

## **The Legislative Auditor's Summary of the**

### **Louisiana Procurement Code**

**R.S. 39:1551-1755**

**LAC 34:I.301-5513**

**Executive Order BJ 2010-16**

### **Overview**

This is a summary of the laws relating to the Louisiana Procurement Code. The summary is presented in a series of questions that include references to key statutes, Attorney General Opinions and case law to facilitate understanding of this area of the law. The summary provides the general principles of state procurement law to serve as a backdrop for the particular facts and circumstances of each unique situation encountered during an audit.

There are numerous links within the document directing your attention to areas within the document and to other related documents posted on the LLA website and on external websites to facilitate your use of this document. For example, under the Table of Contents section, you may go directly to any area of the document by clicking the title of the section that you wish to view. Within each question, there may be links to direct you to other areas of the document and to relevant external documents. You may find out what any link is for by placing your mouse pointer over it; a box will appear explaining what will happen if the link is used.

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## **What is a procurement code?**

State and local governmental entities must follow various requirements in order to properly expend public funds for purchases. These requirements are found in statutes, rules and executive orders issued by the governor. The objective of procurement law is to increase the public's confidence in the government's ability to purchase materials and services for the best price. Such laws also try to ensure that all persons who are involved with procurement are treated fairly.

This summary identifies the key sources of the Louisiana Procurement Code (LPC or Code) that include: statutes, regulations, case law, Attorney General opinions and executive orders. It also highlights some of the major topics such as how goods and services are purchased and how otherwise exempt political subdivisions may choose to be subject to the Louisiana Procurement Code.

## **What laws make up the Louisiana Procurement Code?**

### Statutes and Rules

R.S. 39:1551-1755  
LAC 34:I.301-5513

The Louisiana Procurement Code is a set of laws that govern the purchase of certain services, materials and supplies, and major repairs by most state agencies. For example, the Department of Natural Resources and the Attorney General are state agencies that must follow the LPC. Services contracts typically relate to operations. Examples of services subject to the LPC include janitorial services and maintenance services. Examples of major repairs subject to the LPC include repairs to a pipeline in a plumbing system and repairs to a board walk in a nature preserve. Major repairs would not include any construction funded through Capital Outlay.

The LPC applies to expenditures of both state and federal monies. In addition to the legal requirements found in statute (R.S. 39:1551-1755), there are also extensive administrative rules that must be followed that are found in Title 34 of the Louisiana Administrative Code (See LAC 34:I301-5513). For example, the rules may provide definitions and procedures that are not found in statute.

### Executive Order

[Executive Order BJ 10-16](#)

In addition to the LPC statutes and administrative rules, executive orders are also an important source of law. For example, [Executive Order BJ 10-16](#) provides the procedures required when making certain purchases including small purchases. Executive orders issued by a governor terminate on the date provided in the order or in a later order. If the order does not contain a termination date, the order terminates 60 days after the legislature's regular session adjourns after the issuing governor leaves office. See R.S. 49:215 (C).

## **What entities must follow the Public Bid Law for public works?**

All public entities must follow the Public Bid Law for the construction of public works.

## What entities must follow the procurement code?

The answer to this question depends on the type of public entity involved. The LPC generally applies to the executive branch and its agencies. Universities and colleges must also follow the LPC, subject to certain exceptions and exemptions. See R.S. 39:1572B. Further, some agencies within the executive branch and some services are exempt from the requirements of the LPC. For example, construction is exempt from the LPC because it is governed by the Public Bid Law. Likewise, those exempt agencies follow the Public Bid Law.

## What entities are exempt from the LPC?

The LPC is not applicable to the legislative and judicial branches of state government or to any agency within the legislative branch. However, these two branches of government may choose to be subject to the LPC.

Political subdivisions and quasi-public entities are also exempt from the LPC. They also may choose to be subject to the LPC.

## What are considered political subdivisions?

Political subdivision is not defined in the LPC. Political subdivisions are defined in Art. VI, §44 to mean a parish, municipality, incorporated city, town, or village, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Political subdivision also refers to quasi-public entities that are also exempt. The only definition of quasi-public entity is found in the audit law (R.S. 24:511, *et seq.*). The courts and the Attorney General have generally found that a quasi-public entity is an entity that performs a governmental function.

