

Purchasing & Professional Services Contracts

Rules and Regulations

**State of Louisiana
Office of State Procurement**

Effective April 20, 2018



Title 34
GOVERNMENT CONTRACTS,
PROCUREMENT, AND
PROPERTY CONTROL

Part I. Purchasing

Subpart 1. Central Purchasing
Procedures

(Editor's Note: Part I, Subpart 1, Chapters 3-33 have been moved to Part V, Chapters 3-33.)

Chapter 55. Procedures for
Information Technology
Hardware, Software, Software
Maintenance and Support
Services, and Hardware
Maintenance

§5501. General

A. This Chapter describes the procedures that all agencies in the Executive Branch must follow for the procurement of Information Technology Hardware, Software, Software Maintenance and Support Services, and Hardware Maintenance. Situations not covered by these rules may be found in the general statutes and rules and regulations of the Procurement Code.

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, Office of State Purchasing, LR 29:2378 (November 2003).

§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.

E. For the purposes of this Section, software includes software as a service (SaaS). Software as a service means access to a computer software program that is owned, delivered, and managed remotely by an external service provider on a pay-per-use basis whereby the software is a business application based on a single set of common code and data definitions and the application data is owned and updated by the state or state entity. A formally signed service level

agreement (SLA) is required as part of every SaaS engagement with use of pre-printed external service provider SLA's being prohibited.

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), LR 39:32710 (December 2013).

§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).

§5515. Pre-Printed Contract Forms; Clauses; Approval

A. In accordance with the provisions of R.S. 39:200(F) the director of purchasing may approve a vendor's pre-printed contract form in accordance with the following requirements.

B. All pre-printed contract forms submitted for approval shall, at a minimum, contain the following provisions:

1. the contract shall be governed by the laws of the state of Louisiana;

2. 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;

3. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance;

4. variations between estimated quantities of work in a contract and actual quantities;

5. termination of the contract for vendor's default;

6. termination of the contract in whole or in part for the convenience of the state;

7. the vendor agrees continuation of contracts in effect during more than one fiscal year is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

C. If applicable, the following provisions may be included as negotiated by the parties and approved by the director of purchasing:

1. liquidated damages as appropriate;

2. specified excuses for delay or nonperformance;

3. the vendor shall agree to indemnify the state and hold the state harmless

4. the vendor shall agree to secure and maintain insurance;

D. The director of purchasing may approve a vendor's pre-printed contract form with the participation of the procurement support team.

E. A pre-printed contract form that has been approved shall display the following language adjacent to its title: "This contract form has been approved by the director of state purchasing."

F. The pre-printed contract form shall also display in the form footer the contract approval date and the contract version number as provided by the director of state purchasing.

G. In the event any contractor fails to fulfill or comply with the terms of any contract, the director of purchasing may rescind approval of the vendor's pre-printed contract form.

H. Only those terms and conditions contained in the pre-printed form approved by the director of purchasing shall have any effect between the parties and any reference to or inclusion of other terms and conditions contained in other documents or websites is prohibited.

I. Any alterations or changes to the terms and conditions of the approved pre-printed form are prohibited and will automatically void the approval of the pre-printed form.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 39:1280 (May 2013).

§5517. Master Agreements; Clauses; Approval

A. R.S. 39:198(E) authorizes the state director of purchasing to enter into master agreements with vendors with which the state conducts substantial business over a period of time and sets forth the uses to which such master agreements may be put. Master agreements may be approved in accordance with the following requirements.

B. Master agreements submitted for approval shall, at a minimum, contain the following provisions:

1. any contract based on the master agreement shall be governed by the laws of the state of Louisiana;
2. 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;

3. the unilateral right of the state to order in writing temporary stopping of the work or delaying of performance;

4. variations between estimated quantities of work in a contract and actual quantities;

5. liquidated damages as appropriate;

6. specified excuses for delay or nonperformance;

7. termination of the contract for vendor's default;

8. termination of the contract in whole or in part for the convenience of the state;

9. the vendor shall agree to indemnify the state and hold the state harmless without limitation of liability;

10. the vendor shall agree to secure and maintain insurance in such types and amounts as approved by the director of state purchasing;

11. the vendor agrees continuation of contracts in effect during more than one fiscal year is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract or if such appropriation is reduced by the veto of the governor or by any means provided in the appropriations act or Title 39 of the *Louisiana Revised Statutes* of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated;

12. any changes mandated by state or federal law, whether legislative or judicial, will be incorporated into the master agreement; however, if such a change is not acceptable to either party, the affected term or terms of the contract shall be renegotiated and, if agreement cannot be reached, shall be stricken from the contract.

C. The director of purchasing may approve a master agreement only after the agreement has been negotiated with the vendor by the procurement support team.

D. In the event any vendor fails to fulfill or comply with the terms of any contract, the director of purchasing may rescind approval of the vendor's master agreement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(F).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 39:309 (February 2013).

§5519. Procurement of Consulting Services as Related Services

A. R.S. 39:197(1) allows for the procurement of consulting services, as otherwise subject to the provisions of chapter 16 of title 39 of the *Louisiana Revised Statutes*, which services are ancillary to the procurement of data processing hardware or software. Such ancillary consulting services are to be considered as “related services” authorized to be procured in accordance with the provisions of chapter 17 of title 39 of the *Louisiana Revised Statutes* only when the services are included as a part of the acquisition of the data processing hardware or software.

B. For purposes of this Section, such related services are limited to the lesser of 20 percent of the overall procurement amount or \$250,000.

C. Inclusion of consulting services as related services should include, at a minimum:

1. a scope of work that clearly and completely identifies the services to be performed;
2. a written plan to monitor the performance of the services that, at a minimum, includes the specific objectives or deliverables associated with the proposed service and monitoring plan; methods to be used to measure and determine service performance; a periodic review of interim reports or other indicia of performance performed to date and, the assignment of specific using agency personnel to a monitoring and liaison function;
3. the maximum amount of compensation to be paid for the services;
4. a provision that payment for the services will only be made upon successful completion of the scope of work for the services.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:197(1).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 39:310 (February 2013).

§5521. Procurement of Information Technology Consulting Services, Information Consulting Systems, Information Technology Services, Information Technology Equipment Using Multiple Awards

A. A multiple award is an award of an indefinite quantity contract for one or more information technology (IT) consulting services, IT systems, IT services, IT equipment or similar service to more than one contractor through the request for proposals or invitation to bid process. A multiple award may be in the state's best interest when award to two or more contractors is needed for adequate delivery, service, or availability. 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 proposals. Any such awards shall be limited to the least number of IT consultants, IT systems, IT services, or IT equipment necessary to meet the valid requirements of the Office of Technology Services. It shall be mandatory that the requirements of the Office of Technology Services 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 solicitations separately if a particular service requirement arises which exceeds the scope specified in the contract;
2. the state shall reserve the right to take solicitations separately if the contract will not meet a nonrecurring or special need of the state;
3. the state reserves the right to use its own personnel to provide similar services when such services are available and satisfy the Office of Technology Services need.

B. Where multiple award contracts exist for IT consulting services, IT systems, IT services, IT equipment or similar service, the Office of Technology Services may utilize any of the following procedures prior to issuing task orders.

1. The Office of Technology Services may prepare a request for response that may include, if applicable, the following (A request for response is an informal process used to seek additional information to assist the state chief information officer (CIO) 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 the 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 or services required using generic description of products or services 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 request for submittal of a firm-fixed total price for the product and/or service which are no higher than prices in the multiple award contract;

d. submit the request for response to at least three multiple award contract holders, whenever available, offering functionally equivalent products and/or services that will meet the Office of Technology Services' needs.

2. The CIO may issue task orders by allowing selected awardees to give oral presentations in lieu of written response to a request for response.

3. The CIO need not contact awardees prior to issuing an order if the CIO has information, such as price sheets or catalogs available to determine the best value for the state.

C. Evaluation and Selection of the Contractor to Receive the Task Order

1. In making a best value determination, the CIO shall place the task order(s) with the contractor(s) that meet(s) the Office of Technology Services' needs. The Office of Technology Services should give preference (where allowable) to small entrepreneurships or small and emerging businesses when two or more contractors can provide the products and/or services at the same firm-fixed total price.

2. A best value determination is one that considers, in addition to underlying contract pricing, such factors as:

- a. probable life of the product selected;
- b. technical qualifications;
- c. delivery terms;
- d. warranty;
- e. maintenance availability;
- f. administrative costs;
- g. compatibility of a product within the user's environment;
- h. user's familiarity with the item or service; and
- i. qualifications and experience of proposed staff.

3. The Office of Technology Services shall document in the procurement file the evaluation of the contractors' response that formed the basis for the selection. The documentation shall identify the contractor from which the product and/or services were purchased, the products and/or services purchased, and the cost of the resulting order.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:869 (June 2016).

§5523. Intent to Use

A. If a 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. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:870 (June 2016).

§5525. Determination Required

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

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:200(L).

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Technology Services, LR 42:870 (June 2016).

Part V. Procurement

EDITOR'S NOTE: 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, has amended Chapters 9, 25, and 31, Procurement, of LAC 34:V. The Rules were revised to align with Act 864 of the 2014 Regular Legislative Session, effective January 1, 2015. The Act amended and reenacted R.S.3:4(B)(1)(b), and chapter 17 of subtitle III of title 39 of the *Louisiana Revised Statutes* of 1950, to be comprised of R.S. 39:1551 through 1755, and repealed chapter 16 of subtitle III of title 39 of the *Louisiana Revised Statutes* of 1950, comprised of R.S. 39:1481 through 1526.

The amended and reenacted statutes effectively combined Louisiana's procurement of personal, professional, consulting and social services provisions (formerly chapter 16 of title 39) and provisions for the purchasing of supplies, services and major repairs, into the *Louisiana Procurement Code* (chapter 17 of title 39). All authority, duties and responsibilities formerly residing with the Office of Contractual Review and the Office of State Purchasing were placed under a new central purchasing agency identified as the Office of State Procurement. Revisions to the rules brought them into compliance with the new law by eliminating any outdated references to offices which no longer exist. Therefore, effective January 1, 2015, any reference to the Office of Contractual Review or the Office of State Purchasing, which still remain in the rules, will refer to the Office of State Procurement.

Chapter 1. Procurement of Supplies, Services, and Major Repairs

§101. General Purpose and Policies [Formerly LAC 34:I.301]

A. Definition and Purpose

1. *Specification*—any description of the physical functional, or performance characteristics, or of the nature of a supply, service, or major repair item. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or major repair 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, whether listed here or elsewhere within Part V of these regulations, or as listed in R.S. 39:1556, shall apply.

a. *Invitation for Bids*—all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in R.S. 39:1594. Unless the context requires otherwise, invitation for bids (IFBs) and invitation to bid (ITB) are used interchangeably herein.

b. *Proposer*—a firm, venture or individual who responds to the competitive sealed proposal.

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. Solicitation 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), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§103. Availability of Documents
[Formerly LAC 34:I.303]

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), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014).

§105. Authority to Prepare Specifications
[Formerly LAC 34:I.305]

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, services, or major repairs 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 the Louisiana procurement code and 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), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§107. Procedures for the Development of Specifications
[Formerly LAC 34:I.307]

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), repromulgated LR 40:1347 (July 2014), LR 40:2548 (December 2014).

§109. Definitions and Use
[Formerly LAC 34:I.309]

A. Proprietary Specifications

1. *Proprietary Specification*—a specification that cites brand name, model number, and some other designation as permitted by R.S. 39:1655, 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 his designee, or a governmental body delegated authority under R.S. 39:1566, 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(s) 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.

3. Competition

a. 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.

b. 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.

c. 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. *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 solicitation; 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.

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 preparations of a specification for a common or general use item, the chief procurement officer, his designee, or a governmental body delegated authority under R.S. 39:1566, shall prepare such a specification if such officer determines the conditions in Clauses 3.a.i-iii of this Paragraph have been met.

c. Comments on the Draft. The chief procurement officer, his designee, or the head of a purchasing or using agency preparing a specification for a common or general use item, shall provide an opportunity to appropriate parties to comment on the draft specification including, 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 his designee, or a governmental body delegated authority under R.S. 39:1566.

