:1672.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 21:566 (June 1995).

## Chapter 23. Reporting of Suspected Collusive Bidding or Negotiations

### §2301. Anticompetitive Practices

A. For the purposes of this Section, an anticompetitive practice is a practice among bidders or offerors which reduces or eliminates competition or restrains trade. An anticompetitive practice can result from an agreement or understanding among competitors to restrain trade such as submitting collusive bids or proposals, or result from business actions which have the effect of restraining trade, such as controlling the resale price of products. Indications of suspected anticompetitive practices include identical bids or proposals, rotated low bids or proposals, sharing of the business, "tie-in" sales, resale price maintenance, and group boycotts (see Identical Bidding, §2309).

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

### §2303. Independent Price Determination

A. Every solicitation shall provide that by submitting a bid or offer, the bidder or offeror certifies that the price submitted was independently arrived at without collusion.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

### §2305. Reporting Suspected Anticompetitive Practices

A. The chief procurement officer, in consultation with the attorney general, shall develop procedures, including forms, for reporting suspected anticompetitive practices. A procurement officer who suspects that an anticompetitive practice has occurred or may be occurring shall report the suspected anticompetitive practice to the Attorney General's Office, Anti-Trust Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

### §2307. Detection of Anticompetitive Practices

A. In order to ascertain whether or not an anticompetitive practice may have occurred or may be occurring, the procurement officer will often find it necessary to study past procurement including, as appropriate, the following:

1. a study of the bidding history of a supply, service, or major repair item over an amount of time sufficient to determine any significant bidding patterns or changes;

2. a review of similar state contract awards over a period of time; or

3. consultation with outside sources of information, such as bidders or offerors who have competed for similar state business in the past but who are no longer competing for such business.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

### §2309. Identical Bidding

A. The term "identical bidding" means the submission by bidders or offerors of the same total price or the same price on a particular line item. The submission of identical bids may not signify the existence of collusion. In some instances, price controls imposed by state or federal governments result in the submission of identical bids. Bids may also be identical as a result of chance. Identical bids for supplies are more likely to occur due to chance if:

1. the supply is a commodity with a well-established market price or a brand name with a "suggested retail price;"

2. the quantity being purchased is small in relation to the supplier's total sales;

3. early delivery is required; or

4. transportation expenses are low relative to total costs.

B. In seeking to determine whether collusion has taken place, the procurement officer should view the identical bids against present and past pricing policies of the bidders or offerors, the structure of the industry involved, including comparisons of prices f.o.b. shipping point and f.o.b. destination, and the nature of the supply, service, or major repair involved, such as whether it is a basic chemical or material. Identical bids may also result from resale price maintenance agreements which are described in §2311.C.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

### §2311. Possible Anticompetitive Practices

A. General. The practices which are described in Subsections B-F of this Section and which the procurement officer suspects might be anticompetitive shall be reported in

accordance with §2305 (Reporting Suspected Anticompetitive Practices).

B. Rotated Low Bids or Proposals. Rotated low bids or proposals result where all bidders or offerors participating in the collusive scheme submit bids, but by agreement alternate being the lowest bidder or offeror. In order to determine whether rotation may be occurring, the procurement officer must review similar past procurement in which the same bidders or offerors have participated.

C. Resale Price Maintenance. The practice of resale price maintenance consists of an agreement between a manufacturer and a distributor or a dealer to fix the resale price of a supply. A procurement officer should consider the possibility that such an agreement exists where prices offered adhere to an established pattern, such as a published price schedule, and identical bidding occurs.

D. Sharing of the Business. Sharing of the business occurs where potential bidders or offerors allocate business among themselves based on the customers or the territory involved. Thus a procurement officer might discover that a potential bidder or offeror is not participating in a state procurement because a particular state agency, or a particular territory has not been allocated to such bidder or offeror by the producer or manufacturer.

E. "Tie-In" Sales. "Tie-in" sales are those in which a bidder or offeror attempts to sell one supply or service only upon the condition that the procurement officer purchase another particular supply or service.