Political subdivisions are exempt from the LPC. For example, fire protection districts would be exempt from the LPC. See R.S. 39:1554 for exclusions. They may choose to be subject to the LPC.

## What laws do exempt entities follow?

Entities that are exempt from the LPC follow the Public Bid Law (R.S. 38:2211-2296). The Public Bid Law governs procurement related to public works (R.S. 38:2212) and the purchase of certain services, materials and supplies (R.S. 38:2212.1).<sup>1 2</sup> (For more information see the [LLA Summary of the Public Bid Law.](#))

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<sup>1</sup> AG Op. No. 00-484- Public housing authorities created pursuant to Louisiana law are not state agencies but rather are political subdivisions of the state or of local government bodies. Housing authorities are not subject to the Louisiana Procurement Code but are subject to the Louisiana Public Bid Law, R.S. 38:2211-2296.

<sup>2</sup> AG Op. No. 97-220- The Capital Area Human Services District (CAHSD) is a political subdivision that is subject to the Public Bid Law. Therefore, it is not subject to the State Procurement Code.

Political subdivisions, however, may choose to opt into all or part of the LPC (R.S. 39:1554E). For more information related to public entities that opt into the LPC see **Section III of this Summary**. The LPC is also distinguished from the Professional, Personal, Consulting and Social Services Procurement law found in R.S. 39:1481-1526.

### **What laws address the construction of public works?**

The Public Bid Law addresses the construction of public works. See below for more information.

### **What laws address the purchase of certain services, materials and supplies?**

The Louisiana Procurement Code addresses the purchase of material and supplies for most state agencies. It also applies to certain services including those that are not subject to the Professional, Personal, Consulting and Social Services Procurement Law found in R.S. 39:1481-1526. The Public Bid Law addresses the purchase of materials and supplies for all other public entities.

### **What is the Office of State Purchasing?**

Although much procurement goes on at the agency level, the Office of State Purchasing (OSP), located within the Division of Administration, is the main hub of purchasing in Louisiana. The OSP supervises the procurement of certain services, materials and supplies. The main page for the OSP is found at <http://doa.louisiana.gov/osp/osp.htm>. The phone number is (225)342-8010.

### **Are there entities that are exempt from the OSP and its regulations?**

Yes. Some entities are exempt from OSP and its regulations. For example, the Department of Transportation and Development has authority to procure materials and supplies for component parts of roads, bridges and highways. Additional examples are the New Orleans Food Center Authority and the Louisiana Crawfish Market Development Authority.

Some entities are exempt from OSP but are still subject to state purchasing regulations. For example, the LSU System, Southern University System and the Board of Trustees of State Colleges and Universities System are subject to OSP rules but not the OSP.

### **Where can I get more information on OSP?**

OSP's web site is a source of much useful purchasing information. There you will find a variety of resources including access to the procurement law, administrative rules, and various vendor lists. Go to <http://doa.louisiana.gov/osp/osp.htm>. A copy of OSP's Rules and Regulations may be found at <http://doa.louisiana.gov/osp/legalinfo/rulesregs/index.htm>.

## **How do I make purchases under the LPC?**

The answer to this question depends on:

- ❖ the type of public entity involved;
- ❖ the type of materials and supplies being sought to be purchased;
- ❖ the amount of materials and supplies to be purchased;
- ❖ the conditions under which the agency is operating (For example, is there an emergency going on? See page 9 for information on emergencies.).

Depending on how these questions are answered determines the type of process that is required by the law, regulation and/or Executive Order. A majority of purchases will be from the state contracts list provided by OSP. To view the state contracts list, go to <http://doa.louisiana.gov/osp/osp.htm> and click on “Contracts” on the left hand side of the page.

### **What are state contracts?**

The OSP provides a state contracts list from which public entities may purchase certain services, materials and supplies. The items that are available for purchase through state contract have been subjected to a competitive process conducted by the OSP. The list saves the public entity time and money that would otherwise be spent on performing the required competitive procedures. Entities that are subject to the LPC are generally required to purchase from state contract. Commodities and entities that are exempt from OSP’s control but that are still subject to the LPC are found in R.S. 39:1572.