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.

1. *Functional or Performance Specifications*—terms used interchangeably to designate an approach to specifications that is less interested in dimensions and materials and configurations and more interested in what a product does. These specifications describe the characteristics and capabilities that are pertinent to the intended use of the article and, at a minimum, would include an explanation of the results required, testing methods, and characteristics that the goods or service must perform.

2. *Design Specifications*—a term that customarily employs dimensional and other physical requirements of the item being purchased.

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), repromulgated LR 40:1347 (July 2014), LR 40:2548 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§111. Major Repairs and Labor and Material Service Projects

A. *Major repairs* is as defined in R.S. 39:1556(32).

1. Major repairs may include, but are not limited to the following:

- a. repair or replacement projects, such as painting, flooring installation, etc.;
- b. roof repairs which do not require specialty contractors or designers, or architects or engineers;
- c. repair or replacement of minor building components, such as fixtures.

B. *Services* is as defined in R.S. 39:1556(51). For purposes of this Part, “services” and “labor and material services” shall be used interchangeably.

1. Services do not include those items listed in R.S. 39:1556(51)(b); but, does include, though not limited to, the following:

- a. maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment;
- b. routine recurring maintenance of immovable property;
- c. housekeeping services;
- d. operation of government-owned equipment, immovable property, and systems;
- e. information technology services.

2. When in doubt about what may be identified as a major repair or services, the final determination will be made by the chief procurement officer or his designee in collaboration with the Office of Facility Planning and Control, where applicable.

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 Procurement, LR 44:751 (April 2018).

§101. General Purpose and Policies
[Formerly LAC 34:I.301]

A. Definition and Purpose

1. *Specification*—any description of the physical functional, or performance characteristics, or of the nature of a supply, service, or major repair item. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or major repair 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, whether listed here or elsewhere within Part V of these regulations, or as listed in R.S. 39:1556, shall apply.

a. *Invitation for Bids*—all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in R.S. 39:1594. Unless the context requires otherwise, invitation for bids (IFBs) and invitation to bid (ITB) are used interchangeably herein.

b. *Proposer*—a firm, venture or individual who responds to the competitive sealed proposal.

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. Solicitation 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), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§103. Availability of Documents
[Formerly LAC 34:I.303]

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), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014).

§105. Authority to Prepare Specifications
[Formerly LAC 34:I.305]

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, services, or major repairs 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 the Louisiana procurement code and 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), repromulgated LR 40:1347 (July 2014), LR 40:2547 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§107. Procedures for the Development of Specifications
[Formerly LAC 34:I.307]

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), repromulgated LR 40:1347 (July 2014), LR 40:2548 (December 2014).

§109. Definitions and Use
[Formerly LAC 34:I.309]

A. Proprietary Specifications

1. *Proprietary Specification*—a specification that cites brand name, model number, and some other designation as permitted by R.S. 39:1655, 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 his designee, or a governmental body delegated authority under R.S. 39:1566, 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(s) 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.

3. Competition

a. 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.

b. 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.

c. 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. *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 solicitation; 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.

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 preparations of a specification for a common or general use item, the chief procurement officer, his designee, or a governmental body delegated authority under R.S. 39:1566, shall prepare such a specification if such officer determines the conditions in Clauses 3.a.i-iii of this Paragraph have been met.

c. Comments on the Draft. The chief procurement officer, his designee, or the head of a purchasing or using agency preparing a specification for a common or general use item, shall provide an opportunity to appropriate parties to comment on the draft specification including, 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 his designee, or a governmental body delegated authority under R.S. 39:1566.

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.

1. *Functional or Performance Specifications*—terms used interchangeably to designate an approach to specifications that is less interested in dimensions and materials and configurations and more interested in what a product does. These specifications describe the characteristics and capabilities that are pertinent to the intended use of the article and, at a minimum, would include an explanation of the results required, testing methods, and characteristics that the goods or service must perform.

2. *Design Specifications*—a term that customarily employs dimensional and other physical requirements of the item being purchased.

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), repromulgated LR 40:1347 (July 2014), LR 40:2548 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:750 (April 2018).

§111. Major Repairs and Labor and Material Service Projects

A. *Major repairs* is as defined in R.S. 39:1556(32).

1. Major repairs may include, but are not limited to the following:

- a. repair or replacement projects, such as painting, flooring installation, etc.;
- b. roof repairs which do not require specialty contractors or designers, or architects or engineers;
- c. repair or replacement of minor building components, such as fixtures.

B. *Services* is as defined in R.S. 39:1556(51). For purposes of this Part, “services” and “labor and material services” shall be used interchangeably.

1. Services do not include those items listed in R.S. 39:1556(51)(b); but, does include, though not limited to, the following:

- a. maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment;
- b. routine recurring maintenance of immovable property;
- c. housekeeping services;
- d. operation of government-owned equipment, immovable property, and systems;
- e. information technology services.

2. When in doubt about what may be identified as a major repair or services, the final determination will be made by the chief procurement officer or his designee in collaboration with the Office of Facility Planning and Control, where applicable.

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 Procurement, LR 44:751 (April 2018).

Chapter 3. Competitive Sealed Bidding

§301. Content of the Invitation to Bid (ITB) [Formerly LAC 34:I.501]

A. Invitation to Bid

1. Purchases where the estimated cost is over \$25,000 shall provide adequate public notice in accordance with R.S. 39:1594. Determination of “adequate public notice” shall take into consideration the nature and complexity of the solicitation. All advertisements, written invitations to bid, or other forms of solicitations allowed by law posted through a secure centralized electronic interactive environment pursuant to the Louisiana Uniform Electronic Transaction Act (R.S. 9:2601-2621) and applicable rules and regulations (i.e. LAC 4:XV.701 et seq.) shall contain general descriptions of the classes of commodities on which bids are solicited and shall state:

- 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 to bid 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 to bid 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 to bid may incorporate documents by reference provided that the invitation to bid 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 to 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.

F. Request for Proposals. In the event the state chooses to use the request for proposals method of procurement pursuant to R.S. 39:1595, the procurement shall be made in accordance with LAC 34:V. 2545.

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), repromulgated LR 40:1349 (July 2014), LR 40:2549 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:751 (April 2018).

§303. Bidding Time

[Formerly LAC 34:I.503]

A. Bidding time is the period of time between the date of distribution of the invitation to bid 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 10 days shall 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), repromulgated LR 40:1349 (July 2014), amended LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:751 (April 2018).

§305. Addenda Modifying Invitation To Bid

[Formerly LAC 34:I.505]

A. Addenda modifying invitation to bid shall not be issued within a period of 72 hours 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 to bid within the 72 hours excluding Saturdays, Sundays and any other legal holiday(s), prior to the advertised time for the opening of bids, then the opening of bids shall be extended a minimum of 7 calendar days, without the requirement of re-advertising. Addenda shall be sent to all prospective bidders known to have received an invitation to 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), repromulgated LR 40:1349 (July 2014), amended LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§307. Bidder Submissions
[Formerly LAC 34:I.507]

A. Bid Forms. All written bids, unless otherwise provided for, must be submitted on, and in accordance with forms provided, properly signed, including electronic signature, when applicable, and in the manner specified including receipt by mail, direct delivery, or through any secure electronic interactive environment permitted pursuant to the Louisiana Uniform Electronic Transaction Act and applicable rules and regulations. Bids submitted in the following manner will not be accepted:

1. bid submittal contains no signature indicating an intent to be bound as noted in LAC 34.V. 321.B.2;
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.
3. bids not received as specified in the invitation to bid, prior to bid opening time.

B. Bid Samples and Descriptive Literature

1. *Descriptive Literature*—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*—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 to bid shall state whether bid samples or descriptive literature are required and state the deadline for submittal. 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 to 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 any and all 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), repromulgated LR 40:1350 (July 2014), LR 40:2550 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§309. Bidder Lists
[Formerly LAC 34:I.509]

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 Office of State Procurement'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), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§311. Pre-Bid Conferences
[Formerly LAC 34:I.511]

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 to bid and shall be advertised and/or electronically posted if over \$25,000 and attendance is mandatory. The conference should be held long enough after the invitation to bid 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 to bid unless a change is made by written addenda as provided in §305.

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), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§315. Pre-Opening Modification or Withdrawal of Bids
[Formerly LAC 34:I.515]

A. Procedure. Bids may be modified or withdrawn in accordance with R.S. 39:1594(G). Method for submittal of bids, modifications, or withdrawals may be by written, telegraphic, fax notice, direct delivery or electronic transmission through a secure centralized interactive environment and received at the address designated in the invitation to bid prior to the time set for bid opening. Receipt shall be as recorded by date stamp or, received electronically in accordance with R.S. 9:2615(B) or applicable regulations, at the purchasing agency. Acceptable method of delivery of modification or withdrawal shall be as stated within the invitation to bid.

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.

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), repromulgated LR 40:1350 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:752 (April 2018).

§317. Late Bids
[Formerly LAC 34:I.517]

A. Formal bids and addenda thereto, received at the designated place in the invitation to bid after time specified for bid opening will not be considered, whether delayed in the mail, in transmission or for any cause whatsoever. If receipt of a bid is delayed by actions of the Office of State Procurement or the using agency handling the solicitation, and this delay prejudices a vendor, then the Office of State Procurement or using 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), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§319. Receipt, Opening and Recording of Bids
[Formerly LAC 34:I.519]

A. Receipt. Upon receipt, all bids and modifications will be time-stamped, if received other than electronically, but not opened. All bids received shall be secured until bid opening time.

1. Electronically received bids receipt time shall be determined in accordance with R.S. 9:2615(B).

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 to bid. 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 to 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 8:329 (July 1992), amended LR 21:566 (June 1995), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§321. Mistakes in Bids
[Formerly LAC 34:I.521]

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 in accordance with R.S. 39:1594(G). 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 to bid;
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), repromulgated LR 40:1351 (July 2014), LR 40:2551 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§323. Bid Guaranty and Bond
[Formerly LAC 34:I.523]

A. Bid Guaranty

1. When specified in the invitation to bid, 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), repromulgated LR 40:1351 (July 2014), LR 40:2552 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§325. General Guaranty
[Formerly LAC 34:I.525]

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 including, when applicable, registration with the Secretary of State office.

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), repromulgated LR 40:1352 (July 2014), LR 40:2552 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:753 (April 2018).

§327. Bid Evaluation and Award
[Formerly LAC 34:I.527]

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 to bid.” See R.S. 39:1594(H) (competitive sealed bidding, award) of the Louisiana procurement code. The invitation to bid 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 to bid.

B. Responsiveness and Responsibility

Responsive Bidder—a person who has submitted a bid under R.S. 39:1594 which conforms in all substantive respects to the invitation to bid including the specifications set forth in the invitation.

Responsible Bidder or Proposer—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

a. The Office of State Procurement, or using agency, whichever is applicable, may request suitable evidence that a vendor is a responsible bidder or proposer.

C. Product Acceptability

1. The invitation to bid 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 to bid. 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 to bid. Only objectively measurable criteria which are set forth in the invitation to bid 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 to bid 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), repromulgated LR 40:1352 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

§329. Tie Bids
[Formerly LAC 34:I.529]

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 to bid.

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.

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

- a. maintains its principal place of 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), repromulgated LR 40:1353 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

§331. Awarding of Bids
[Formerly LAC 34:I.531]

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 §335.

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 to bid, 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), repromulgated LR 40:1353 (July 2014), LR 40:2553 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

§333. Documentation of Award
[Formerly LAC 34:I.533]

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), repromulgated LR 40:1353 (July 2014), LR 40:2554 (December 2014).

§335. Publicizing Awards
[Formerly LAC 34:I.535]

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), repromulgated LR 40:1353 (July 2014), LR 40:2554 (December 2014).