F. Group Boycott. A group boycott results from an agreement between competitors not to deal with another competitor or not to participate in, for instance, a state procurement until the boycotting competitors' conditions are met by the boycotted competitor or the state. The boycott of a competitor by other competitors may have an effect on the market structure or price of a supply, service, or major repair items needed by the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:338 (July 1982), amended LR 21:566 (June 1995).

## Chapter 25. Intergovernmental Regulations

### §2501. Scope

A. This Part applies to cooperative purchasing and other cooperative activities authorized by R.S. 39:1702.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995).

### §2503. Cooperative Purchasing Shall Not Adversely Affect Employees

A. No employee of any public procurement unit participating in any cooperative purchasing activity authorized by Part VII (Intergovernmental Relations) of the Louisiana Procurement Code shall suffer any loss of salary, seniority, tenure, or pension rights, or be adversely affected as a result of any such activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995).

### §2505. Cooperative Purchasing Agreement in Form of Open-Ended State Contract

A. Cooperative purchasing may include, but is not limited to, joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

B. Any agreement between the state and a local public procurement unit entered into pursuant to R.S. 39:1702 which provides that certain open-ended state procurement contracts shall be available to the local public procurement unit, shall also provide that:

1. the state shall conduct the procurement in compliance with the Louisiana Procurement Code;

2. when the local public procurement unit agrees to procure any supply or service under the state contract, its requirements for such supply or service shall be obtained by placing purchase orders against the appropriate state contract in accordance with the terms and conditions of such contract;

3. payment for supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;

4. inspection and acceptance of supplies or services ordered by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit;

5. the state may terminate the agreement for failure of the local public procurement unit to comply with the terms of the contract or pay a contractor to whom the state has awarded an open-ended contract;

6. the exercise of any warranty rights attaching to supplies or services received by the local public procurement unit under state contracts shall be the exclusive obligation of said local public procurement unit; and

7. failure of a local public procurement unit which is procuring supplies or services under a state contract to secure performance from the contractor in accordance with the terms and conditions of its purchase order will not necessarily require the state or any other local public

procurement unit to consider the default or to discontinue procuring under the contract.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995).

**§2506. LaMAS (Louisiana Multiple Award Schedule) State Contracts Based on GSA Prices**

A. The State Central Purchasing Agency of the Division of Administration may establish state contracts based on GSA (General Service Administration) pricing when it has been determined in writing by the director of state purchasing that certain conditions are met, which shall become part of the procurement file.

B. Materials, supplies, or equipment shall not be purchased on a state contract based on GSA pricing at a price higher than the price of the same item listed on any available state purchasing contract.

C. Establishment of a state contract based on GSA pricing will only be considered when there is a valid business case.

D. State agencies shall not procure materials, supplies or equipment directly under a GSA contract. The State Central Purchasing Agency of the Division of Administration will:

1. be responsible for analyzing and determining the feasibility of establishing a LaMAS state contract based on GSA prices; and
2. issue procedures for establishment and utilization of this type of contract.

E. No use shall be made of a LaMAS contract without the participation of a Louisiana licensed dealer or distributor. Louisiana licensed dealers or distributors must meet the requirement of a resident business defined in R.S. 39:1591(6). Louisiana licensed dealers or distributors shall agree to:

1. Louisiana terms and conditions; and
2. provide written consent from the GSA contractor to extend current GSA pricing to the state of Louisiana.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581 and R.S. 39:1702.A.(2).

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 29:2381 (November 2003).

**§2507. Supply of Personnel, Information, and Services**

A. Requests made to a public procurement unit by another public procurement unit or external procurement activity to provide or make available personnel, services, information, or technical services pursuant to R.S. 39:1706, shall be complied with only to the extent that the chief procurement officer determines that it is practical and feasible to do so in terms of personnel, time, and other resources.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 8:341 (July 1982), amended LR 21:566 (June 1995).

