ACT 87 – FREQUENTLY ASKED QUESTIONS

• Where can I find Act 87 and any explanation?
  
  

• How does an agency comply with the Act’s requirements?
  
  Agencies submitting contracts to OSP must provide a certification by the agency’s budget official whether the contract is for discretionary or non-discretionary purposes, as provided in the guidelines. Examples of non-discretionary purposes include statutory, constitutional, and legislative mandates, as well as unavoidable obligations. Agencies must provide clear evidence of the funding source, by submitting a BA-22 or other appropriate document.

• What is the difference between Discretionary and Non-Discretionary funds?


Some examples of contracts which OSP regards as non-discretionary are:

- contracts to protect the life, health or welfare of the public, or public employees from immediate harm
- contracts to protect public assets
- contracts determined to be an emergency by the Chief Procurement officer or by declaration of emergency by the Governor or President.
- contracts for legal and related services when the state is defending a legal action.

  Consult the link above for more examples.

• Are only 100% state general-funded contracts required to be defined as discretionary versus non-discretionary?

  No, OSP is required by Act 87 to report monthly to the Joint Legislative Committee on the Budget whether professional, personal, consulting and social services contracts and cooperative endeavor agreements, including those with interagency and intergovernmental
parties, are discretionary or non-discretionary. Additionally, certain contracts which are $40,000 and over and meet other criteria require the review and approval of JLCB. See below.

• Does OSP report contracts that are under the agencies Delegation of Authority or does the agency do this? If OSP, how do we submit this to OSP and by what date and what format?

Non-Exempt agencies which approve their own contracts under a delegation of authority, and which do not utilize LaGov’s SRM system for those contracts, must report to OSP by the 15th of the following month. This reporting method will replace the quarterly method that is currently required by law. Agencies must submit in Microsoft Excel format to OSP at _DOA-OSP-Reports@la.gov.(Please note the preceding _ (underscore).

• What information must be included in the monthly report submitted to OSP by each agency operating under a delegation of authority? Is there a standard template that we should use in submitting this monthly report?

The report must include the names of the contracting parties, contract term, dollar value of each contract awarded that month, whether the contract is for discretionary purposes or for nondiscretionary purposes, contract descriptions and additional funding information. The template is available at:


Reports should be submitted to the email address above.

• Does a contract have to meet ALL of the requirements bulleted in OSP Memo 16-03 in order to be subjected to JLCB approval?

Yes, the contract must meet each of the four requirements bulleted in the memo to require review and approval by the JLCB.

• Personal, Professional or Consulting Services (Social Services are excluded)
• $40,000 or more per year (12 month period)
• For a discretionary purpose
• Funded with 100% state general funds or Overcollections funds (to be verified by BA-22 or other appropriate document
• Bullet #2 states $40,000 or more per year. Is it per 12 month period or state fiscal year?
  Per 12 month period

• What if a contract is not initially over $40,000 and an amendment is issued that will increase the price over the threshold? Will the amendment need to go to JLCB for approval?
  Yes, assuming it meets all other requirements of Act 87.

• Our agency may use multiple funding sources for each contract. If a contract’s funding source is $50,000 State General Funds and $50,000 Interagency Transfer, will the contract still be required to go to JLCB?
  No. In this example, the contract would not be subject to JLCB approval. The Act provides that the contract must be 100% State General Funds or Overcollections funds to trigger JLCB review.

• Are any Agencies or Departments exempt from Act 87?
  No agency is exempt from the reporting requirement, but certain exemptions apply to the JLCB approval process. Exemptions are limited in Act 87 to:
  • Contracts of the Secretary of State necessary to perform any constitutional or statutory function of the office.
  • Contracts to implement DHH programs funded pursuant to Title XIX, XX or XXI of the Social Security Act, or funded fully/partially by federal funds.
  • Contracts with state or local providers of indigent defender services necessary to perform any constitutional or statutory function.
  • Contracts of a district attorney necessary to perform any constitutional, discretionary, or statutory function of the office, or to perform services under the child support enforcement program administered by DCFS in accordance with the federal requirements of Title IV-D of the 18 Social Security Act and corresponding state laws and regulations.

• When submitting contracts through PROACT and LAGOV, is there any way to check off whether JLCB approval is indicated?
Features are being added to PROACT and LaGov. Dropdown boxes will allow the agency to advise if a contract is discretionary or non-discretionary and whether the funding is 100% State General Fund or Overcollections funds. The agency must certify this information as well as provide supporting documents when they submit contracts to OSP for approval.

• What is JLCB and who does the committee consist of?

The Joint Legislative Committee on the Budget (JLCB) is comprised of the members of the House Committee on Appropriations, Senate Committee on Finance, the Chairman of the House Committee on Ways and Means and the Chairman of the Committee on Senate Revenue and Fiscal Affairs.

The committee staff rotates every two years between the House Fiscal Division and Senate Fiscal Services. From January 1, 2014 to December 31, 2015 the House Fiscal Division will staff the committee. Additionally, the Legislative Fiscal Office and the Legislative Auditor assists the committee in the performance of its functions and duties.

More information on JLCB can be found at: http://jlcb.legis.la.gov/

• How many times a month and when will JLCB meet for review of contracts?

JLCB generally meets once a month, often but not exclusively on the 3rd Friday of each month. It is expected that JLCB will review contracts at its regular meetings in which its other business is taken up.