§337. Assignments
[Formerly LAC 34:I.537]

A. No contract or purchase order or proceeds thereof may be assigned, sublet or transferred without prior written approval 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), repromulgated LR 40:1353 (July 2014), LR 40:2554 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

§339. Deliveries
[Formerly LAC 34:I.539]

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 to 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 the Office of State Procurement, Division of Administration. Also, the state agencies shall report any offer of a reduction in contract price to the Office of State Procurement, 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), repromulgated LR 40:1354 (July 2014), LR 40:2554 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:754 (April 2018).

Chapter 5. Reverse Auctions

§501. Definition

[Formerly LAC 34:I.601]

A. For the purpose of this Section, *using agency* means the Office of State Procurement using an electronic online reverse auction process on its own behalf or on behalf of one or more state agencies.

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 38:1406 (June 2012), repromulgated LR 40:1354 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:51 (January 2016).

§503. Application

[Formerly LAC 34:I.603]

A. Notwithstanding the provisions of subpart A of R.S. 39:1600, with the approval of the state chief procurement officer that the best interests of the state would be served, a reverse auction may be utilized for the acquisition of materials, supplies, services of any type, products, or equipment of any monetary amount, including small purchases.

B. Prior to the use of any reverse auction, the state chief procurement may require in the solicitation language that:

1. vendors shall register before the opening date and time, and as part of the registration, require that the vendors agree to any terms and conditions and other requirements of the solicitation;

2. vendors shall be prequalified prior to placing bids and allow only bidders who are prequalified to submit bids;

3. the solicitation shall designate an opening date and time and the closing date and time. The closing date and time may be fixed or remain open depending on the nature of the item being bid;

4. at the opening date and time, the using agency shall begin accepting online bids and continue accepting bids until the bid is officially closed. Registered bidders shall be allowed to lower the price of their bid below the lowest bid posted on the Internet until the closing date and time;

5. bidders' identities shall not be revealed during the bidding process; only, the successively lower prices, ranks, scores, and related bid details shall be revealed;

6. all bids shall be posted electronically and updated on a real-time basis;

7. the using agency shall retain the right to cancel the solicitation if it determines that it is in the agency's or the state's best interest;

8. the using agency shall retain its existing authority to determine the criteria that shall be used as a basis for making awards.

C. Adequate public notice for the purchase of materials, supplies, services, or equipment using a reverse auction shall be given. The advertisement or notice shall conform to the requirements for public notice of sealed bidding or small purchases as applicable, pursuant respectively to R.S. 39:1594 or 1596, such that the extent, timing, location, form, and duration of public notice activities for the reverse auction process shall be fully consistent with the public notice activities required for a sealed bid or small purchase of equivalent value.

D. The Office of State Procurement shall report annually to the legislature by September 1, on the use of reverse auctions and any savings achieved.

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 38:1406 (June 2012), repromulgated LR 40:1354 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:51 (January 2016), LR 44:755 (April 2018).

§505. Addenda Modifying a Reverse Auction
[Formerly LAC 34:I.605]

A. Addenda will be issued in accordance with §305 of these rules.

B. It is the responsibility of the bidder to obtain any solicitation amendment(s) if the solicitation and addenda are posted on the state's internet-based system for posting bid opportunities.

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 38:1406 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018).

§507. Price Submittals
[Formerly LAC 34:I.607]

A. Bidders may submit multiple prices during the event. The lowest price offered will become the price portion of the bid response.

B. The preference provisions of R.S. 39:1604-1604.7 shall apply to the reverse auction process.

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 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2555 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018).

§509. Withdrawal of Bids
[Formerly LAC 34:I.609]

A. Withdrawal of bids will be handled in accordance with §321 of this 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 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:755 (April 2018).

§511. Tie Bids
[Formerly LAC 34:I.611]

A. In the event that multiple bidders submit identical prices for the same goods or services, the bid received first will be considered to be the lowest. Any other identical bids received later will be considered in the order received.

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 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014).

§513. Rejected Bids
[Formerly LAC 34:I.613]

A. The awarding authority may reject any bid, in whole or in part, and may select the next lowest responsive and responsible bid, if any of the following occur:

1. the materials, supplies, services, products, or equipment, for which the bid is offered are not in compliance with the requirements, specifications, terms or conditions as stated in the reverse auction;
2. the price of the lowest responsive and responsible bid exceeds the amount budgeted for the procurement;
3. it is determined that awarding any item is not in the best interest of the agency/department.

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 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:52 (January 2016).

§515. Public Viewing of Auction Event
[Formerly LAC 34:I.615]

A. The public may view the internet auction event which will be conducted such that the names of the bidders will not be disclosed until after the completion of the auction, at which time the event record will be available to the public.

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 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014).

§517. Security
[Formerly LAC 34:I.617]

A. All reverse auctions shall be conducted in accordance with the electronic security requirements of R.S. 9:2615(B) of the Office of Technology Services.

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 38:1407 (June 2012), repromulgated LR 40:1355 (July 2014), LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 42:52 (January 2016), LR 44:756 (April 2018).

Chapter 7. Small Purchases

§701. Small Purchases
[Formerly LAC 34:I.701]

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), repromulgated LR 40:1355 (July 2014).

Chapter 9. Sole Source Procurement

§901. Application
[Formerly LAC 34:I.901]

A. These provisions shall apply to all sole source procurement unless emergency conditions exist as defined in Chapter 11 (Emergency Procurement) of 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 8:331 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1356 (July 2014), amended LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1669 (September 2015).

§905. Conditions for Use of Sole Source Procurement
[Formerly LAC 34:I.905]

A. Determination

1. The determination as to whether a procurement of a supply, service, or major repair item or a professional, personal, consulting, or social services contract award shall be made as a sole source shall be made by the state chief procurement officer, a chief procurement officer or either officer's designee upon sufficient factors and cause, and shall be in the best interests of the state. 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 in writing and 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 proposer 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 and services;
- e. registered breeding stock may be purchased on a selective basis without use of a competitive process, 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 use of a competitive process 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, rebuilt/remanufactured/refurbished or preowned by an individual or corporation and 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 the Office of State Procurement 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 the Office of State Procurement 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), repromulgated LR 40:1356 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1281 (July 2015), LR 44:756 (April 2018).

§907. Record of Sole Source Procurement
[Formerly LAC 34:I.907]

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), repromulgated LR 40:1356 (July 2014).

Chapter 11. Emergency Procurement

§1101. Application

[Formerly LAC 34:I.1101]

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), LR 40:1356 (July 2014).

§1103. Definition of Emergency Conditions

[Formerly LAC 34:I.1103]

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), repromulgated LR 40:1356 (July 2014).

§1105. Scope of Emergency Procurement

[Formerly LAC 34:I.1105]

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), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 40:1357 (July 2014).

§1107. Authority to Make Emergency Procurement

[Formerly LAC 34:I.1107]

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), LR 40:1357 (July 2014).

§1109. Source Selection Methods
[Formerly LAC 34:I.1109]

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 to bid 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), LR 40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:756 (April 2018).

§1111. Determination and Record of Emergency Procurement
[Formerly LAC 34:I.1111]

A. Determination. The procurement officer or the head of a purchasing agency shall make a written determination stating the basis for any emergency procurement or award of a professional, personal, consulting or social services contract, and for the selection of a particular contractor. Such determination shall be sent promptly to the state chief procurement officer or chief procurement officer as appropriate for approval or rejection.

B. Record

1. A record of emergency procurement shall be maintained in a form/format determined by the director of the Office of State Procurement that lists, for those entities under its jurisdiction, at a minimum, the following:

- 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), LR 40:1357 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), LR 44:756 (April 2018).

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

§1301. Scope
[Formerly LAC 34:I.1301]

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), repromulgated LR 40:1357 (July 2014).

§1303. Policy
[Formerly LAC 34:I.1303]

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), repromulgated LR 40:1357 (July 2014).

§1305. Cancellation of Solicitations—Notice
[Formerly LAC 34:I.1305]

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), repromulgated LR 40:1357 (July 2014).

§1307. Reasons for Cancellation
[Formerly LAC 34:I.1307]

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), repromulgated LR 40:1358 (July 2014).

§1309. Rejection of Individual Bids or Proposals
[Formerly LAC 34:I.1309]

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

1. *Proposals* (as used in this Section)—competitive solicitations solicited in accordance with R.S. 39:1595 and §2545 of these regulations.

B. Notice in Solicitation. Each solicitation issued by the state shall provide that any bid or proposal 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 or proposal submitted in compliance with competitive sealed bidding requirements and submissions under Chapter 7 (Small Purchases) or competitive sealed proposals governed by R.S. 39:1595. Reasons for rejecting a bid or proposal include but are not limited to:

1. the person that submitted the bid or proposal is nonresponsive as determined under §1511 of these regulations;
2. the bid or proposal is not responsive.; 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 to bid or request for proposal. See Chapter 3, §327.

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), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

§1311. Disposition of Bids or Proposals
[Formerly LAC 34:I.1311]

A. When bids or proposals are rejected, or a solicitation is canceled after bids/proposals have been opened, the bids/proposals 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), repromulgated LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

Chapter 15. Responsibility and Prequalification

§1501. Definitions
[Formerly LAC 34:I.1501]

Responsible Bidder or Proposer—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 also R.S. 39:1606 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 to bid.

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

Suppliers—as used in R.S. 39:1607 (prequalification of suppliers) of the Louisiana procurement code, means prospective bidders or proposers.

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), LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

§1503. Application
[Formerly LAC 34:I.1503]

A. A determination of responsibility or nonresponsibility shall be governed by this Chapter and applicable sections of the procurement code.

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), LR 40:1358 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

§1505. Standards of Responsibility
[Formerly LAC 34:I.1505]

A. Standards

1. A reasonable inquiry to determine the responsibility of a bidder or proposer may be conducted in accordance with R.S. 39:1606. The following standards, as they relate to the particular procurement under consideration, may be used, but is not limited to the following:

- a. has adequate financial resources for performance; or, has the ability to obtain such resources as required during performance;
- b. has the necessary experience, organizations, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements);
- c. is able to comply with the proposed or required time of delivery or performance schedule;
- d. has a satisfactory record of integrity, judgment and performance (contractors who are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall in the absence of evidence to the contrary or evidence of compelling circumstances, be presumed to be unable to fulfill the requirement);
- e. is otherwise qualified and eligible to receive an award under applicable laws and regulations.

2. Before making a determination of responsibility, the Office of State Procurement; or, the head of the using agency, shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in Subsections A and B of this Section. Information from the following sources may be utilized before making a determination of responsibility:

- a. information from the prospective contractor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;
- b. other existing information within the agency, including financial data, the list of debarred and ineligible bidders and records concerning contractor performance;
- c. publications, including credit ratings and trade and financial journals;
- d. other sources, including banks, other financial companies, and state departments and agencies.

3. When applicable, to the extent that a prospective contractor cannot meet the standard in Paragraph A.2 of this Section except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system or prospective major subcontractors are determined by the Office of State Procurement or the head of the using agency to satisfy that standard.

4. 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), LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:757 (April 2018).

§1507. Ability to Meet Standards
[Formerly LAC 34:I.1507]

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), LR 40:1359 (July 2014).

§1509. Duty Concerning Responsibility
[Formerly LAC 34:I.1509]

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), LR 40:1359 (July 2014).

§1511. Written Determination of Nonresponsibility Required
[Formerly LAC 34:I.1511]

A. If a bidder or proposer 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, as applicable. A copy of the determination shall be sent promptly to the nonresponsible bidder or proposer. The determination shall be made part of the procurement file.

1. Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, consideration of §§1505 and 2536.

B. Any such bidder or proposer 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), repromulgated LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

Chapter 17. Types of Contracts

§1701. Centralization of Contracting Authority
[Formerly LAC 34:I.1701]

A. When a mandatory use statewide competitive contract for supplies or services is established all state governmental bodies, excluding those exempted from the central purchasing agency 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), repromulgated LR 40:1359 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

§1703. Policy Regarding Selection of Contract Types
[Formerly LAC 34:I.1703]

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), repromulgated LR 40:1359 (July 2014).

