

State of Louisiana



EXECUTIVE DEPARTMENT EXECUTIVE ORDER NUMBER JBE 2016 – 36

COOPERATIVE ENDEAVOR AGREEMENTS

WHEREAS, Article VII, Section 14 of the Louisiana Constitution of 1974 provides that “the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private. Neither the state nor a political subdivision shall subscribe to or purchase the stock of a corporation or association or for any private enterprise;”

WHEREAS, Article VII, Section 14 also authorizes, for a public purpose, cooperative endeavors among the state and its political subdivisions or political corporations, and with the United States or its agencies, or with any public or private association, corporation, or individual;

WHEREAS, Louisiana Revised Statute 38:2193 mandates that, if the attorney general is of the opinion that a contract of the state or any political subdivision violates the constitutional provision concerning the donation of public funds, the attorney general shall institute a civil proceeding to invalidate the contract if in his opinion such a proceeding is necessary for the assertion or protection of any right or interest of the state or political subdivision within the intendment of La. Const. art. VII, §14;

WHEREAS, since a cooperative endeavor agreement (“agreement”) is a form of contract, it would be in the best interest of the State of Louisiana to have all such agreements reviewed by an arm of the State that is not a party to the agreement, prior to the agreement becoming effective, in order to limit the potential for litigation over the validity of the agreement;

WHEREAS, the best interest of the State of Louisiana is also served by monitoring the use of these agreements from both a legal and a budgetary perspective, and by providing a centralized record of these agreements; and

WHEREAS, the Division of Administration is charged with the responsibility for the State of Louisiana of overseeing the acquisition of supplies and services under contractual agreements and, therefore, has the expertise and necessary personnel to determine if these agreements are in violation of La. Const. art. VII, §14, or any procurement statutes or rules which regulate the manner in which the State and its agencies and political subdivisions must acquire supplies and services.

NOW THEREFORE, I, JOHN BEL EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: Unless exempted by written delegation of authority granted by the director of the Office of State Procurement, Division of Administration, with the approval of the Commissioner of Administration, each department, commission, board, agency, and/or office in the executive branch of the State of Louisiana (“department”) shall submit all cooperative endeavor agreements (“agreements”) which require the expenditure of public funds

to the Office of State Procurement for review and approval.

SECTION 2: To the fullest extent possible, all agreements shall be submitted for review at least forty-five (45) days prior to the effective date of the agreement. The Office of State Procurement shall review the agreement as expeditiously as possible and return it to the submitting department. Agreements not submitted within forty-five (45) days in advance of the effective date must be accompanied by a written explanation of the reasons for the delay in submission.

SECTION 3: Agreements with non-governmental entities for economic development purposes should contain the specific goals sought to be achieved by the non-governmental entity and methods for reimbursement to the state if those goals are not met. Further, a non-governmental entity, other than one participating in a business incubator program, Quality Jobs Program, or Enterprise Zone Program, which defaults on the agreement, breaches the terms of the agreement, ceases to do business, or ceases to do business in Louisiana, shall be required to repay the State, and the agreement must set out the terms of the repayment.

Agreements based on legislative appropriation to a public or quasi-public agency or entity which is not a state budget unit must include a comprehensive budget, provided to the agency and the legislative auditor, showing all anticipated uses of the appropriation, an estimate of the duration of the project, and a plan showing specific goals and objectives, including measures of performance.

Agreements should contain a plan to monitor compliance with the terms of the agreement, assigning a particular person within the agency to be responsible for monitoring the agreement. Written reports must be provided to the agency at least every six (6) months concerning the use of funds and the specific goals and objectives for the use of the funds.

Agreements that contain an authorization for a non-governmental recipient to make grants should contain a listing of all sub-recipients, or at the minimum, a detailed description of the grant application and approval process, ensuring that funds are not provided for any use inconsistent with the provisions of the Agreement.

SECTION 4: Agreements in which the state provides a guarantee or credit enhancement for a private for-profit entity and which do not contemplate the issuance of bonds should be submitted to the State Bond Commission for approval prior to execution. Evidence of the necessary Bond Commission approval should be attached to the submitted agreement.

SECTION 5: The Commissioner of Administration must be informed by the state agency in advance of the confection of any agreement in which a non-public party is expected to generate or expend revenue of one million dollars or more per year from the operation, management or control of a state resource. Agreements must comply with La. R.S. 39:366.1 *et seq*, the Accountability for State Resources Act, as applicable. The state agency must advise the Joint Legislative Committee on the Budget at least 30 calendar days before its next meeting of the proposed agreement. The JLCB will determine whether to hold a hearing, in accordance with the provisions of La. R.S. 39:366.11. No agreement shall be officially confectioned prior to the expiration of time for JLCB to hold a hearing.

SECTION 6: All agreements shall be submitted with a BA-22 or other appropriate budgetary form evidencing the availability of funds.

SECTION 7: All agreements shall contain a provision that conditions the agreement and/or continuation of the agreement on a) the availability of sufficient funds to fulfill the obligations of the department under the agreement and b) the approval of the director of the Office of State Procurement and/or

the Commissioner of Administration, unless exempt by written delegation of authority granted pursuant to Section 1 of this Order.

SECTION 8: All departments, commissions, boards, agencies, and officers of the State of Louisiana, or any political subdivision thereof, are authorized and directed to cooperate in implementing the provisions of this Order.

SECTION 9: This Order is effective upon signature and shall continue in effect until amended, modified, terminated, or rescinded by the Governor, or terminated by operation of law.



IN WITNESS WHEREOF, I have set my hand officially and caused to be affixed the Great Seal of Louisiana, at the Capitol, in the City of Baton Rouge, on this 22nd day of July, 2016.



GOVERNOR OF LOUISIANA

**ATTEST BY
THE GOVERNOR**



SECRETARY OF STATE