### **May an agency purchase outside of the state contract list?**

In general, agencies that are subject to the LPC must purchase items from OSP’s state contract list. Agencies that want to make a purchase that is not on state contract must first submit a written request to OSP asking permission. An agency must submit a letter that provides a sound business reason for not purchasing an item that is on state contract. OSP will review the request and the agency will be notified if approval has been granted by OSP to make a “non-contract” purchase.

### **What if an equivalent item appears to be on the state contract list?**

Occasionally, public entities want to purchase a specific commodity that it is not on the state contract list although an equivalent item appears to be available for purchase on the list. Public entities that are subject to the OSP must provide a valid business case in writing in order to issue bids instead of purchasing the commodity off the state contract list. If OSP approves the entity’s bidding out the item, open specifications must be used.

### **What are open specifications?**

A public entity must use open specifications in its solicitation for bids. Public entities may specify a particular brand, make, or manufacturer in the specifications let out for public bid, if it

is clearly in the public interest. The model and catalog number can be specified in the bid. However, the bid documents must clearly state that equivalent products are acceptable.

**How does a public entity make a purchase that is not on the state contract list?**

The type of procurement procedure that a public entity must use depends on various factors. For example, the cost of the items to be procured is one such factor. No competitive bidding procedure is required for purchases that are \$5,000 or less. Purchases that are greater than \$5,000, and up to \$15,000, require quotes from at least three vendors by telephone, fax or other means. Procurements that are greater than \$15,000, but less than \$25,000, should use OSP’s state contract list when feasible. However, if the state contract vendor list cannot be used, then written invitations for bids must be sent to at least five bidders. Contracts that are greater than \$25,000 must be awarded through competitive sealed bidding. A summary of the required procurement procedures is provided in the table below.

Table xx.

<b>Amount of purchase</b>	<b>Method</b>
\$0-5,000 per single transaction	No competitive bidding is required.*
>\$5,000 to \$15,000	Quotes from 3 or vendors by telephone, facsimile, or other means*
>\$15,000 to \$25,000	If possible, use OSP computerized vendor list; otherwise obtain <u>written</u> quotes from at least 5 vendors*
>\$25,000	Advertised according to <a href="#">R.S. 39:1594</a>

Source: \*[Executive Order BJ 10-16](#).

**What information should I document?**

Agencies should maintain documentation of each quote received. Procurement amounts may not be artificially divided in order to circumvent the LPC. Quotes may be taken by telephone, facsimile or some other means. However, the quotes must be taken in writing if they exceed \$5,000. Awards shall be made to the lowest responsive quotation. Subject to some exceptions,

the Executive Order provides a lengthy list of items that are not subject to a competitive process regardless of price. (See [Section 5 of Executive Order BJ 10-16](#).)

## **Small Purchases**

### **What are considered small purchases under the LPC?**

R.S. 39:1596  
LAC 34: I.701  
[E.O. BJ 10-16](#)

Small purchases are procurements below \$25,000 or as defined in the Governor's Small Purchases Executive Order. [BJ 10-16](#) is the most current executive order addressing small purchase procedures. (Items covered by an existing state contract and public works contracts that are greater than five thousand dollars are governed by R.S. 38:2241.) Small purchases are specifically exempted from the competitive sealed bidding requirements of the LPC. In general, a non-sealed bid solicitation is required for small purchases.

## **Competitive Sealed Bidding**

### **What is competitive sealed bidding and when is it used?**

R.S. 39:1594  
LAC 34:I 501-539

When state contracts are not used and no exceptional circumstances apply (Small Purchase, Sole Source, and Emergency Procurement) and the purchase is greater than \$25,000, competitive sealed bidding should be used. Competitive sealed bidding is a method that uses formal advertising in order to solicit bids from a variety of contractors to capture the best price.

### **What steps are involved?**

Under competitive sealed bidding, public entities issue invitations for bids (IFB). The bid documents must contain a description of the services, materials, and supplies that the entity seeks to procure. The bid documents should also contain all terms and conditions that must be in the final contract. Except for emergency procurements, the time between the date of the IFB and the date set for opening bids may not be less than ten days. For bids greater than \$25,000, the bidding time should typically be no shorter than twenty days.