**Chapter 29. Education**

**§2901. Department of Education Procurement**

A. The Department of Education shall conduct the procurement of all supplies, services, and major repairs, as defined by the Louisiana Procurement Code, R.S. 39:1551 et seq., through the central purchasing agency of the Division of Administration. This rule does not extend to those items exempted in R.S. 39:1572.A(2).

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1572.B.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 14:429 (July 1988).

**Chapter 31. Conduct of Hearing—Louisiana Procurement Code**

**§3101. Definitions**

*Aggrieved Person*—a person who files a written protest in connection with the solicitation or award or the issuance of a written notice of intent to award a contract under the Louisiana Procurement Code and has or may have a pecuniary or other property interest in the award of the contract.

*Candidate for Suspension or Debarment*—a candidate for suspension or debarment is a person, who in the opinion of the chief procurement officer has committed an action giving cause for suspension or debarment pursuant to R.S. 39:1672.C.

*Commissioner*—the Commissioner of the Division of Administration.

*Contractor*—a person who has been awarded a contract.

*Hearing Officer*—the chief procurement officer or his designee who shall exercise such authority as is granted for the conduct of protests in accordance with the provisions of the Louisiana Procurement Code [Title 39:1551 et seq., Section 1671(B)].

*Interested Person*—any person who has submitted a bid in response to an invitation for bids, a request for proposals, or other solicitation issued under the Louisiana Procurement Code who has or may have a pecuniary or other property interest which may be affected by a determination made in a protest hearing.

*Party*—as used herein, unless the content clearly indicates otherwise, is either a *contractor* or a *candidate for suspension or debarment* or both.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983).

**§3103. Application**

A. The following rules shall only apply to hearings held by boards of higher education and institutions under their jurisdiction in accordance with §§601, 1671, 1672, and 1673 of Title 39 of the Louisiana Revised Statutes.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of the Commissioner, LR 9:210 (April 1983), amended LR 23:67 (January 1997).

**§3105. Initiation of Hearing**

A. Responsibility of Bidders and Offerors. A hearing held to consider the disqualification of a bidder or offeror shall be commenced with the giving of written notice issued by the chief procurement officer, the commissioners or head of a governmental body.

B. Protest of Aggrieved Person in Connection with the Solicitation, Award, or Issuance of Written Notice of Intent to Award. Any person who is aggrieved in connection with the solicitation, award, or issuance of written notice of intent to award may protest to the chief procurement officer. Protests with respect to a solicitation shall be submitted in writing prior to the opening of bids. Protests with respect to the award of a contract or the issuance of written notice of intent to award a contract shall be submitted in writing within 14 days after contract award.

1. The written protest must state the issue(s) protested. The protest hearing is limited to the issues contained in the written protest unless there is a showing that an issue not mentioned ought to be examined in order to properly dispose of the matter, or, in the public interest, there is other good ground for consideration of other issues and evidence.

2. Upon receipt of a written protest in conformity with the preceding paragraph, the chief procurement officer shall cause to issue a written notice to the aggrieved person and shall also, issue a written notice to all interested persons.

C. Suspensions and Debarments. A hearing for a candidate for suspension or debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such debarment shall be initiated by issuance of written notice thereof.

D. Contract and Breach of Contract Controversies. Hearings on controversies between the state and a contractor based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission shall commence with issuance of written notice by the chief procurement officer on his motion for reasons set forth in the notice or at the request of the contractor communicated in writing to the chief procurement officer and the head of the governmental body of the state utilizing the supplies, services, or major repairs under the contract.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983), amended LR 22:280 (April 1996).

**§3107. Notice**

A. The written notice required to be sent in order to commence a hearing within the foregoing section of these rules for the adjudicatory hearings provided for to parties, aggrieved persons, or interested persons who do not waive their rights shall include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the statutes and rules involved;
4. a short and plain statement of the matters asserted.

B. If the chief procurement officer is unable to state the matters in detail at the time notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, the chief procurement officer shall issue a more detailed notice prior to the date set for the hearing.

C. In addition to the requirements of the notice set forth above, the notice may contain a statement advising all parties, aggrieved persons, or interested persons as applicable that failure to participate in the noticed hearing shall serve to waive any and all further administrative remedies.