§1705. Cost-Plus-a-Percentage-of-Cost Contracts
[Formerly LAC 34:I.1705]

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), repromulgated LR 40:1360 (July 2014).

§1707. Types of Contracts
[Formerly LAC 34:I.1707]

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), repromulgated LR 40:1360 (July 2014).

§1709. Use of Brand Name, LaMAS (Louisiana Multiple Award Schedule), and Multi-State Contracts
[Formerly LAC 34:I.1709]

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. A listing of all contracts applicable to this Section will be maintained on the website of the Office of State Procurement.

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), repromulgated LR 40:1360 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

Chapter 18. Progressive and Multiple Awards

§1801. Progressive Award [Formerly LAC 34:I.1801]

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 proposer 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), repromulgated LR 40:1361 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:758 (April 2018).

§1803. Multiple Award [Formerly LAC 34:I.1803]

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 proposer, 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 proposers 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), repromulgated LR 40:1361 (July 2014), amended LR 44:758 (April 2018).

§1805. Intent to Use [Formerly LAC 34:I.1805]

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), repromulgated LR 40:1361 (July 2014).

§1807. Determination Required [Formerly LAC 34:I.1807]

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), repromulgated LR 40:1361 (July 2014).

Chapter 19. Multi-Year Contracts

§1901. Determination [Formerly LAC 34:I.1901]

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), repromulgated LR 40:1361 (July 2014).

§1903. Conditions for Purchasing and Contracting Use of Multi-Year Contracts [Formerly LAC 34:I.1903]

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

1. when purchasing supplies, services or major repairs and contract performance requires alteration in the contractor's facilities or operations involving high start-up costs;
2. when contracts for purchases of supplies, services or major repairs require 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;
3. when establishing contracts for the installment purchase of supplies or equipment, including but not limited to data processing equipment and telecommunications equipment, procured in accordance with R.S. 39:1616;
4. when establishing contracts for professional, personal, consulting, or social services after determination in writing by the commissioner of administration or his designee.

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), repromulgated LR 40:1361 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018).

§1905. Multi-Year Contract Procedure [Formerly LAC 34:I.1905]

A. Solicitation. The solicitation shall state:

1. the amount of supplies, services or major repairs 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 or major repair, 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. Additional regulations, applicable to procurement of professional, personal, consulting, social services and energy efficiency contracts are found in Chapter 25 of this 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 8:337 (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 44:759 (April 2018).

Chapter 20. Leases of Movable

§2001. Description

[Formerly LAC 34:I.2001]

A. A lease of movables 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), repromulgated LR 40:1362 (July 2014).

§2003. Use

[Formerly LAC 34:I.2003]

A. A lease of movables 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), repromulgated LR 40:1362 (July 2014).

§2005. Lease with Purchase Option

[Formerly LAC 34:I.2005]

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), repromulgated LR 40:1362 (July 2014).

Chapter 21. Miscellaneous Contract Provisions for Supplies, Services, and Major Repairs

§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, 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 for supplies, services and major repairs may permit or require the inclusion of clauses providing for equitable adjustments in prices, time for performance, or other contract provisions identified in R.S. 39:1661 in addition to the following, as appropriate:

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 including due date of the payment(s);

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 may permit or require the inclusion of clauses providing for appropriate remedies and covering the following subjects:

1. liquidated damages as appropriate;
2. specified excuses for delay or nonperformance;
3. termination of the contract for default;
4. termination of the contract in whole or in part for the convenience of the state.
5. an annual appropriation dependency clause;
6. audit language;

7. when a contract requires an original signature as provided by R.S. 9:2601-2621 and LAC 4:I.Chapter 7, Implementation of Electronic Signatures in Global and National Commerce Act—P.I., 106-229, is considered an original signature.

D. Additional contract clauses for contracts awarded from a competitive sealed proposal shall contain as a minimum:

1. description of the work to be performed or objectives to be met, when applicable;
2. amount and time of payments to be made;
3. description of reports or other deliverables to be received, when applicable;
4. date of reports or other deliverables to be received, when applicable;
5. responsibility for payment of taxes, when applicable;
6. circumstances under which the contract can be terminated either with or without cause;
7. remedies for default;
8. a statement giving the legislative auditor the authority to audit records of the individual firm;
9. performance measurement;
10. monitoring plan.

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 LR 41:670 (April 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:759 (April 2018).

§2103. Exercise of Option
[Formerly LAC 34:I.2103]

A. Before exercising any option for renewal, extension, or purchase, the chief procurement officer shall 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), repromulgated LR 40:1362 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

§2105. Goods Manufactured or Services Performed by Sheltered Workshops
[Formerly LAC 34:I.2105]

A. R.S. 39:1604.4 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.

B. Purchases of goods manufactured by or services performed by individuals with severe disabilities in state-operated and state-supported sheltered workshops as defined in R.S. 39:1604.4 shall be exempt from competitive sealed bidding in accordance with the provisions of R.S. 39:1594.

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 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

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

§2201. Inspection
[Formerly LAC 34:I.2201]

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), repromulgated LR 40:1363 (July 2014).

§2203. Audit of Records

[Formerly LAC 34:I.2203]

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. 39:1629 and 1629.1; 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), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

Chapter 23. Reporting of Suspected Collusive Bidding or Negotiations

§2301. Anticompetitive Practices

[Formerly LAC 34:I.2301]

A. For the purposes of this Section, an anticompetitive practice is a practice among bidders or proposers 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), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

§2303. Independent Price Determination

[Formerly LAC 34:I.2303]

A. Every solicitation shall provide that by submitting a bid or proposal, the bidder or proposer 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), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

§2305. Reporting Suspected Anticompetitive Practices

[Formerly LAC 34:I.2305]

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), repromulgated LR 40:1363 (July 2014).

§2307. Detection of Anticompetitive Practices
[Formerly LAC 34:I.2307]

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 proposers 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), repromulgated LR 40:1363 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:760 (April 2018).

§2309. Identical Bidding
[Formerly LAC 34:I.2309]

A. The term *identical bidding* means the submission by bidders or proposers 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 or proposals against present and past pricing policies of the bidders or proposers, 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 or proposals may also result from resale price maintenance agreements which are described in §2311.C of this 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 8:338 (July 1982), amended LR 21:566 (June 1995), repromulgated LR 40:1364 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

§2311. Possible Anticompetitive Practices
[Formerly LAC 34:I.2311]

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 proposers participating in the collusive scheme submit bids, but by agreement alternate being the lowest bidder or proposers. In order to determine whether rotation may be occurring, the procurement officer must review similar past procurement in which the same bidders or proposers 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 occurs where potential bidders or proposers allocate business among themselves based on the customers or the territory involved. Thus a procurement officer might discover that a potential bidder or

proposer is not participating in a state procurement because a particular state agency, or a particular territory has not been allocated to such bidder or proposer by the producer or manufacturer.

E. "Tie-In" Sales. "Tie-in" sales are those in which a bidder or proposer 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), repromulgated LR 40:1364 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

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

Subchapter A. General Provisions

§2501. Delegation of Authority [Formerly LAC 34:V.101]

A. The director of the Office of State Procurement may delegate in writing certain responsibilities set forth herein in accordance with R.S. 39:1566.

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 4:495 (December 1978), amended LR 7:179 (April 1981), LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985), repromulgated LR 40:2556 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:761 (April 2018).

§2503. Definitions and Classes of Contractual Services [Formerly LAC 34:V.103]

A. The following services shall be contracted out in accordance with these regulations.

1. *Personal Services*—for contracts with individuals who render work which requires use of creative or artistic skills including but not limited to those individual services identified in R.S. 39:1556(37) and entertainers, expert speakers and other services satisfying the requirements of the definition for personal services as added by regulation.

2. *Professional Service*—for contracts with a total amount of compensation of \$50,000 or more, the definition of "professional service" shall be limited to lawyers, doctors, dentists, veterinarians, architects, engineers, landscape architects, accountants, claims adjusters, pharmacists, visiting professors, and scientists and any other profession that may be added by regulations adopted by the Office of State Procurement of the Division of Administration.

3. *Consulting Service*—for contracts as defined in R.S. 39:1556(10).

4. *Retroactive Claims Recovery Services*—those consulting services where third party coverage identification and verification represent the primary services, and any operations type activities such as information technology and/or claims submission are merely incidental to the total work tasks to be performed, and where such services will result in revenue enhancement to the state through a contingency fee arrangement. The RFP process for this type of consulting service shall require that at least 50 percent of total weighted criteria for evaluation be allocated to cost.

5. *Social Service*—for contracts as defined in R.S. 39:1556(54).

6.a. *Performance-Based Energy Efficiency Contract*—a contract for energy efficiency services and equipment in which the payment obligation for each year of the contract is either:

i. set as a percentage of the annual energy cost savings attributable to the services or equipment under the contract; or

ii. guaranteed by the person under contract to be less than the annual energy cost savings attributable to the services or equipment under the contract.

b. Any state agency, board, or commission may enter into a performance-based energy efficiency contract for services and equipment. Any such agency, board, or commission shall contact the Division of Administration for assistance in preparation of the requests for proposals, analysis of the proposals, and development of the contract. The contract shall be considered a consulting services contract.

c. Performance-based energy efficiency contracts shall be awarded through a request for proposal process. Any performance-based energy efficiency contract entered into shall be for a period not to exceed 10 years and shall contain a guarantee of energy savings.

7. Interagency contracts between governmental entities as defined in R.S. 39:1556(25) and 1556(30), respectively, for any of the services enumerated in Paragraphs 1, 2, 3, 4, 5 or 6 of this Subsection shall be governed by these regulations, except that contracts between boards of higher education and their respective institutions shall be exempt.

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 7:181 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1067 (November 1985), LR 13:652 (November 1987), LR 17:264 (March 1991), LR 20:542 (May 1994), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 41:1669 (September 2015), LR 40:2556 (December 2014), amended LR 40:2544 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1669 (September 2015), amended LR 44:761 (April 2018).

§2505. Performance-Based Energy Efficiency Contracting [Formerly LAC 34:V.105]

A. Preparation of Requests for Proposals

1. Performance contracts shall be considered to be consulting services contracts under the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and shall be awarded in accordance with the provisions of that chapter, the rules and regulations promulgated by the Office of State Procurement pursuant to that chapter and this Section.

2. Prior to its preparation of an RFP, a state agency, as defined in R.S. 39:2 (hereinafter, "user agency") shall perform a needs analysis in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by the Division of Administration, through its Office of State Procurement ("OSP") pursuant to that chapter. Such needs analysis shall be in a form approved by the Commissioner of the Division of Administration or his designated agent and shall include a detailed audit of energy use.

3. Prior to its preparation of an RFP, a user agency shall submit its needs analysis to the Commissioner of the Division of Administration or his designated agent for approval.

4. Upon approval of a user agency's needs analysis pursuant to this Section, such user agency shall prepare an RFP in a form approved by OSP, which form shall require proposers to separately itemize the costs and savings associated with each proposed energy cost savings measure ("ECSM"). In accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by OSP pursuant to that chapter, every RFP shall indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the performance contract, the criteria to be used in evaluating the proposals and the time frames within which the work must be completed. Prior to advertising its RFP, a user agency shall submit it to the Commissioner of Administration or his designated agent and obtain his written consent to the advertisement of the RFP.

5. Upon approval of a user agency's RFP, such user agency shall advertise its RFP in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes* and the rules and regulations promulgated by OSP pursuant to that chapter.

B. Evaluation of Submitted Proposals

1. A user agency shall review any proposals it timely receives in response to its RFP and shall submit to the Office of Facility Planning and Control ("FPC") the results of its review, along with each proposal that is responsive and responsible and otherwise in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. A user agency shall not make a final selection from among the proposals it submits to FPC.

