



State of Louisiana
DIVISION OF ADMINISTRATION
OFFICE OF STATE PURCHASING

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COMMISSIONER OF ADMINISTRATION

MEMORANDUM OSP02-02

To: All State Agencies and Political Subdivisions
Purchasing Personnel

From: Denise Lea
Director of State Purchasing

Date: August 15, 2001

Re: Changes in Procurement Laws / 2001 Regular Legislative Session

The purpose of this memorandum is to advise purchasing personnel of legislative changes and impact to Louisiana's Procurement Code and Public Bid Law.

One of the centerpieces of the 2001 Regular Legislative Session was to make the necessary changes to ready Louisiana for e-commerce. In keeping, **Act 244** enacted the Uniform Electronic Transactions Act which gives legal recognition and effect to electronic records, electronic signatures, and electronic transactions and contracts. However, it is still required that legal notices be published in the official journals of the state and political subdivisions as mandated by Title 43.

Additionally, **Act 1032** revised laws applicable to various state agencies relative to electronic transactions. To facilitate e-procurement, this act added a definition for "Sealed Bidding" to the Procurement Code. It reads: "Sealed bidding means the receipt of bids protected from inspection prior to bid opening. Bids may be received in any manner specified in the invitation for bids including receipt by mail, by direct delivery, or through any secure electronic interactive environment permitted by rule or regulation." [R.S. 39:1556 (29)]

A definition of "written" had already been enacted during the 2000 legislative session to ready us for e-commerce initiatives. The Procurement Code defines "written" or "in writing" to mean "the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored." [R.S. 39:1556 (28)]

Act 772 provides for an electronic government structure for the executive branch of state government. It primarily creates the position of state Chief Information Officer and the Office of Information Technology within the Division of Administration whose purpose is to oversee and implement Louisiana's master information technology plan.



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This act has the potential to create a big change for state agencies in the method for procuring services for data processing equipment maintenance, software and software maintenance. Heretofore these have been non-competitive. Act 772 is requiring the Data Processing Procurement Support Team to propose procurement guidelines for hardware maintenance, software, and software maintenance and support, and that State Purchasing promulgate rules and regulations to govern these purchases [R.S. 39.199.C. and D.].

Act 868 amends the cooperative purchasing law in the Procurement Code [R.S. 39:1702.A.(2)] and permits State Purchasing to promulgate rules and regulations relative to the use and adoption of GSA contracts for procurement purposes. Two caveats still remain in the law – one is that GSA prices must be less than the price of the same item available on any state contract; and secondly, the use of GSA contracts requires the participation of a Louisiana distributor. It is State Purchasing's intent to adopt only qualifying GSA schedules as State of Louisiana contracts for use by state agencies and political subdivisions. This law does not open the door to use any and all GSA contracts. Additional information will be released once rules and regulations are put into effect.

The Louisiana product preference laws, which impact all state agencies and political subdivisions, were also amended by **Act 693** [R.S. 38:2251 and R.S. 39:1595]. Primarily, it lowers the preference on food products which are only "further processed" in the state to 7%. Food products which are wholly produced in the state are given a 10% preference. (This is like the previous 7% and 4 % rule.) This act also adds products made from Louisiana clay to qualify for the product preference.

Political subdivisions operating under the Public Bid Law [Title 38] should be aware of several acts which impact your procurement activities. Interpretations of these acts should be sought from Glenn Ducote with the Office of the Attorney General (e-mail ducoteg@ag.state.la.us).

Act 1216 is a new law and requires all public works contracts to include a clause that any punch list generated during a construction project include the cost estimates for each punch list item, and further provides that you cannot withhold from payment more than the value of the punch list. [R.S. 38:2248.B]

Act 138 repealed R.S. 38:2216(A)(2) and 2218(B) and deletes the requirement that bonds be countersigned by a Louisiana licensed agent and resident of our state.

R.S. 38:2223 was amended by **Act 1005**, and now requires that the location of underground installations be furnished by the agency to all prospective bidders in the

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plans and specifications. This will require working with the utility providers during the planning stage, instead of after the fact and prior to work startup.

Another act streamlined the construction process for public entities. **Act 1114** amended R.S. 38:2212 to allow agencies to use their own employees for public works projects up to the contract limit of \$100,000 *including the construction of buildings*. Heretofore, an agency could not use its employees to construct or make additions to buildings.

Act 644 clarified an existing preference law for paper and paper products in Title 38. Previously, R.S. 38:2251.C.(6) required paper and paper products to be both manufactured 'and' converted in Louisiana to qualify for the preference. The law was changed to read manufactured 'or' converted, which should promote competition for your paper buys.

Act 1106 amended R.S. 38:2212.A.(1)(b) to read: "The provisions and requirements of this Section, those stated in the advertisement for bids, and those required on the bid form shall not be waived by any public entity." This removes the provision for the consideration of exceptions as informalities.

The acts discussed above may be viewed and printed from State Purchasing's website (www.state.la.us/osp) by accessing "Legal Info / Louisiana's Law Search". This will open the Louisiana State Legislature Web Portal – click on "Session Info" and "2001 Regular Legislative Session" and inquire by the applicable act number. You may also go directly to Legislature's website (www.legis.state.la.us).

I trust you find this information helpful.

dml/ref

c: Glenn Ducote, Assistant Attorney General
State Purchasing Staff