D. Whenever practical, the notice shall be served by return receipt certified mail. Where time or other factors render mail service impractical, the chief procurement officer may effect service by any other means reasonably calculated to communicate the written notice.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983).

**§3109. Hearing; Record**

A. Hearing

1. An opportunity shall be afforded all parties, aggrieved persons, or interested persons to respond and present evidence on all issues of fact involved and argument on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts.

2. The hearing officer may, in his discretion, request written views from a governmental body which will be directly affected by the outcome of the adjudicatory hearing and give such weight to the submission as the facts and law require. A copy of such written submission shall be provided to all parties, aggrieved persons, or interested persons participating in the adjudicatory proceeding.

## GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

3. Informal disposition may be made of any case of adjudication by stipulation, agreed settlement, consent order, or default.

### B. Record

1. The record shall contain:

- a. all pleadings, motions, intermediate rulings;
- b. evidence received or considered or a résumé thereof if not transcribed;
- c. a statement of matters officially noticed except matters so obvious that statement of them would serve no useful purpose;
- d. offers of proof, objections, and rulings thereon;
- e. proposed findings and exceptions;
- f. any decision, opinion, or report by the officer presiding at the hearing.

2. The hearing officer shall have all proceedings before him recorded electronically and may in his discretion, or shall upon written request of any party, aggrieved person, or interested person, cause to be made a full transcript of said proceedings.

a. The cost of a transcript shall be paid by the Division of Administration when the hearing officer elects upon his motion to transcribe the proceedings. In such event, any party, aggrieved person, or interested person requesting a copy shall be given a copy upon first paying the actual cost thereof or upon payment of the cost of a portion of the transcript if the request is for a particular portion of the transcript.

b. The cost of a transcript shall be paid by the party, aggrieved person, or interested person when a transcript is made at their request. Copies requested shall be paid for by the party, aggrieved person, interested person, or the hearing officer as the case may be.

3. Findings of fact made by the hearing officer shall be based exclusively on the evidence and on matters officially noticed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:210 (April 1983).

### **§3111. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Depositions and Discovery; and Confidential Privileged Information**

#### A. Rules of Evidence

1. The hearing officer may admit and give probative effect to evidence which possesses probative value commonly accepted by reasonable prudent persons in the conduct of their affairs. He shall give effect to the rules of privilege recognized by law. He may exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence.

Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties, aggrieved person, or interested persons will not be prejudiced substantially, any part of the evidence may be received in written form.

2. All evidence, including records and documents in the possession of the governmental agency of which the hearing officer desires to avail himself, shall be offered and made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence.

B. Official Notice. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within a governmental agency's specialized knowledge. Parties, aggrieved persons, or interested persons shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. A governmental agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

C. Oaths and Affirmations. The hearing officer shall have the power to administer oaths and affirmations, regulate the course of the hearings, set the time and place for continued hearings, fix the time for filing of briefs and other documents, and direct the parties to appear and confer to consider the simplification of the issues. The hearing officer shall also have authority to raise issues not otherwise raised by persons party to a hearing where such an issue is pertinent to a proper disposition of the matter.

D. Subpoenas. The hearing officer shall have power to sign and issue subpoenas requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence. No subpoena shall be issued until the party, aggrieved person, interested person, or governmental agency who wishes to subpoena the witness first deposits a sum of money sufficient to pay all fees and expenses to which a witness in a civil case is entitled pursuant to R.S. 13:3661 and R.S. 13:3671. Witnesses subpoenaed to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations, and to state the results thereof, shall receive such additional compensation from the party, aggrieved person, interested person, or governmental agency who wishes to subpoena such witness as may be fixed by the hearing officer with reference to the value of the time employed and the degree of learning or skill required. Whenever any person summoned neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or give testimony, as required, the hearing officer may apply to the judge of the district court

for the district within which the person so summoned resides or is found, for an attachment against him as for a contempt.