2. Prior to the award of any performance contract, FPC shall evaluate all proposals submitted by a user agency for that performance contract. In its evaluation, FPC shall include suggestions, if appropriate, for the resolution of any unique issues arising in connection with a particular proposed performance contract. FPC's evaluation shall also include, but not be limited to, a consideration of the following:

- a. whether proposed ECSMs are in compliance with the provisions of R.S. 39:1622;
- b. whether proposed ECSMs will generate net savings, as those terms are defined in Subsection E of this Section; and
- c. whether the proposed protocol for measuring and verifying the energy savings guaranteed in the contract conforms to the latest standards set forth by the International Performance Measurement and Verification Protocol.

3. FPC shall, within 60 days of the receipt of the submitted proposals, forward to the Commissioner of Administration or his designated agent its written evaluation of the submitted proposals, along with the results of the review of the submitted proposals by the user agency. FPC shall not make a final selection from among the proposals it forwards to the Commissioner of the Division of Administration except if FPC has been designated as the Commissioner's agent for that specific purpose.

4. Prior to the award of any performance contract, the Commissioner of the Division of Administration or his designated agent may retain an independent consultant in accordance with this Section. Such independent third-party consultant shall evaluate all proposals and written evaluations submitted to the Commissioner of the Division of Administration or his designated agent. Such evaluation shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. After completing its evaluation, an independent consultant shall submit to the Commissioner of the Division of Administration or his designated agent the written results of such evaluation. An independent consultant shall not make a final selection from among the proposals it evaluates.

5. Prior to retaining an independent third-party consultant pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall require every proposed independent consultant to execute a written certification verifying that he or she has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency. Such written certification shall be in a form approved by the legislative auditor. In order to assist the legislative auditor in verifying the independence of a proposed independent consultant, such proposed independent consultant shall provide to the legislative auditor any documentation or information the legislative auditor requests. A proposed independent consultant shall not be retained, unless the legislative auditor has determined that such proposed independent consultant has no direct conflict of interest as to the user agency that requested the proposals to be evaluated, the proposals themselves and/or those who submitted the proposals to the user agency.

6. After completing his review of the submitted proposals and evaluations prepared by the independent consultant, if any, pursuant to this Section, the Commissioner of the Division of Administration or his designated agent shall provide written notification to a user agency that the Commissioner of the Division of Administration or his designated agent has consented to the award of a performance contract to a specified energy services company ("ESCO") or that he has not consented to the award of a performance contract. Pursuant to the provisions of Title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section, such consent shall be given to the responsible ESCO whose proposal is determined by the Commissioner of the Division of Administration or his designated agent to be the most advantageous to the state of Louisiana, taking into consideration all of the evaluation factors set forth in the RFP, as well as any evaluations or recommendations provided by the user agency, and the independent consultant, if any. In the event that the Commissioner of the Division of Administration or his designated agent determines that consent to the award of a performance contract would not be advantageous to the state of Louisiana, he shall provide the user agency with written reasons for his decision to withhold his consent.

7. Except as explicitly set forth in this Section, no party shall disclose information derived from submitted proposals prior to the consent by the Commissioner of the Division of Administration or his designated agent to the award of a performance contract to a specified ESCO.

C. Negotiation of Performance Contracts

1. A user agency shall negotiate with an approved ESCO a performance contract in a form approved by OSP. The process of such negotiation shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana*

Revised Statutes, the rules and regulations promulgated by OSP pursuant to that chapter and this Section. The Commissioner of the Division of Administration or his designated agent may require that an independent consultant retained pursuant to this Section participate on behalf of a user agency in the negotiation of a performance contract with an approved ESCO.

a. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall set forth the total units of energy saved, the method, device or financial arrangement to be used to establish the amount of such savings, the cost per unit of energy and, if applicable, the basis for any adjustment in the cost per unit of energy during the term of the contract.

b. Notwithstanding any other provisions of this Section, every performance contract negotiated pursuant to this Section shall, with respect to each ECSM included in such performance contract and in addition to fulfilling any other requirements set forth in this Section, state the following:

- i. the detailed scope of work to be performed pursuant to the performance contract;
- ii. the initial price to be paid by the user agency;
- iii. the annual energy cost savings guaranteed by the ESCO;
- iv. the annual maintenance savings guaranteed by the ESCO, including, but not limited to, services, parts, materials, labor and equipment;
- v. the annual new maintenance costs, including operating expenses added as a result of new equipment installed or service performed by the ESCO; and
- vi. the total annual savings guaranteed by the ESCO. *Total annual savings* means annual energy cost savings plus annual maintenance savings minus annual new maintenance costs.

c. Notwithstanding any other provisions of this Section, no payment shall be made to an ESCO pursuant to a performance contract unless such performance contract complies with Paragraph C.1.

2. The term of every performance contract negotiated pursuant to this Section and term of any obligation incurred by a user agency to fund a performance contract shall be for a period equal to the lesser of 20 years or the average life of the equipment installed by the ESCO and shall contain a guarantee of energy savings, which guarantee shall, at a minimum, ensure total annual savings sufficient to fully fund any financing arrangement entered into pursuant to such performance contract.

3. Every performance contract negotiated pursuant to this Section shall contain the following clause: "The continuation of this contract is contingent upon the appropriation of funds by the legislature to fulfill the requirements of the contract. If the legislature fails to appropriate sufficient monies to provide for the continuation of the contract, the contract shall terminate on the last day of the fiscal year for which funds have been appropriated. Such termination shall be without penalty or expense to the agency, board or commission except for payments which have been earned prior to the termination date."

4. A user agency shall submit a negotiated performance contract to OSP for its review and approval. A user agency's submission of a negotiated performance contract shall be in accordance with the provisions of title 39, chapter 17 of the *Louisiana Revised Statutes*, the rules and regulations promulgated by OSP pursuant to that chapter and this Section.

5. At the time a performance contract is executed, the contracting ESCO shall submit a certified or cashier's check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 2 1/2 percent of the total value of the proposed performance contract. The percentage of such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

D. Audits of Performance Contracts

1. An ESCO that enters into a performance contract shall provide the user agency with all performance information and other reports required by the performance contract.

a. An ESCO's reports to the user agency shall conform with the standards of the International Performance Measurement and Verification Protocol.

b. An ESCO's reports to the user agency shall, in addition to fulfilling any other requirements set forth in its performance contract or in this Section, state the following:

- i. the name of the user agency;
- ii. the ESCO's name and address;
- iii. whether the payment obligation under the performance contract is either:

(a). set as a percentage of the annual energy cost savings attributable to the services or equipment under the performance contract; or

(b). guaranteed by the ESCO to be less than the annual energy cost savings attributable to the services or equipment under the performance contract;

- iv. the total annual savings guaranteed by the ESCO;
- v. the total amount the user agency is required to pay under the performance contract and the term of the contract;
- vi. the total amount paid to date by the user agency and the amount paid each year to date under the performance contract;
- vii. any costs paid by the user agency which were associated with the set-up or maintenance of the performance contract or with repair or maintenance of the equipment used under the performance contract;
- viii. the annual cost to the user agency of energy or other utilities beginning two years prior to operation of the performance contract and during the operation of the performance contract; and
- ix. the annual energy cost savings each year, shown also as a percentage of the annual amount to be paid by the user agency under the performance contract. When calculating annual energy cost savings, maintenance savings shall be included. *Maintenance savings* means operating expenses eliminated and future capital replacement expenditures avoided by the user agency as a result of new equipment installed or services performed by the ESCO.

2. Upon a request by a user agency, by the Commissioner of the Division of Administration or his designated agent or by the legislative auditor, an ESCO shall provide any working documents, accounting records or other materials relating to costs, pricing or any other aspect of the ESCOs performance pursuant to a performance contract. Documents, records and other materials provided by an ESCO in accordance with this Section shall be subject to review and verification by a user agency, by the Commissioner of the Division of Administration or his designated agent, by the legislative auditor, or by an independent third party selected by a user agency, by the Commissioner of the Division of Administration or by the legislative auditor.

3. User agencies shall provide to the legislative auditor copies of all performance information and other reports submitted by an ESCO pursuant to a performance contract or this Section. The legislative auditor shall conduct periodic audits of performance contracts, both during the term of such performance contracts and upon the completion of such performance contracts.

E. Retention by User Agencies of Net Savings Generated by Energy Cost Savings Measures

1. Pursuant to R.S. 39:254.B(1), a user agency that is able to demonstrate net savings from implementing an ECSM by means of a performance contract may retain its net savings relating to such ECSM, until the investment costs of implementing the ECSM are paid in full, and thereafter may retain one half of such net savings over the remaining useful life of the ECSM. Such retained net savings shall be from funds appropriated or allocated to the user agency for utility costs.

2. The Commissioner of the Division of Administration or his designated agent shall develop and promulgate such rules and regulations as are necessary to provide for the measurement and verification of net savings relating to ECSMs.

3. For the purposes of these rules, ECSM refers to a repair, equipment modification, procedure, course of action or other step taken which lowers energy costs.

4. For the purposes of these rules, *net savings* from the implementation of ECSMs shall be defined as measurable and verifiable energy cost savings that directly result from such implementation and shall be determined in accordance with the following provisions.

a. ESCOs shall employ energy savings measurement techniques that embody the best practical methods of determining net savings generated by the ECSMs to be evaluated. Such measurement techniques shall be fully defined and set forth in the RFP and performance contract that includes the ECSMs. In selecting a measurement technique, an ESCO shall consider the complexity of the ECSM to be evaluated and other factors that may affect energy use, such as changes in the mission of a facility, population, space utilization and weather.

b. Energy savings measurement may be based upon estimates, calculations or computer models, if metering is not practical.

c. Every RFP and performance contract shall set forth in detail the method to be used by an ESCO in order to determine the unit energy costs by which an energy baseline and energy savings are to be multiplied. For the purposes of these rules, an energy baseline shall be defined as the amount of energy that would be consumed annually without implementation of a given ECSM and shall be based upon historical metered data, engineering calculations, submetering of buildings or other energy-consuming systems, building load simulations, statistical regression analysis, or some combination of these methods.

d. The selection of every energy savings measurement technique and method of determining unit energy costs or energy baseline shall be subject to the approval of the Commissioner of the Division of Administration or his designated agent, who shall have the authority to modify such techniques and methods if he determines, in his sole discretion, that such modification is warranted by changed conditions or other circumstances affecting the accuracy or appropriateness of such techniques and methods.

e. Net savings must be real savings of money that the state of Louisiana either is currently spending or has budgeted to spend in the future. Such money must be available in the state's budget for payments against the performance contract involved. Net savings may be either recurring or one-time cost savings.

f. Examples of net savings shall include, but not be limited to, recurring operation, maintenance and repair tasks, which are currently performed by the state or its agents and which are directly related to the energy-consuming system affected by an ECSM. The savings associated with such tasks shall be net savings, if the ESCO assumes such tasks, reduces the burden of such tasks or eliminates such tasks. The Commissioner of the Division of Administration or his designated agent shall determine whether an ESCO's action with respect to a given recurring task generates net savings and shall determine the value of such net savings.

g. Net savings may also include one-time cost savings of money budgeted by the state and available to fund a project or task that is made unnecessary by the implementation of an ECSM. The Commissioner of the Division of Administration or his designated agent shall determine whether an ESCO's action with respect to a given one-time project or task generates net savings and shall determine the value of such net savings.

h. Any utility company rebates or other incentives arising in connection with the implementation of an ECSM shall be the property of the user agency. An ESCO shall provide any assistance necessary in order to permit a user agency to apply for and receive such rebates or other incentives.

i. In accordance with the provisions of R.S. 39:1622(H), if at any time after the execution of a performance-based energy efficiency contract, a state agency makes a unilateral change or modification to the scope of work under the contract, the annual energy cost savings attributable to the services or equipment shall be adjusted to account for any expended costs and any projected savings that can no longer be measured or verified as a result of the change or modification. However, any adjustment that reduces the annual energy cost savings attributable to the services or equipment by 20 percent or more shall require approval of the Joint Legislative Committee on the Budget prior to the amendment of the contract. This Subsection shall apply to all performance-based energy efficiency contracts in effect on and after January 1, 2010, and all future contracts executed pursuant to this Section.