### **When may bids be modified?**

Bids may not be modified within three working days before the opening of bids. This excludes Saturdays, Sundays and legal holidays. However, if bids must be modified within the three working day period, the opening of bids is extended by one week without having to re-advertise. The bid modification must be sent to all prospective bidders (LAC 34:I.505).

### **What are some exceptions to competitive sealed bidding?**

There are some exceptions to the competitive sealed bidding requirement. Some of the exceptions are found in the group purchasing statute (R.S. 39:1593.1) that uses a competitive

request for proposal process. The preference statutes are another exception. Public entities are allowed to make selections based on preferences for certain Louisiana goods or services based on specific criteria. (R.S. 39:1595; R.S. 39:1594.1-1594.2.)

## **Emergency Procurement**

R.S. 39:1598  
LAC 34: I.1101-1111

### **How does an entity make a purchase during an emergency?**

The ordinary rules of procurement do not apply during a state of emergency in order to expedite purchases so that order may be restored.

### **What is considered an emergency?**

LAC 34: I.1103

An emergency is a threat to "...public health, welfare, safety, or public property..." There are many types of conditions that create an emergency such as floods, epidemics, and equipment failures. There may be another similar type of reason that is identified by the agency's chief procurement officer. The emergency creates an immediate need for services, materials and supplies.

### **What emergency purchases must the chief procurement officer approve?**

Whenever it is practical, the chief procurement officer must approve procurements up to \$5,000. It is mandatory that the chief procurement officer, or the equivalent person, approve all emergency procurements that are \$5,000 or more.

### **What information should be documented for an emergency purchase?**

The chief procurement officer must document the facts and circumstances of the emergency. Public entities are required to follow the following steps for emergency procurements:

- Every effort shall be made to obtain quotations from three or more vendors when supplies, services, or major repairs are to be purchased on an emergency basis, except for standard equipment parts for which prices are established;
- Immediate purchasing shall be discouraged as much as is practicable;
- When supplies, services, or major repairs are urgently required and time does not permit the obtaining of written quotations, the procurement officer may obtain quotations by telephoning or otherwise, but such quotations shall be made on the relative purchase requisitions; and
- So far as practicable, quotations shall be secured from institutions of the state as provided by law.

Additional information on emergency procurements is available from the Office of State Purchasing: <http://www.doa.louisiana.gov/osp/publications/emergencyprocurement.pdf>

## Sole Source Procurements

R.S. 39:1597  
LAC 34: I.901-907

### What are sole source procurements?

Sole source procurement is used when there is only one source available to make a particular purchase. Sole source procurement, like emergency procurement, does not have competition. An agency may use sole source when it submits to the OSP in writing that there is only one source that can fill the need. The agency may not make sole source procurement until it receives approval from OSP.

### What are the reporting requirements for sole source procurement?

The agency must submit a report on sole source procurements to the Legislature annually. The report must include:

- each contractor's name;
- the amount and type of each contract;
- a listing of the supplies, services or major repairs procured under each contract; and
- the identification number of each contract file.

## Local Political Subdivisions and Quasi-Public Entities and the LPC

R.S. 39:1554  
R.S. 39:1572

### What entities or branches of government are exempt from the LPC?

The following are exempt from the LPC:

- the legislative branch and its agencies;
- the judicial branch; and
- local political subdivisions and quasi-public entities.

### Can an exempt entity choose to adopt all or part of the LPC?

Yes. As noted earlier, the LPC does not apply to all public entities. Exempt entities must follow the Public Bid Law (R.S. 38:2211-2296) that governs the purchase of public works and materials and supplies.<sup>3 4</sup> However, local political subdivisions and quasi-public entities may adopt all or

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<sup>3</sup> AG Op. No. 00-484- Public housing authorities created pursuant to Louisiana law are not state agencies but rather are political subdivisions of the state or of local government bodies. Housing authorities are not subject to the Louisiana Procurement Code but are subject to the Louisiana Public Bid Law, R.S. 38:2211-2296.

