

NOTICE OF INTENT

Office of the Governor Division of Administration Office of State Procurement

Procurement (LAC 34:V. 2101, 2518, and 2521)

Editor's Note: This Notice of Intent is being repromulgated to correct an error upon submission. The original Notice of Intent can be viewed in the November 20, 2014 edition of the *Louisiana Register* on pages 2346-2348.

In accordance with provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Office of the Governor, Division of Administration, Office of State Procurement, proposes to amend Chapters 21 and 25 of LAC 34:V, Procurement.

The laws governing procurement by state executive branch agencies defines "written" or "in writing" as including "information that is electronically transmitted and stored." As currently written, the rules governing the review of professional, personal, consulting, and social service contracts require original contracts with original signatures to be submitted to the Office of State Procurement. The following amendments to LAC 34:V.2518 and LAC 34:V.2521.E.1 are necessary in order to allow for the review of electronically transmitted documents.

The amendment to LAC 34:V.2521.M is necessary to correct an inconsistency between the rule as now written and governing law (see R.S. 39:1595(B)(10)(a)).

The amendment to LAC 34:V.2101 is necessary to be consistent with the provisions of R.S. 39:1661.

Title 34

GOVERNMENT CONTRACTS, PROCUREMENT AND PROPERTY CONTROL

Part V. Louisiana Procurement Code

Chapter 21. Miscellaneous Provisions

§2101. Contract Provisions

[Formerly LAC 34:I.2101]

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.

B. Contract Clauses. Contracts may include clauses providing for equitable adjustments in prices, time for performance, or other contract provisions, as appropriate, covering the following subjects:

1. the unilateral right of the state to order in writing changes in the work within the general scope of the contract in any one or more of the following:
 - a. drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the state in accordance therewith;
 - b. method of shipment or packing; or
 - c. place of delivery;
 - d. security for contract performance;
 - e. insurance requirements including as appropriate but not limited to general liability, automobile coverage, workers' compensation, and errors and omissions;
 - f. beginning and ending dates of the contract;
 - g. maximum compensation to be paid the contractor;
2. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance;
3. variations between estimated quantities of work in a contract and actual quantities;
4. manufacturers' design drawings shall be supplied in duplicate for all state buildings, to the appropriate state agency at the conclusion of the contract.

C. Additional Contract Clauses. Contracts shall include clauses providing for appropriate remedies and covering the following subjects:

1. liquidated damages as may be appropriate;
2. specified excuses for delay or nonperformance as may be appropriate;
3. termination of the contract for default; and
4. termination of the contract in whole or in part for the convenience of 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 8:337 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1362 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:

Chapter 25. Procurement of Professional, Personal, Consulting, Social Services, and Energy Efficiency Contracts

Subchapter A. General Provisions

§2518. Submission of Contracts

[Formerly LAC 34:V.118]

A. At least one copy of said contract and attachments shall be submitted to the Office of State Procurement. The Office of State Procurement shall submit a list of all contracts for \$25,000 or more to the Legislative Fiscal Office. Copies of such contracts shall be forwarded to the Legislative Fiscal Office upon request. The Office of State Procurement will not accept for review and approval any contract that is not accompanied by the necessary attachments and copies as required herein. (Attachments being submittal letters, R.S. 39:1497 certification, BA-22, etc.)

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 4:497 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), LR 13:653 (November 1987), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 40:2562 (December 2014), LR 41:

§2521. Contractual Review Process

[Formerly LAC 34:V.121]

A. Contracts arriving in the Office of State Procurement will be date stamped and logged in. Contracts should be submitted prior to their effective dates and no contract shall be approved which has been submitted 60 days after its effective date unless written justification is provided by the using agency and approval granted by the state chief procurement officer or his designee. All submittals will be required to have a cover letter attached thereto in conformity with §195, Appendix D of this Part.

B. If a contract does not appear to be out of the ordinary and appears to have the necessary attachments and inclusions, it will be routed as appropriate to the Division of Administration budget analyst for the submitting agency. A BA-22, or its equivalent, shall be submitted with every contract submitted to the Office of State Procurement, which contains any expenditures or reduction in expenditures.

C. Contracts that are incomplete as to form may be returned to the submitting agency. If a contract is merely missing an attachment then the necessary attachment may be secured from the submitting agency.

