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State of Louisiana
Division of Administration
Office of State Procurement

MEMORANDUM OSP 16-03

TO: All Department Undersecretaries, Agency Heads, Business Managers, and Contract Officers of all Non-Exempt State Departments and Agencies, Colleges and Universities, Boards and Commissions

FROM: Paul A. Holmes, State Procurement Director 

DATE: July 15, 2015

SUBJECT: **IMPORTANT NOTICE RE:** Act 87, 2015 Legislative Session—Professional, Personal, Consulting and Social Services Contract Approval and Reporting Requirements; Rescission of Certain Delegated Authority to Agencies

Act 87 Summary

Effective July 1, 2015, Act 87 of 2015 provides that contracts meeting the following criteria must be submitted by the Office of State Procurement (“OSP”) for review and approval to the Joint Legislative Committee on the Budget (“JLCB”) during Fiscal Years 16, 17 and 18:

- Personal, Professional or Consulting Services (Social Services are excluded)
- \$40,000 or more per year
- For a discretionary purpose
- Funded with 100% state general funds or Overcollections funds (to be verified by BA-22 or other appropriate document)

If a contract meeting the above-criteria is submitted to the JLCB and is not placed on the JLCB’s agenda within 30 days, then the contract will automatically become effective. If a contract meeting the above-criteria is submitted to the JLCB, is placed on the agenda and is ultimately rejected, the submitting agency will lose the funding which has been allocated to the contract, and the funding will be redirected to the Higher Education Financing Fund.

Additionally, OSP is required by Act 87 to report to the JLCB monthly all Professional, Personal, Consulting and Social Services contracts that have been awarded, including dollar amount, and to designate whether each approved contract is “discretionary” or “non-discretionary.”

Review and Approval by JLCB

OSP has developed the attached guide which generally defines contract scopes or purposes which would cause OSP to classify them as non-discretionary. Contracts which do not meet non-discretionary criteria will be considered “discretionary.” OSP will require all agencies to verify whether a contract is discretionary or non-discretionary upon submission of same to OSP for approval. If a doubt exists as to whether or not a contract is discretionary, OSP can provide consultation prior to submission of a contract for final approval.

To re-emphasize, all agencies should be aware that pursuant to Act 87, a discretionary contract which must be submitted for review and approval to the JLCB and which is rejected, will cause the contract’s funding to be reallocated and removed from the agency’s budget, and placed into the Higher Education Financing Fund. Therefore, an agency should give all discretionary contracts due consideration prior to development of a solicitation and/or submission to OSP for final review. Once a contract has been submitted to the JLCB for review, neither OSP nor the agency has a mechanism to withdraw the contract from JLCB’s consideration.

It is expected that the process of submitting contracts for review to the JLCB will add 30 to 60 days to the timeframe in which the contract can become effective. Therefore, agencies should adequately consider and understand the lead times required before a discretionary contract that falls under the Act’s review and approval requirements can become effective.

In order to comply with the monthly reporting requirements of Act 87, as well as its requirement to submit discretionary contracts spending \$40,000 or more from 100% state general funds or from the Overcollections Fund for review and approval, agencies must provide the following when submitting any Personal, Professional, Consulting or Social services contracts to OSP for approval:

- Certification by the agency’s budget official whether the contract is for discretionary or nondiscretionary purposes, as provided in the OSP guidelines. Examples of non-discretionary purposes include statutory, constitutional, and legislative mandates, as well as unavoidable obligations.
- Clear evidence of the funding source and discretionary/nondiscretionary nature of the contract to ensure that such contracts are not unnecessarily held for JLCB review.

If a contract is submitted to the JLCB for review and approval under Act 87, the agency will be notified of such by OSP at the same time the contract or contract information is transmitted to the JLCB. Thereafter, it will be the submitting agency’s responsibility to track or monitor whether or not the contract was placed onto the JLCB’s agenda within 30 days. If a contract is placed onto the JLCB’s agenda and is rejected by the JLCB or requires modification, then OSP will be notified and the agency will be contacted by OSP to receive instructions regarding modification and

resubmission to the JLCB for approval, or instructions regarding the reallocation of funds to the Higher Education Financing Fund.

Agencies submitting contracts which are specifically excluded in Act 87 from review and approval of the JLCB such as those involving DHH programs, district attorneys or the Secretary of State's office, should cite the exclusion from the Act. See R.S. 39:1590 (C), [page 6 of the Act as published by the Legislature].

Rescission of Delegated Authority

Effective immediately, any delegation of authority from OSP to any executive branch Department, Office or Agency, including those headed by statewide elected officials and institutions of higher education, which allows the agency to forego submission to OSP for approval of contracts which meet the following criteria is hereby withdrawn:

- Personal, Professional or Consulting Services (Social Services are excluded)
- \$40,000 or more per year
- For a discretionary purpose
- Funded with 100% state general funds or Overcollections funds (to be verified by BA-22 or other appropriate document)

Any such contracts entered into by non-exempt agencies shall be submitted to OSP for final approval prior to the contract taking effect. Agencies should take immediate steps to notify proposers and contractors responding to solicitations for contracts which meet the criteria that JLCB review and approval is required.

Monthly Reporting by Non-LaGov SRM Agencies

Act 87 requires that OSP report all approved Professional, Personal, Consulting and Social Services contracts, regardless of amount, whether discretionary or non-discretionary, on a monthly basis to the JLCB. If an agency's contracts are approved by OSP, then OSP will automatically report the contract after it is entered into the state's LaGov SRM system.

Non-exempt agencies which approve their own contracts under a delegation of authority, and which do not utilize LaGov's SRM system for the entry of those contracts, however, must report to OSP by the 15th of each month, all Professional, Personal, Consulting and Social Services contracts approved the previous month. This reporting method will replace the quarterly reporting method that is currently required by rule. Monthly reporting will commence by August 15, 2015.

Further instructions regarding the process for JLCB approvals and monthly reporting will be communicated in the near future by OSP in the form of a Q & A fact sheet. Questions regarding this memorandum may be directed to:

Pam Rice, Assistant Director over Professional Contracts pamela.rice@la.gov
Jonathan Walker, Chief Analyst jonathan.walker@la.gov

Thank you for your cooperation as we implement this new law.

OFFICE OF STATE PROCUREMENT NON-DISCRETIONARY CONTRACT GUIDELINES

For purposes of compliance with Act 87 of the 2015 Regular Session, relative to reporting requirements and JLCB review and approval requirements, the Office of State Procurement regards the following types of contracts for Professional, Personal, Consulting and Social Services as non-discretionary:

1. Contracts necessary to protect the life, health or welfare of the public or public employees from immediate harm;
2. Contracts necessary to protect public assets, including public funds or funding, from immediate harm or loss;
3. Contracts necessary to comply with judicial mandates;
4. Contracts for services in a circumstance which the Chief Procurement Officer has determined to be an emergency pursuant to RS 39:1600(E);
5. Contracts for services required by an event which the Governor and/or President has declared to be a disaster or an emergency;
6. Contracts for legal and related services when the State or its agents are being subjected to legal action;
7. Contracts for services which are funded by an appropriation from the Legislature to a specific entity;
8. Contracts for those services specifically designated as "essential" and exempted by the Governor from any expenditure freeze directed through Executive Order; and
9. Contracts necessary to comply with constitutional, legislative or regulatory mandates, including those related to R.S. 39:36(A)(1)(b) which defines the non-discretionary operating budget.