<sup>4</sup> AG Op. No. 97-220- The Capital Area Human Services District (CAHSD) is a political subdivision that is subject to the Public Bid Law. Therefore, it is not subject to the State Procurement Code.

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any part of the LPC and its regulations for the procurement of supplies, services, or major repairs.

Also, some entities are exempt from having to make procurements through the OSP and its regulations, while others are exempt from OSP but are required to follow its regulations.

### **How can an exempt entity adopt all or part of the LPC?**

A local political subdivision or quasi-public entity should provide some written documentation showing that they have adopted the LPC and its regulations. For example, a police jury, parish council or board of a local political subdivision or quasi-public entity may pass an ordinance or a resolution confirming adoption of all or part of the LPC.

### **What happens after an exempt entity adopts the LPC?**

Once a local political subdivision or quasi-public entity has formally decided to become subject to all or part of the LPC and its regulations, it must follow the rules that apply to state agencies. The cooperative purchasing law will also operate to make an otherwise excluded public entity subject to the requirements of the LPC.

### **Are there other ways in which an otherwise exempt entity would be subject to the LPC?**

In addition to making itself subject through resolution or ordinance, a public entity that is a “local public procurement unit” that enters into a state procurement contract causes the contract to be subject to the LPC. (LAC 34:I.2505).

For example, R.S. 38:2212.1(F) allows any public entity not subject to the Procurement Code to purchase materials, supplies, and equipment pursuant to the cooperative purchasing provisions of the Procurement Code found at R.S. 39:1701 et seq. The contract thus entered is subject to the relevant laws of the Procurement Code.

### **What is Cooperative Purchasing?**

R.S. 39:1702 -1710  
LAC 34: I.2501-2506

Cooperative purchasing allows multiple entities to procure materials and supplies in a joint effort. The entities may be a combination of public units or a mixture of public and private procurement units. For example, a state agency, a local parish government and a university may purchase some equipment together in a cooperative purchase contract to achieve the best price.

### **Does Cooperative Purchasing make an otherwise exempt entity subject to the LPC?**

Yes. Cooperative purchasing is another way by which an otherwise exempt public entity is made subject to the LPC. Although local political subdivisions and quasi-public entities are excluded

from the LPC, if an entity that is a “local public procurement unit”<sup>5</sup> enters into a contract governed by the cooperative purchasing laws and regulations, the contract is subject to the LPC. (See LAC I.34:2505).

**How does an entity that is subject to the LPC make a purchase that is not available on state contract?**

If a public entity wants to purchase a specific commodity that it is not on the state contract list, it may solicit bids according to the LPC.

If it appears that an equivalent item is available for purchase on the list, the entity must get permission from OSP prior to making the purchase.

**How does an exempt agency that has opted into the LPC make a purchase that is not available on state contract?**

The answer is the same as above. Local political subdivisions and quasi-public entities that opt into the LPC, and therefore make themselves subject to the OSP, must provide a valid business case in writing in order to issue bids instead of purchasing the commodity off the state contract list in the same manner as state agencies. If OSP approves bidding out the item, open specifications must be used.

**What are open specifications?**

A public entity must use open specifications in its solicitation for bids. Public entities may specify a particular brand, make, or manufacturer in the specifications let out for public bid, if it is clearly in the public interest. The model and catalog number can be specified in the bid. However, the bid documents must clearly state that equivalent products are acceptable.

In addition, even if a local political subdivision or quasi-public entity did not opt into the LPC and instead chose to bid through the Public Bid Law (R.S. 38:2211-2296), it would still have to use open specifications. As is required under the LPC, the bid specifications must clearly state that equivalent products are acceptable even though a brand or model number is included in the specifications.

**How does an exempt entity that has not opted into the LPC make a purchase that is not available on state contract?**

A public entity that is exempt from the LPC must follow the Public Bid Law.

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<sup>5</sup> R.S. 39:1701 defines "local public procurement unit" to mean any parish, city, town, governmental body, and any other subdivision of the state or public agency thereof, public authority, public educational, health, or other institution, and to the extent provided by law, any other entity which expends public funds for the acquisition or leasing of supplies, services, major repairs, and construction, and any nonprofit corporation operating a charitable hospital.