F. Grandfathered Performance Contracts

1. Notwithstanding any other provision of this Section, where an RFP or a proposed performance contract is exempt from the application of subparagraphs (a) through (d) of R.S. 39:1622(E)3.a.(ii), the selected ESCO shall, at the time a performance contract is executed, submit a certified or cashier's check, payable to the Commissioner of the Division of Administration or his designated agent, in a sum equal to no more than 1 percent of the total value of the

proposed performance contract. The percentage of such total value and the means of calculating such total value and the means of calculating such total value shall be determined by the Commissioner of the Division of Administration or his designated agent and shall be set forth in the performance contract.

2. Where an RFP or a proposed performance contract is exempt from the application of subparagraphs (a) through (d) of R.S. 39:1622(E)3.a.(ii), such RFP or proposed performance contract shall not be subject to the application of Subsection A or B of this Section but shall be subject to the remaining provisions of this Section.

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

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office Facility Planning and Control, LR 31:640 (March 2005), amended LR 32:2049 (November 2006), repromulgated LR 40:2558 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:762 (April 2018).

§2506. Contracts Under Agency Delegation of Authority
[Formerly LAC 34:V.106]

A. The state chief procurement officer may grant delegations of authority to an agency director to approve contracts without the necessity of forwarding a copy to the Office of State Procurement. The agency shall maintain a file for all such delegated contracts. This file shall be available for inspection by the Office of State Procurement upon request.

B. The using agency shall submit a report to the Office of State Procurement, as requested. This report shall contain a listing of all delegated contracts to include: the name of contractor, amount of contract, specific nature of services rendered, date of contract, total dollar amount of all delegated contracts entered into by the using agency, and any other information required by Office of State Procurement policy for that requested time period. If no such contracts have been entered into during this period, a report shall still be submitted notifying the Office of State Procurement.

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 7:179 (April 1981), amended LR 8:591 (November 1982), LR 10:455 (June 1984), LR 11:1068 (November 1985), LR 17:265 (March 1991), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2561 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), repromulgated LR 41:1669 (September 2015), amended LR 44:763 (April 2018).

§2509. Contract Contents
[Formerly LAC 34:V.109]

A. Each contract for professional, personal, consulting and social services shall contain the contract provisions set forth in R.S. 39:1625.

B. Contracts funded fully or in part by federal funds, in addition to meeting all the requirements of these guidelines and R.S. 39:1551-1755 shall meet all applicable federal standards and shall contain all necessary clauses required by federal statutes, rules or regulations. The burden of complying with federal regulations shall rest with the using agency.

C. Travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49 (the state general travel regulations, LAC 4, Part V). Persons performing services under contracts approved by the Office of State Procurement shall be considered to be other persons under LAC 4:V.1503.C.3 (the state general travel regulations).

D. When a contract is to include travel and other reimbursable expenses, it shall contain language to effect the following:

1. travel and other reimbursable expense shall constitute part of the total maximum payable under the contract. Travel expenses shall be reimbursed in accordance with Administration Policy and Procedure Memorandum 49 (PPM 49), LAC 4, Part V; or

2. no more than (a certain sum) of the total maximum amount payable under this contract shall be paid or received as reimbursement for travel and other reimbursable expenses. Travel expenses shall be reimbursed in accordance with Division of Administration Policy and Procedure Memorandum 49, LAC 4, Part V.

E. If the using agency desires to reimburse the contractor other than in accordance with rates established in Policy and Procedure Memorandum 49, LAC 4, Part V, such reimbursement must be approved by the Commissioner of Administration as a waiver to the requirements of PPM 49.

F. Include the right to suspend or terminate a contract based on non-appropriated funds; or for cause or to protect the best interest of the state.

G. An electronic signature as provided by LAC 4:I.Chapter 7 is considered an original signature.

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 4:496 (December 1978), amended LR 7:182 (April 1981), LR 8:592 (November 1982), LR 10:456 (June 1984), LR 11:1068 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2561 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:763 (April 2018).

§2512. Modification of Contract
[Formerly LAC 34:V.112]

A. All amendments to contracts for professional, personal, consulting and social services shall be submitted to the Office of State Procurement and shall become effective only upon approval by the director of the Office of State Procurement. If an amendment extends a contract beyond one year, justification for a multi-year contract must be submitted with said amendment in accordance with Chapter 19 herein.

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 LR 40:2562 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:763 (April 2018).

§2515. Termination of Contract
[Formerly LAC 34:V.115]

A. Whenever a contract is terminated prior to the termination date stated in the contract, the Office of State Procurement shall be notified in writing by the using agency of such prior termination, and the reasons there for.

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), repromulgated LR 40:2562 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018).

§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. 39:1623 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 LR 40:2562 (December 2014), amended LR 41:671 (April 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018).

§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 director of the Office of State Procurement or his designee. All Submittals will be required to have a cover letter attached thereto.

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 or amendment submitted to the Office of State Procurement, which contains any expenditures or reduction in expenditures.

C. Contracts that are incomplete as to form, or missing an attachment, may be returned to 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 an explanation.

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. An electronic signature as provided by LAC 4:I.Chapter 7 shall be considered an original signature;

2. contractor name and address (including zip code);

3. scope of services that clearly and completely identifies the work to be performed and products to be delivered;

4. beginning and termination dates for the contract. Normally, such contracts should be for a term no longer than one year, although the director of State Procurement may approve contracts with terms up to three years. Contracts shall not include a clause permitting automatic renewal or extension of the original beyond a three-year period, unless authorized by the funding statute. Per R.S. 39:1622(C)(1) performance-based energy efficiency contracts shall have a term not to exceed 10 years;

5. the maximum amount of compensation to be paid under the contract. This maximum must be inclusive of all payment, fees, travel expenses, etc. When applicable, the amounts shall be stated by category and then given as a comprehensive total. The payment schedule shall be given also;

6. a statement giving the legislative auditor and/or the Office of the Governor, Division of Administration auditors authority to audit the financial records of the contractor relative to work done under the contract;

7. a clause providing that the contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the submitting agency thereto, provided, however, that claims for money due or to become due to the contractor from the using agency under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to both the using agency and the director of the Office of State Procurement;

8. the Office of State Procurement shall notify the using agency in writing when an assignment of proceeds notice has been received from a contractor;

9. a statement giving the contractor the responsibility for paying any taxes which may be due as a result of the contract. The taxes could include state or federal income taxes or payroll taxes;

10. advance payments on all contracts except those for professional services are allowable if limited to less than or equal to 20 percent of the contract amount and if necessary to provide for the lowest cost delivery of service, and as provided by R S. 39:1613:

a. all such advances shall be approved by the director of the Office of State Procurement. If federal funds are to be advanced, federal guidelines shall prevail on the conditions and amount of the advance. Specific state statutory authority may override the 20 percent limit for certain contracts;

b. when submitting for approval a contract including provisions for an advance, the using agency shall submit the following additional information at a minimum:

i. certification by the using agency that the procurement of the services involved at the lowest cost requires the advance and that no other source of funding is available;

ii. provisions in the contract specifying the amount and timing of the payments and safeguarding repayment of the advance.

F. Each contract over \$5,000 submitted for approval shall be accompanied by a certification letter as described in R.S. 39:1623, signed by the using agency's representative.

G. Proof of review and approval by other agencies shall accompany submitted contracts as follows; or contracts will be returned to the submitting agency without final approval.

1. Civil Service. All contracts must have Civil Service approval unless exempted by the Department of Civil Service.

2. Attorney General. Contracts for legal services that are not consulting work and that do involve or lead to litigation must be reviewed by the attorney general in accordance with R.S. 49:258. Approval of the attorney general can be evidenced by the signature on the contract documents or by a letter from the attorney general. Contracts with Louisiana district attorneys do not require this approval.

3. Legislative Auditor. Contracts for financial auditing of state agencies must have prior written approval of the legislative auditor.

4. If the contractor is a corporation not incorporated under the laws of the state of Louisiana, then the contractor must secure a certificate of authority pursuant to R.S. 12:301-302 from the secretary of the state of Louisiana and verification of such certificate must be made available to the Office of State Procurement.

5. The Office of Information Technology Services shall review and recommend any contract containing elements of telecommunication services before returning it to the Office of State Procurement for completion of the analysis.

H. Consulting Services Contracts for \$50,000 or More. If a contract is for services defined as consulting in R.S. 39:1556(10) and is for an amount equal to or exceeding \$50,000 for a 12-month period, it must have been awarded pursuant to the requirements of R.S. 39:1595(B), unless exempt by §2542 of this Part. Failure to so comply shall result in the using agency having to reconduct the process. A statement in accordance with R.S. 39:1595(B) as to why the award was made must be submitted with the contract.

I. Information technology consulting service contracts for more than \$100,000 shall be procured in accordance with Subchapter C of this Section.

J. Social Services Contracts for \$250,000 or More During a 12-Month Period. If a contract is for services defined as social services in R.S. 39:1556(54) it must have been awarded pursuant to the requirements of R.S. 39:1595(B) unless exempt by R.S. 39:1619. Failure to so comply shall result in the using agency having to reconduct the process. A statement in accordance with R.S. 39:1595(B) as to why the award was made must be submitted with the contract.

K. When a contractor is a corporation, a formal, dated board resolution must be secured and attached to the contract indicating that the signatory is a corporate representative and authorized to sign said contract.

L. When it has been determined that a contract is complete, the contract shall be returned to the submitting agency with an approval from the Office of State Procurement.

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. 39:1569.1. This performance evaluation shall be retained by the using agency for all contracts approved under delegated authority. For all other contracts this performance evaluation shall be submitted to the Office of State Procurement within 120 days after the termination of the contract.

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 Procurement, LR 40:2562 (December 2014), amended LR 40:2545 (December 2014), LR 41:671 (April 2015), repromulgated LR 41:1669 (September 2015), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:764 (April 2018).

§2524. Exempt Occupations
[Formerly LAC 34:V.124]

A. The following list of occupations shall be construed as falling within the definition of medical, nursing or allied health fields given in R.S. 39:1626. Personnel employed in these fields would therefore be exempt from the prohibition contained in R.S. 39:1624(A)(4) which disallows personal, professional, consulting or social services contracts between the state of Louisiana and state employees:

1. audiologist;

2. dental assistant;
3. dentist;
4. electroencephalograph technician;
5. emergency medical technician;
6. hospital chaplain;
7. inhalation therapist;
8. medical laboratory technologist;
9. accredited medical records technician/ administrator;
10. nurse anesthetist;
11. occupational therapist;
12. optometrist;
13. osteopath;
14. pharmacist;
15. psychologist;
16. physical therapist;
17. physician;
18. podiatrist;
19. practical nurse;
20. professional dietitian;
21. psychiatrist;
22. radiologic technologist;
23. radioisotope technologist;
24. registered nurse;
25. rehabilitation counselor;
26. respiratory therapy technician;
27. respiratory therapy technologist;
28. social worker;
29. speech pathologist;
30. ultrasonography technologist.

B. Other specialists as may be included later by the director of the Office of State Procurement by issuance of a policy and procedure memorandum.

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 8:593 (November 1982), amended LR 10:457 (June 1984), LR 11:1070 (November 1985), LR 15:82 (February 1989), LR 17:266 (March 1991), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018).

§2527. Delegation of Signature Authority
[Formerly LAC 34:V.127]

A. R.S. 39:1595(A)(10)(b)(i), (ii) and 39:1595.1 requires that the head of the using agency or his designee shall sign all contracts for personal, professional, consulting or social services. All delegations of signature authority by the

head of the using agency must be in writing and must be approved by the Office of State Procurement. Normally delegations of signature authority to the level of assistant secretary or equivalent will be approved if circumstances warrant the delegation. Delegations of signature authority to a level below that of assistant secretary may be granted in unusual situations, for example, where the volume of contracts is very heavy.