E. **Depositions and Discovery.** The hearing officer, governmental agency, or any party, aggrieved person, or interested person may take the depositions of witnesses, within or without the state, in the same manner as provided by law for the taking of depositions in civil actions in courts of record. Depositions so taken shall be admissible in the record of the hearing. The admission of such depositions may be objected to at the time of hearing and may be received in evidence or excluded from the evidence by hearing officer in accordance with the rules of evidence provided in these rules.

F. **Confidential and Privileged Information**

1. Records and documents, in the possession of a governmental body, the hearing officer, or any officer or employee, including conclusions drawn therefrom which are deemed confidential and privileged shall not be made available for adjudication proceedings and shall not be subject to subpoena by any person or other state or federal agency.

2. Such records or documents shall only include any private contracts, geological and geophysical information and data, trade secrets and commercial or financial data, which are obtained by an agency through a voluntary agreement between the agency and any person, which said records and documents are designated as confidential and privileged by the parties when obtained, or records and documents which are specifically exempt from disclosure by statute.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated, by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:211 (April 1983).

**§3113. Decisions and Orders of the Hearing Officer**

A. If the subject matter of the hearing is not resolved, the hearing officer shall, within 14 days of the conclusion of a protest hearing, or within a reasonable time of the conclusion of a hearing to determine responsibility, suspension or debarment, or a controversy between the state and a contractor, issue a written decision stating the reasons for the action taken and informing the party, aggrieved person, or interested person of the right to administrative review and thereafter judicial review where applicable.

1. A copy of the decision or order shall be mailed or otherwise furnished the party, aggrieved person, or interested person immediately.

B. The decision of the hearing officer shall become final and conclusive unless the decision is fraudulent or the party, aggrieved person, or interested person adversely affected by the decision or order has timely appealed administratively to the commissioner.

1. The final decision of the hearing officer shall not be subject to the review of the commissioner when the decision

is rendered in a proceeding to determine responsibility of a bidder or offeror. Notice of the right to judicial review of the final decision shall accompany service of the final decision.

C. A bidder or offeror who is disqualified shall have the right to request a rehearing before the hearing officer. This right must be exercised within 10 days of the date of receipt of the decision of disqualification. The grounds for rehearing shall be limited to the following:

1.a. the decision or order is clearly contrary to the law and the evidence;

b. the party has discovered since the hearing evidence important to the issues which he could not have with due diligence obtained before or during the hearing;

c. there is a showing that issues not previously considered ought to be examined in order to properly dispose of the matter; or

d. there is other good ground for further consideration of the issues and the evidence in the public interest;

2. The request for rehearing on behalf of a bidder or offeror disqualified after hearing on his responsibility shall be in writing and shall set forth the grounds which justify a rehearing. In the event a rehearing is granted by the hearing officer, it shall be confined to the grounds upon which the rehearing was granted.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 39:1581.

**HISTORICAL NOTE:** Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:211 (April 1983).

**§3115. Administrative Appeal to the Commissioner**

A. The commissioner shall have authority to review and determine any appeal by a party, aggrieved person or interested person who has intervened in a hearing before the hearing officer from a determination by the hearing officer from an adjudication on a protest of a solicitation, award, or intent to award, a suspension or debarment, or a controversy between the state and a contractor.

B. **Scope of Appellate Review by the Commissioner**

1. An appeal to the commissioner authorized by R.S. 39:1681 and the foregoing provision shall be limited to a review of the record of the proceedings before the hearing officer and written briefs submitted by or on behalf of persons who have appealed.

2. A person seeking review by the commissioner of a decision by the hearing officer may, within the time limitations fixed herein below for appeals, raise by separate written documents:

a. the existence and discovery since hearing of new evidence important to the issues which he could not have with due diligence obtained before or during trial; or

b. the existence of issues not previously considered which ought to be examined in order to properly dispose of

the matter. Upon receipt of such separate written document, the commissioner, should he deem the assertions well founded, may either remand the matter to the hearing office or grant a hearing to consider the assertions himself. In either event, whether the assertions are heard by the hearing officer or the commissioner, the evidence or submissions of said hearing shall be incorporated into the record and considered in the administrative appeal.