D. Contracts Returned from Budget

1. Not Recommended for Approval. If a contract is not recommended for approval, the Office of State Procurement shall discuss the reason with the budget analyst. If the problem cannot be resolved, the contract shall be returned to the submitting agency with a letter explaining the problem.

2. Recommended for Approval. If a contract is recommended for approval the review process shall continue.

E. Legal and Content Review. There are a number of different types of contracts, and content requirements may vary a little. All contracts shall contain the following:

1. signatures of both the head of the using agency or his designee and the contractor.

E.2. - L.

M. A performance evaluation for every personal, professional, consulting or social services contract shall be done by the using agency in accordance with R.S. 39:1500. This performance evaluation shall be retained by the using agency for all small purchase contracts approved under delegated authority. For all other contracts this performance evaluation shall be submitted to the Office of State Procurement within 60 days after the termination of the contract. An example evaluation form can be found in §195, Appendix F of this Part. Using agencies should use their own formats.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39: 1490(B).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 7:182 (April 1981), amended LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1069 (November 1985), LR 13:87 (February 1987), LR 13:653 (November 1987), LR 15:81 (February 1989), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2562 (December 2014), amended LR 40:2545 (December 2014), LR 41:

Family Impact Statement

In compliance with Act 1183 of the 1999 Regular Session of the Louisiana Legislature, the impact of this proposed Rule on the family has been considered. It is anticipated that this Rule will have no impact on family functioning, stability and autonomy as described in R.S. 49:972.

Poverty Impact Statement

It is anticipated that the proposed action will have no significant impact on:

1. household income, assets, and financial security;
2. early childhood or educational development;
3. employment and workforce development;
4. taxes and tax credits; or
5. child and dependent care, housing, health care, nutrition, transportation, and utilities assistance.

Small Business Statement

The impact of the proposed Rule on small businesses has been considered and it is estimated that the proposed action is not expected to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act.

The agency, consistent with health, safety, environmental and economic welfare factors has considered and, where possible, utilized regulatory methods in the drafting of the proposed Rule that will accomplish the objectives of applicable statutes while minimizing the adverse impact of the proposed Rule on small businesses.

Provider Impact Statement

The proposed Rule should not have any known or foreseeable impact on providers as defined by HCR 170 of the 2014 Regular Legislative Session. In particular, there should be no known or foreseeable effect on:

1. the staffing level requirements or qualifications required to provide the same level of service;
2. the total direct and indirect effect on the cost to the providers to provide the same level of service; or
3. the overall effect on the ability of the provider to provide the same level of service.

Public Comments

Interested persons may submit written comments to George Grazioso, Office of State Purchasing, P.O. Box 94095, Baton Rouge, LA 70804-9095. He is responsible for responding to inquiries regarding this proposed Rule. All comments must be received by February 9, 2015, by close of business.

Jan B. Cassidy
Assistant Commission

FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES

RULE TITLE: Procurement

I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The proposed rule changes are anticipated to result in no significant cost or savings for either state or local governmental entities. The laws governing procurement by state executive branch agencies defines “written” or “in writing” as including “information that is electronically transmitted and stored.” As currently written, the rules governing the review of professional personal, consulting, and social service contracts require original contracts with original signature to be submitted to the Office of State Procurement. The following amendments to LAC 34:V.118 and LAC 34:V.121(E)(1) are necessary in order to allow for the review of electronically transmitted documents. These modifications will likely result in non-quantifiable time savings for various state employees handling contracts and procurement in the various state agencies.

The amendment to LACV.121(m) is necessary to correct an inconsistency between the rule as now written and governing law (see, R.S. 39:1595(b)(10)(a)).

The amendment to LAC 34:V.2101(M) is necessary to correct an inconsistency between the rule as now written and governing law (see, R.S. 39:1595(B)(10)(a)).

II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

Implementing the rule changes will have no effect on revenue collections of state or local governmental entities.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS OR NONGOVERNMENTAL GROUPS (Summary)

There will be no specific costs to directly affected persons or non-governmental groups as a result of the proposed rule. However, there will likely be a non-quantifiable economic benefit to the state through the ability to accept for review electronically transmitted documents.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There will be no effect on competition and employment as a result of implementing this rule.

Jan B. Cassidy
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Office of the Governor

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Legislative Fiscal Office