B. In addition, autonomous or semi-autonomous boards or commissions may sign their own contracts if such authority is granted them by their enabling legislation or by the heads of the agency in which they are placed.

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 8:593 (November 1982), amended LR 10:457 (June 1984), LR 11:1070 (November 1985), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018).

§2530. Confidentiality of Technical Data or Trade Secrets
[Formerly LAC 34:V.130]

A. The using agency shall be responsible for protecting technical data, financial information, overhead rates, and trade secrets which may come into their possession from individuals and businesses doing business with the state. Any such information received by the Office of State Procurement shall be returned to the using agency upon completion of said review.

B. A bidder or proposer who asserts a trade secret or confidentiality over any information contained in its bid or proposal but fails to provide OSP a redacted copy of its bid or proposal upon request of OSP, shall have the option to either waive its assertion of trade secret or confidentiality or have its bid or proposal rejected, subject to applicable law.

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 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:457 (June 1984), LR 11:1070 (November 1985), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:765 (April 2018).

§2533. Multi-Year Contracts
[Formerly LAC 34:V.133]

A. Contracts in excess of one year shall be submitted to the Office of Contractual Review with written reasons why a multi-year contract is needed. Justification of multi-year contracts shall be submitted in accordance with R.S. 39:1615 in compliance with the delegation of authority from the Commissioner of Administration.

B. Any contracts which cross fiscal years should contain a funding-out clause in accordance with R.S. 39:1615.

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 7:181 (April 1981), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 17:266 (March 1991), repromulgated LR 40:2564 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:766 (April 2018).

§2534. Cost Reimbursement Contracts
[Formerly LAC 34:V.134]

A. If a nongovernmental provider is expected to receive \$100,000 or more per year of state funds via one or more cost-reimbursement contracts, then those contracts shall contain at least one of the following requirements:

1. source documentation verification (evidenced by invoices, canceled checks, certified payroll sheets, etc.) shall be submitted to the state to justify each payment request; or

2. utilizing internal auditors, the using agency shall perform frequent, unannounced contract compliance audits of the contractor. "Frequent" shall mean no less than once per contract or per 12 months if the contract is longer than 12 months and all disallowed expenditures shall be reimbursed to the using agency; or

3. the contract shall require the contractor to obtain a contract compliance audit of expenditures charged to the contract. This compliance audit shall be performed by a certified public accountant or the Louisiana Legislative Auditor's Office. A contract compliance audit must include an examination of reimbursed expenditures to determine if they are in accord with contract terms, not reimbursed by any other source, and in accord with any guidelines set by

the using agency or other relevant authority. This examination shall be conducted in accordance with generally accepted auditing and sampling procedures, including the *Government Auditing Standards*.

a. Such an audit may be performed in conjunction with a financial audit, but results must be available to the using agency within 12 months after the fiscal year end of the contractor. It is the intention of this rule not to require audits at a different time of year if annual audits are currently being performed. Thus, a contract period may be covered by two separate audits.

b. For multi-year cost-reimbursement contracts, the provider may with the using agency's consent, elect to have a multi-year contract compliance audit done to cover the entire contract period.

c. If a single provider has multiple cost-reimbursement contracts subject to the requirements herein, then the provider may elect to have an audit done using the single audit model. In these instances, a major state contract means any state contract for which expenditures during the year exceed the greater of \$100,000 or 3 percent of such total expenditures.

d. All disallowed expenditures shall be reimbursed to the using agency. Such disallowances shall normally be recouped by the using agency in current or future contracts with the provider. For cost-reimbursement contracts, any audit of the contract period issued pursuant to the Single Audit Act of 1984, P.L. 98-502, OMB Circular A- 110, or other federal legislation and regulations, shall fulfill the audit requirements of this Paragraph 3.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1490(B) and 39:1521.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of Contractual Review, LR 15:82 (February 1989), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2565 (December 2014), amended LR 40:2545 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:766 (April 2018).

§2536. Determination of Responsibility
[Formerly LAC 34:V.136]

A. In order to qualify as responsible, a proposer must meet the following standards as they relate to the particular procurement under consideration:

1. has adequate financial resources for performance, or has the ability to obtain such resources as required during performance;
2. has the necessary experience, organizations, technical qualifications, skills, and facilities, or has the ability to obtain them (including probable subcontractor arrangements);
3. is able to comply with the proposed or required time of delivery or performance schedule;
4. has a satisfactory record of integrity, judgment and performance (contractors who are seriously delinquent in current contract performance, considering the number of contracts and the extent of delinquencies of each, shall in the absence of evidence to the contrary or evidence of compelling circumstances, be presumed to be unable to fulfill the requirement);
5. is otherwise qualified and eligible to receive an award under applicable laws and regulations.

B. A proposer shall present acceptable evidence of financial resources, experience, organization, technical qualifications, skills, and facilities, to perform the service called for by the contract.

C. No contract for consulting services for \$50,000 or more, or for social services for \$250,000 or more shall be awarded to any person or firm unless the head of the using agency has first determined that such person or firm is responsible within the meaning of Subsections A and B.

D. In any case where a contract for consulting services is for \$50,000 or more, or where a contract for social services is for \$250,000 or more, the head of the using agency shall prepare, sign, and place in the contract file a statement of the facts on which a determination of responsibility was based. Any supporting documents or reports and any information to support determinations of responsibility of the proposer or potential subcontractors should be kept on file with the agency, subject to inspection upon the request by the director of state procurement or his designee.

E. Before making a determination of responsibility, the head of the using agency shall have sufficient current information to satisfy himself that the prospective contractor meets the standards in Subsections A and B. Information from the following sources shall be utilized before making a determination of responsibility:

1. information from the prospective contractor, including representations and other data contained in proposals, or other written statements or commitments, such as financial assistance and subcontracting arrangements;
2. other existing information within the agency, including financial data, the list of debarred and ineligible bidders and records concerning contractor performance;
3. publications, including credit ratings and trade and financial journals;
4. other sources, including banks, other financial companies, and state departments and agencies.

F. To the extent that a prospective contractor cannot meet the standard in Paragraph A.2 except by means of proposed subcontracting, the prospective prime contractor shall not be considered to be responsible unless recent performance history indicates an acceptable subcontracting system or prospective major subcontractors are determined by the head of the using agency to satisfy that standard.

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 4:496 (December 1978), amended LR 8:593 (November 1982), LR 10:458 (June 1984), LR 11:1070 (November 1985), LR 13:654 (November 1987), repromulgated LR 40:2565 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:766 (April 2018).

§2539. Suspension, Debarment and Reinstatement **[Formerly LAC 34:V.139]**

A. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the state chief procurement officer shall have authority to suspend or debar an individual or business for cause from consideration for a contract, in accordance with the provisions of R.S. 39:1672.

1. The state shall also have the right to suspend or terminate a contract based on the absence of appropriated, funds for the acquisition of goods or services or for cause; or, when in the best interest of the state.

B. Reinstatement

1. If the commissioner finds that the state chief procurement officer was in error, then he may reinstate said individual or business. If the commissioner affirms the decision of the state chief procurement officer that decision is final and conclusive.

2. The state chief procurement officer, upon request of a debarred individual or business shall review the requesting debarred contractor's file on an annual basis, and may reinstate said contractor for future consideration if he believes the circumstances warrant reinstatement and it would be in the best interest of the state. A list of debarred individuals and businesses shall be kept by the Office of State Procurement and made available upon request to state agencies.

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 8:594 (November 1982), amended LR 10:458 (June 1984), LR 11:1071 (November 1985), repromulgated LR 40:2566 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), amended LR 44:766 (April 2018).

Subchapter B. Contracts Let Via a Request for Proposals Process

§2542. Source Selection Methods **[Formerly LAC 34:V.142]**

A. Pursuant to R.S. 39:1620-1621, professional or personal services contracts for any amount, consulting services contracts less than \$50,000 for a twelve-month period, and social services contracts meeting one of the requirements of R.S. 39:1619(B) may be awarded without competitive negotiation or bidding; therefore this Section shall be applicable to consulting services contracts for \$50,000 or more per 12-month period and which are not exempted by R.S. 39:1621, and social services contracts for \$250,000 or more per 12 month period which are not exempted by R.S. 39:1619(B).

1. Emergency Awards. An emergency award of a personal, professional, consulting, or social services contract shall be made in accordance with LAC 34:V.

2. Sole Source Awards. A sole source award of a personal, professional, consulting, or social services contract shall be made in accordance with LAC 34:V.

3. Record. A record of emergency procurements and sole source procurements shall be maintained by the Office of State Procurement, and shall contain:

- a. contractor's name;
- b. the amount of the contract;
- c. services to be rendered;
- d. reason for the emergency or sole source procurement.

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 7:179 (April 1981), amended LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1071 (November 1985), LR 13:655 (November 1987), repromulgated LR 40:2566 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1282 (July 2015), amended LR 44:766 (April 2018).

§2545. Request for Proposals
[Formerly LAC 34:V.145]

A. Unless otherwise stated, this Section applies to all requests for proposals (RFP) solicitations issued under any provision of chapter 17, title 39, of the *Louisiana Revised Statutes*.

1. In addition to the requirements of R.S. 39:1595 and these regulations, a request for proposals should:
 - a. specifically define the task and desired results of project;
 - b. identify agency liaison personnel and resources available to the contractor;
 - c. state approximately when the contractor can begin the work, plus an estimate of the time necessary to accomplish the work, if applicable;
 - d. specify applicable procedures concerning billing, documentation requirements, progress reports, and final reports, if applicable;
 - e. specify that a minimum of two copies of the proposal be submitted;
 - f. inform the potential contractors of the criteria and the selection methodology and the weight which will be applied to each significant evaluation criteria to be used in evaluating the proposals' responsiveness to the RFP;
 - g. inform the potential contractors that the state reserves the right to use a best and final offer (BAFO) as a part of the competitive negotiation process to clarify the scope of work and/ or to obtain the most cost effective pricing available from the proposer along with the proposers most favorable terms in response to the solicitation. When used, inform the potential contractors of the evaluation criteria and associated weights, if different from the initial scoring criteria and weights;
 - h. require potential contractors to include the following information in their proposals:
 - i. a description of the firm's qualifications to include a specific list of personnel to be used in the services and their qualifications (at least list the number and the qualifications of each position). However, a résumé will be required on each of the key personnel. Additionally for consulting services, the contractor must stipulate that these personnel will not be removed from the contract without prior approval of the using agency;
 - ii. a list of the agencies with names and contact persons, for whom similar work has been done;
 - iii. if applicable, the length of time needed for the services, broken down by phases, if phasing is necessary;
 - iv. the proposed methodology for accomplishing the services with a precise statement of what the state will receive as an end product of the services (this is sometimes referred to as the technical section of the proposal);
 - v. for consulting services only, an itemized cost statement showing various classes of man-hours at appropriate rate, delineated by phases, if phasing is used, and an itemized listing of all other expenses or fees that are expected to be paid by the state and a complete breakdown of consultant overhead rate, if applicable;

vi. for social services only, a detailed budget or other cost breakdown as may be required by the using agency and/or the federal government.

2. The final selection of a contractor shall be made in accordance with the selection criteria established in the RFP. However, no contract may be enforced against the state until approval of the contract has been granted by the Office of State Procurement. When a final selection has been made, but prior to notice of award, the contract file containing that information outlined in Paragraphs 1-2 above, including the request for proposals, along with a selection memorandum justifying the final selection shall be sent to the Office of State Procurement for final concurrence. The selection memorandum shall include, but not be limited to:

- a. a list of criteria used along with the weight assigned each criteria;
- b. scores of each proposal considered in each of the categories listed above along with overall scores of each proposal considered;
- c. a narrative justifying selection.

3. After final negotiation and execution, the contract shall be sent to the Office of State Procurement for final review and approval.