C. Appeal of Protest Hearing. An aggrieved person or an interested person who has participated in the proceedings before the hearing officer appealed from shall file an appeal to the commissioner within seven days of receipt of the decision of the hearing officer. The commissioner shall decide within 14 days whether the solicitation or award or intent thereof was in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. A copy of the decision of the commissioner on the appeal shall be mailed or otherwise furnished immediately to the aggrieved person or interested person who has appealed or otherwise participated in the appeal from the decision of the hearing officer. The decision of the commissioner on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the person adversely affected by the decision of the commissioner has timely appealed to the court in accordance with R.S. 39:1691.A.

D. Appeal of Suspension or Debarment Hearing. A party shall file his appeal with the commissioner from a suspension or debarment hearing within 14 days of the receipt of the decision of suspension or debarment from the hearing officer. The commissioner shall decide within 14 days whether, or the extent to which, the debarment or suspension was in accordance with the constitution, statute, regulations, and the best interests of the state and was fair. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person or any other party interviewing. The decision of the commissioner on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the debarred or suspended party has timely appealed to the court in accordance with R.S. 39:1691.B. The filing of a petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner except as is provided under the section entitled "Procedure upon Judicial Review" of this rule.

E. Appeal of Contractor Controversy. A party shall file his appeal with the commissioner within 14 days of the receipt of the determination under R.S. 39:1673.C. The commissioner shall decide within 14 days the contractor or breach of contract controversy. A copy of the decision shall be mailed or otherwise furnished immediately to the contractor. The decision of the commission on appeal shall be final and conclusive unless:

1. the decision is fraudulent; or

2. the contractor has timely appealed to the court in accordance with R.S. 39:1691.C. The filing of a petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner except as is provided under §3119 "Procedure upon Judicial Review."

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:212 (April 1983).

**§3117. Judicial Appeal from Administrative Decisions**

A. Solicitation and Award of Contracts. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder, 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. Any action under R.S. 39:1691.A shall be commenced within 14 days after receipt of the decision of the commissioner under R.S. 39:1683.C.

B. Debarment or Suspension. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the constitution, statute, and regulations. Such actions shall extend to actions for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691.B shall be commenced within six months after receipt of the decision of the commissioner under R.S. 39:1684.C.

C. Actions under Contracts or for Breach of Contract. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a contractor who contracts with the state, for any cause of action which arises under or by virtue of the contract for a breach of the contract or whether the action is for declaratory, injunctive, or other equitable relief. Any action under R.S. 39:1691.C shall be commenced within six months after receipt of the decision of the commissioner under R.S. 39:1685.C.

D. Disqualification of Bidders or Offerors. A bidder or offeror disqualified after a hearing conducted pursuant to R.S. 39:1601 shall have a right of appeal to the Nineteenth Judicial District Court. Any action for review of a hearing conducted pursuant to R.S. 39:1601 shall be commenced within 30 days after receipt of the hearing officer's decision or within 30 days of the receipt of a decision on an application for rehearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:212 (April 1983).

**§3119. Procedure upon Judicial Review**

A. An appeal to the Nineteenth Judicial District Court for review of a decision of the commissioner shall be instituted within the time delays established in the preceding section entitled "Judicial Appeal from Administrative Decisions" by the filing of a petition. An appeal to the decision of a hearing officer in a hearing involving the responsibility of a bidder or offeror shall likewise be filed within the delay provided in the preceding Section and shall be instituted by the filing of a petition.

B.1. The filing of the petition does not stay enforcement of a decision in proceedings involving responsibility of a bidder or offeror, suspension or debarment, or controversies between the state and a contractor. The commissioner may grant, or the Nineteenth Judicial District Court may order, a stay upon appropriate terms.

2. The filing of a petition shall stay progress of a solicitation or award of a contract unless the chief procurement officer makes a written determination that the awarding of the contract is necessary without delay to protect the substantial interests of the state. Upon such determination, no court shall enjoin progress under the award except after notice and hearing.