• Who will be submitting the contract to JLCB for review: OSP or the submitting Agency?

Contracts being reported to JLCB which do not require review/approval will be submitted by line item in a spreadsheet compiled and submitted by OSP, based on agencies’ submitted information. Additionally, OSP will submit contracts and supporting documentation to JLCB for those which require review and approval, and notify the agency at the time. The submitting agency will be responsible for tracking and monitoring to determine if the item was placed on the JLCB agenda, and the outcome. The agency
must notify OSP if 30 days have passed since the contract was submitted to JLCB or if the contract has been placed on the agenda and approved.

- If our agency utilizes PROACT, will we be required to submit a hard copy in addition to the electronic submission? If an agency doesn’t utilize PROACT, will we be required to submit an additional hard copy?

  Agencies should continue submitting contracts to OSP through PROACT or hard copy, depending on the agency involved. Contracts requiring JLCB review/approval will be submitted to the panel by OSP.

- If an agency is awarding a contract through an RFP Process will we need to receive JLCB approval before the release of the RFP?

  No, JLCB will review and approve contracts, not RFPs. Contracts resulting from RFPs which meet Act 87’s requirements must be submitted to JLCB for review and approval.

- If an RFP requires PST approval will an agency or OSP obtain a prior approval from JLCB before the services can be procured?

  No, JLCB review and approval will not occur until there is a final contract.

- Are sole source contracts exempt from the JLCB process?

  No, the method of contract award is not a factor in the process. Contracts which do not meet all four of the bullets listed under Act 87 would not require JLCB review.

- Due to the time restrictions, if an agency must obtain an Emergency Contract will it be exempt from obtaining the approval? Or will JLCB conduct a special meeting to ensure services are uninterrupted?

  Agencies should not expect JLCB to conduct a special meeting for contract approvals. If a contract’s uninterrupted services are critical, agencies should consider submitting a justification to OSP which outlines why the need for the contract is non-discretionary.

- Will the contract be reviewed and pre-approved before submitting to JLCB or will the contract go to JLCB first then be reviewed by OSP staff?
OSP-PC will conduct its usual review process before submitting contracts to JLCB. Contracts will not receive final approval until the JLCB process is complete, for those contracts which require review and approval.

- The memo states that if a contract is not placed on the JLCB’s agenda within 30 days, then the contract will automatically become effective. Is it 30 calendar days or business days? Does effective mean approved, or does OSP still have to review and approve the contract after JLCB issues an approval or rejection?

  Days means 30 calendar days. Effective means approved by JLCB. OSP will conduct its usual review process before submitting contracts to JLCB. Once the contract has been approved by JLCB, it will receive final approval from OSP.

- If a contract is ultimately rejected by JLCB will the submitting agency have a chance to protest this decision? If so, what will the procedures be?

  There is no mechanism provided in Act 87 to protest the decision. If a contract is placed onto the JLCB’s agenda and is rejected by the JLCB or requires modification, then OSP will be notified and the agency will be contacted by OSP to receive instructions regarding modification and resubmission to the JLCB for approval, or instructions regarding the reallocation of funds to the Higher Education Financing Fund.

- If a review by JLCB will add 30 to 60 days to the timeframe in which the contract can become effective, will the agencies be required to submit late letters, and state that JLCB is the reason for late submission?

  If a contract is late under the usual processes when submitted to OSP, then a late letter is required. JLCB review occurs after submission to OSP.

- Where will the money be allocated, if a contract is subsequently rejected by JLCB?

  If a contract is rejected the money will be un-allotted (remain, but off-limits) in the submitting agency’s budget, and will subsequently be swept at the end of each Fiscal Year by the Treasurer into the Higher Education Financing Fund, where it shall be appropriated in the next FY solely for public postsecondary education institutions.
• Can OSP provide examples on what may cause JLCB to reject a contract?

As the process is new, we cannot provide any feedback at this time.

• Are Boards required to comply with Act 87? Our Board does not receive state funding and monies are self-generated. Does this mean that we still have to do this?

Yes, Boards are required to comply with Act 87 if a contract meets the criteria set forth in Memorandum OSP 16-03. However, one of the criteria is based upon means of finance. If a contract includes any amount of Fees and Self-Generated Revenues, Interagency Transfers, Federal Funds or any Statutory Dedication other than Overcollections, it is exempt from the JLCB approval process.

• As a University with LaGrad Act contracting autonomy, we are operating under the belief that our delegated authority is $50,000 per year for personal, professional, consulting, and social services contracts. Has our delegation been rescinded?

The delegation has been rescinded only as to contracts which meet the criteria of Act 87:

• Personal, Professional or Consulting Services (Social Services are excluded)
• $40,000 or more per year (12 month period)
• For a discretionary purpose
• Funded with 100% state general funds or Overcollections funds (to be verified by BA-22 or other appropriate document

If your agency has a delegation of authority which allows you to approve certain contracts without sending to OSP for approval, that delegation is withdrawn as to contracts which meet all 4 bullets above. Such contracts must be sent to OSP for review and approval and submission to JLCB. Any contracts which do not meet this criteria can continue to be approved by your agency per your current delegation.

However, monthly reports must be provided of all contracting activity, indicating whether contracts are discretionary or non-discretionary. See the bullet above regarding reporting requirements.