4. Right to Protest. Any person who is aggrieved in connection with the request for proposal or award may protest and appeal pursuant to the provisions of R.S. 39:1671, 1681, 1683, 1691, and 1692.

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 4:495 (December 1978), amended LR 7:180 (April 1981), LR 8:594 (November 1982), LR 10:459 (June 1984), LR 11:1072 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2567 (December 2014), amended LR 40:2545 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1283 (July 2015), repromulgated LR 41:1670 (September 2015), amended LR 44:767 (April 2018).

Subchapter C. Contracts for Information Technology Consulting Services in an Amount Greater than \$100,000

§2549. Procurement Support Team [Formerly LAC 34:V.149]

A. Unless a procurement support team is formed in accordance with R.S. 39:200(I), a procurement support team shall be formed in accordance with the procedures defined herein for every contract for the procurement of information technology consulting services in an amount greater than \$100,000. At the discretion of the director of the Office of State Procurement, all other consulting services anticipated to cost \$140,000 or more may require PST review of the RFP, the selection process, and subsequent contract. The formation of a procurement support team shall be accomplished by the Office of State Procurement and shall include one or more representatives from each of the following: the Office of State Procurement, the Attorney General's Office; the using agency initiating the procurement action; and the Legislative Fiscal Office. The procurement support team shall submit a recommendation to the director of the Office of State Procurement concerning the final contract. Where a procurement support team is formed in accordance with R.S. 39:200(I), the requirements of this Section may be met by including a representative from the Attorney General's Office.

B. At least two members of each procurement support team should have formal training in computer contract negotiations. The Legislative Fiscal Office and the Attorney General's Office shall each designate in writing to the Office of State Procurement the names of a primary and an alternate team member, and should insure that at least one of these individuals has received formal training in computer contract negotiations. It shall thereafter be the responsibility of each named agency to keep the Office of State Procurement advised of any changes in designated individuals. At least four members, one from each office designated, must be present to constitute a quorum.

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 10:460 (June 1984), amended LR 11:1073 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2568 (December 2014), amended LR 40:2545 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:767 (April 2018).

§2551. Procurement Support Team Involvement
[Formerly LAC 34:V.151]

A. Procurement support team participation must include, as a minimum, review of the request for proposals, review of using agency evaluation of proposals and award of contract, and review and/or negotiation of contract terms. Procurements requiring a procurement support team will involve the active participation of all of the members of the procurement support team as a unit. There will be at least one joint meeting per phase during the process. 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. The team leader will be designated by the Office of State Procurement.

B. All data processing consulting service contracts in an amount greater than \$100,000 shall be subject to the statutory and regulatory requirements for consulting service contracts in general. The recommendation of a procurement support team member is not to be construed as approval by the agency which that team member represents, in those cases where formal agency approval of the final agreements is required.

C. In situations where formal negotiations with prospective contractors, or a successful proposer, is appropriate, such negotiations will be conducted by a negotiations 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 statutory required reviews. The lead negotiator and at least one other member of the negotiating team should have formal training in computer contract negotiations.

D. The individual agencies represented on procurement support teams will have the following primary responsibilities. The 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 Procurement.

1. Legislative Fiscal Office. The Legislative Fiscal Office shall have primary responsibility for the financial analysis of RFP's, and review of funding procedures, and certification of specific appropriation for the purpose prior to the final contract award.

2. Attorney General's Office. The Attorney General's Office shall have primary responsibility for developing the legal terms and conditions of draft contracts, evaluating the legal impact of substantive terms and conditions, reviewing to insure compliance with statutes and regulations, and legal negotiations.

3. Office of State Procurement. The Office of State Procurement shall have primary responsibility for insuring compliance with RFP procedures and regulations.

4. The Using Agency. The using agency shall have primary responsibility for the determination of the compliance of proposals with the functional requirements, drafting of the requests for proposals, the evaluation of proposals, the award of the contract and for all management decisions at each phase of the procurement process.

5. The Office of Information Technology Services shall provide technical staff to the procurement support team. They shall provide advice and support in the area of information technology techniques, negotiation techniques, and reviewing the structure and content of requests for proposals.

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 10:460 (June 1984), amended LR 11:1073 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:767 (April 2018).

§2554. Emergency and Sole Source Procurements
[Formerly LAC 34:V.154]

A. Notwithstanding the guidelines established in §2542, procurements of information technology consulting services in an amount greater than \$100,000 under emergency or sole source conditions shall involve a procurement support team designated by the Office of State Procurement and under the direction of a team leader designated by the Office of State Procurement.

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 10:461 (June 1984), amended LR 11:1074 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018).

§2557. Procurement Support Team; Procurement Schedule
[Formerly LAC 34:V.157]

A. Each using agency contemplating a contract requiring more than \$100,000 of information technology consulting services shall write the director of the Office of State Procurement notifying him prior to the drafting of the request for proposals. The Office of State Procurement shall then contact the appropriate agencies and obtain from those agencies the names of the individuals designated to participate on the particular procurement support team (PST). The Office of State Procurement shall then designate a team leader, insure that at least two members of the procurement support team have received formal training in computer contract negotiations, and forward to the team leader the names of the other team members, along with any information received from the using agency.

B. The team leader will establish a schedule for the procurement activity, define the role and task of each team member, and establish a project file. The using agency and all team members are responsible for insuring that the team leader receives a copy of all correspondence and documentation.

C. At the end of the procurement process one copy of the documentation related to the procurement will be retained on file by the Office of State Procurement. The team leader will make written status reports at the end of each phase to the Office of State Procurement. Such status reports shall be presented to the Office of State Procurement at each regular meeting.

D. Each member of the procurement support team must review as a minimum the request for proposals, the using agency's proposal evaluation, the award of contract and the final contract. As a minimum, this review must be indicated by the signature of each team member. Where team evaluations are made, each PST team member must sign the evaluation, or his designating or qualifying reports.

E. In the event that a PST team member indicates acceptance or concurrence with any activity, and that PST team member's agency subsequently refuses to approve the process pursuant to its statutorily required review, the reviewing agency and the individual PST team member must submit to the team leader written reasons for their actions. The PST team leader shall file these documents in the final activity file.

F. After a procurement process has been completed, PST team members and the using agency are encouraged to submit written evaluations and comments of the process, and suggestions for future improvements. Such evaluations, comments, and suggestions shall be sent to the Office of State Procurement.

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 10:461 (June 1984), amended LR 11:1074 (November 1985), repromulgated LR 40:2569 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018).

Subchapter D. Revised Statutes

§2587. Revised Statutes
[Formerly LAC 34:V.187]

A. These regulations shall be read and interpreted jointly with R.S. 39:1551-1755.

B. A rule or regulation shall not change any contract commitment, right, or obligation of the state or of a contractor under a state contract in existence on the effective date of that rule or regulation [R.S. 39:1564].

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 7:183 (April 1981), LR 8:596 (November 1982), LR 10:461 (June 1984), LR 11:1074 (November 1985), repromulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2570 (December 2014), amended LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1670 (September 2015), amended LR 44:768 (April 2018).

Chapter 27. Intergovernmental Regulations

§2701. Scope
[Formerly LAC 34:I.2501]

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), repromulgated LR 40:1364 (July 2014), LR 40:2572 (December 2014).

§2703. Cooperative Purchasing Shall Not Adversely Affect Employees
[Formerly LAC 34:I.2503]

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), repromulgated LR 40:1364 (July 2014), LR 40:2573 (December 2014).

§2705. Cooperative Purchasing Agreement in Form of Open-Ended State Contract
[Formerly LAC 34:I.2505]

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), repromulgated LR 40:1364 (July 2014), LR 40:2573 (December 2014).

§2706. LaMAS (Louisiana Multiple Award Schedule) State Contracts Based on GSA Prices
[Formerly LAC 34:I.2506]

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 the Office of State Procurement 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 statewide competitive contract established by the Office of State Procurement.

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. 39:1556(47) 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), repromulgated LR 40:1365 (July 2014), LR 40:2573 (December 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:768 (April 2018).

§2707. Supply of Personnel, Information, and Services
[Formerly LAC 34:I.2507]

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), repromulgated LR 40:1365 (July 2014), LR 40:2573 (December 2014).

Chapter 29. Education

§2901. Department of Education Procurement
[Formerly LAC 34:I.2901]

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), repromulgated LR 40:1365 (July 2014).

Chapter 31. Protests and Appeals, Bidder Responsibility, Suspension and Debarment of Bidders, Contract Controversies

§3101. Definitions
[Formerly LAC 34:I.3101]

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 to bid, 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), repromulgated LR 40:1365 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

§3103. Application

[Formerly LAC 34:I.3103]

A. The following rules shall only apply to hearings held by boards of higher education and institutions under their jurisdiction in accordance with R.S. 39:1671, 1672, and 1673 of title 39 of the *Louisiana Revised Statutes*, unless the institution is operating under a pilot procurement code in accordance with R.S. 17:3139.5(5)(c)(i) which has adopted rules or procedures that supersede these rules.

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), repromulgated LR 40:1366 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 40:2546 (December 2014), repromulgated by the Office of the Governor, Division of Administration, Office of State Procurement, LR 41:1671 (September 2015), amended LR 44:769 (April 2018).

§3105. Initiation of Hearing

[Formerly LAC 34:I.3105]

A. Responsibility of Bidders and Proposers. A hearing held to consider the disqualification of a bidder or proposer 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 at least 2 days prior to the opening of bids or proposals. 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 in accordance with the procurement code.

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), repromulgated LR 40:1366 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

§3107. Notice

[Formerly LAC 34:I.3107]

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), repromulgated LR 40:1366 (July 2014).

§3109. Hearing; Record

[Formerly LAC 34:I.3109]

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.

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), repromulgated LR 40:1366 (July 2014).

**§3111. Rules of Evidence; Official Notice; Oaths and Affirmations; Subpoenas; Depositions and Discovery; and Confidential Privileged Information
[Formerly LAC 34:I.3111]**

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), repromulgated LR 40:1367 (July 2014).

§3113. Decisions and Orders of the Hearing Officer
[Formerly LAC 34:I.3113]

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 proposer. Notice of the right to judicial review of the final decision shall accompany service of the final decision.

C. A bidder or proposer 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 proposer 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), repromulgated LR 40:1368 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

§3115. Administrative Appeal to the Commissioner
[Formerly LAC 34:I.3115]

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 contract or breach of contract controversy. A copy of the decision shall be mailed or otherwise furnished immediately to the contractor. The decision of the commissioner 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), repromulgated LR 40:1368 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:769 (April 2018).

§3117. Judicial Appeal from Administrative Decisions
[Formerly LAC 34:I.3117]

A. **Solicitation and Award of Contracts.** The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder, proposer, 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 Proposer.** A bidder or proposer 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), repromulgated LR 40:1369 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).

§3119. Procedure upon Judicial Review
[Formerly LAC 34:I.3119]

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 proposer 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 proposer, 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. Not supported and sustainable by a preponderance of evidence as determined by the reviewing court. In the application of this rule, the court shall make its own determination and conclusions of fact by a preponderance of evidence based upon its own evaluation of the record reviewed in its entirety upon judicial review. In the application of the rule, where the agency has the opportunity to judge 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), repromulgated LR 40:1369 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).

§3121. Appeals

[Formerly LAC 34:I.3121]

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), repromulgated LR 40:1370 (July 2014).

Chapter 33. Vendors

§3301. Vendor Fees

[Formerly LAC 34:I.3301]

A. The state reserves the right to charge an annual subscription fee to vendors, upon written notice of no less than 30 days. The fees may be used to ensure sustainability of various services to vendors that assist them in conducting business with the state of Louisiana relative to procurement and procurement related opportunities, such as training, instructive publications, etc.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1561.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of State Purchasing, LR 12:833 (December 1986), amended LR 13:342 (June 1987), LR 17:660 (July 1991), repromulgated LR 40:1370 (July 2014), amended by the Office of the Governor, Division of Administration, Office of State Procurement, LR 44:770 (April 2018).