C. Review. The review shall be conducted by the Nineteenth Judicial District Court without a jury and shall be confined to the record. In case of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs. There shall be no right of review by a trial de novo.

D. Judgment on Review. The court may affirm the decision of the commissioner or chief procurement officer, as the case may be, or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

1. in violation of constitutional or statutory provisions;
2. in excess of the statutory authority of the agency;
3. made upon lawful procedure;
4. affected by other error of law;
5. arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

6. manifestly erroneous in view of the reliable, probative and substantial evidence on the whole record. In the application of the rule, where the agency has the opportunity to judge of the credibility of witnesses by first hand observation of demeanor on the witness stand and the reviewing court does not, due regard shall be given to the agency's determination of credibility issues.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:213 (April 1983).

**§3121. Appeals**

A. Review of a final judgment of the district court to the Court of Appeal for the First Circuit shall be taken as in other civil cases.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1581.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 9:213 (April 1983).



**Title 34**  
**GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL**

**Part I. Purchasing**

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

**Chapter 51. General Provisions**

**§5101. Authority**

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

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

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

**§5103. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Chapter 53. Procurement of  
Equipment**

**§5301. Appropriation Bills**

A. An agency wishing to participate in the state equipment-lease-purchase program must provide the Division of Administration, Budget Office a list of equipment being requested. The equipment listing shall be on the standard budget request forms. These forms are to be submitted with the agency's budget request on December 5 each year. The Budget Office will review the request and make a funding recommendation. The Budget Office shall have the sole responsibility of determining which pieces of equipment will be recommended for this program and will notify the agency in the "Notification of Appropriation

Letter" if such equipment is recommended for funding through this program.

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

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

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

**§5303. Capital Outlay Bill**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§5311. Processing Procurement Request**

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

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

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

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

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

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

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

i. State Accounting Office—Agency Services; and

ii. Office of Risk Management.

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

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

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

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

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

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

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

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

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

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

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

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

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

(a). State Accounting Office—Agency Services;

(b). Office of Risk Management.

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

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

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

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

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

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

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

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

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

partial payment request, a photocopy of the number 2 pink copy of the purchase order must be attached to the invoice. Submit the original number 2 pink copy when the final payment is requested.

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

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

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

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

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

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

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

**§5315. Payment for Selected Equipment**

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

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

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

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

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

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

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

**§5316. Insurance on Equipment**

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

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

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

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

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

**§5318. Maintenance on Equipment**

A. The using agency shall at all times during the lease, at using agency's expense, maintain, preserve and keep the equipment in good repair and working order in full and complete accordance with the selected vendor's specifications. The using agency shall furnish proof that the equipment is being maintained in such a fashion, upon request, to the Division of Administration.



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**§5513. Procurement Support Team Operations**

**A. Procurement Support Team Composition**

1. A procurement support team (PST) shall be formed in accordance with the procedures defined herein for every information technology contract in an amount \$100,000 or greater for the procurement of information technology hardware, hardware maintenance, software, software maintenance, and software support services. All contracts shall be subject to the review and approval of other agencies as required by statute or regulations. Purchase release orders issued pursuant to a direct order contract or a brand name contract shall not constitute a contract for purposes of these procedures. The formation of a procurement support team shall be accomplished by the Office of State Purchasing and shall include one or more representatives from each of the following: the Office of State Purchasing; the Legislative Legal Staff; the using agency initiating the procurement action; and the Legislative Fiscal Office. The Office of Information Technology will provide technical staff to assist

the Office of State Purchasing and the procurement support team.

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

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

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

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

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

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

4. The Office of Information Technology shall provide technical staff to assist the Office of State Purchasing and the procurement support team. They shall provide advice and support in the area of information technology techniques, negotiation techniques, developing the structure and content of solicitations, and evaluation of bids or proposals, as requested by the Office of State Purchasing.

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

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

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

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

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

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

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

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

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