## Updates from the 2010 Regular Session

### **ACT 864**

*Act 864 of the 2010 Regular Session enacted R.S. 39:2181 and 2182. This Act applies to any contract or cooperative endeavor agreement that results from any bid or other award governed under Chapter 16 and Chapter 17 of Title 39.*

Any "public entity" (defined as agency, board, commission, department, or public corporation of the state, created by the constitution or statute or pursuant thereto, or any political subdivision of the state, including but not limited to any political subdivision as defined by Article VI, §44 of the Constitution of Louisiana, and any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision) is authorized to reject the lowest bid from, or not award the contract to, a business in which any individual with an ownership interest of five percent or more has been convicted of, or has entered a plea of guilty or *nolo contendere* to any state felony crime or equivalent federal felony crime committed in the solicitation or execution of a contract or bid awarded under the laws governing public contracts under the provisions of Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950, professional, personal, consulting, and social services procurement under the provisions of Chapter 16 of Title 39, or the Louisiana Procurement Code under the provisions of Chapter 17 of Title 39.

This new law will not impose a duty, responsibility, or requirement on a public entity to perform criminal background checks on contractors, vendors, or subcontractors. It will be the responsibility of any person, company, or entity making an allegation of prior convictions on the part of any individual with an ownership interest of five percent or more in any bidder to present *prima facie* evidence to the public entity supporting their claim.

If substantiated, the company whose bid is rejected shall be responsible to the public entity for the costs of rebidding, the increased costs of awarding to the second low bidder, or forfeiture of the bid bond, whichever is higher.

### **ACT 868**

*Act 868 of the 2010 Regular Session effective July 1, 2010, enacted R.S. 38:2196.1 requires any person or entity who enters into a contract with any state or local entity **without** bidding or enters into a contract with a local entity in excess of \$10,000 **with** bidding to execute an affidavit of fee disposition if a fee, commission or other consideration is paid to the contractor to sell or provide goods or services to the local or state entity.*

The requirement applies to a contract for any goods or services. The affidavit shall disclose to the state or local entity the full disposition of the commission, fee or other consideration paid. The affidavit shall be in writing in a form prescribed by the Louisiana Board of Ethics and shall be notarized as authentic.

The affidavit shall:

- Include the full value of the commission, fee or other consideration
  - Names of all parties to receive consideration,
  - Signature of the party authorized to commit the entity receiving the disposition to the contract.
  - The signatory shall attest to the truth of the facts set forth in the affidavit.
- Shall be attached to and made a part of the relevant contract.
- If any part of the amount of the disposition of consideration changes, then a new affidavit with the change shall be prepared, notarized and recorded by the contractor in the public records.
- If any information in the affidavit is found to be incorrect, the contract shall become null and void and all payments of fees, commissions or other consideration shall be rebated to the state or local entity which entered into the contract.
- Penalty:  
Misrepresentation of the facts in an affidavit shall subject the attesting party to penalties in R.S. 14:133 regarding filing a false public record. R.S.14:133(C) provides:

Whoever commits the crime of filing false public records shall be imprisoned for not more than five years with or without hard labor or shall be fined not more than five thousand dollars, or both.

Act 811 of the 2010 Regular Session added the following language:

**In addition to the penalty provided for in Paragraph (1) of this Subsection, a person convicted of the provisions of this Section may be ordered to pay restitution to the state if the state suffered a loss as a result of the offense. Restitution shall include the payment of legal interest at the rate provided in R.S. 13:4202.**

The affidavit also applies to procurement R.S. 39:200(N), professional services R.S. 39:1493.1, public contracts R.S. 39:1758, lease-purchase contracts R.S. 39:1767, and DOTD contracts R.S. 48:251.8.

## Updates from the 2011 Regular Session

### ACT 210

#### Reverse Auction

Act 210 of the 2011 Regular Session enacted several new statutes that added a new method of procurement called a reverse auction. A reverse auction is a competitive online solicitation process on the internet for equipment, supplies, and other materials in which vendors compete against each other online in real time in an open and interactive environment.

More about the reverse auction will be found in the [Public Bid FAQ](#), as Act 210 enacted R.S. 38:2271 for political subdivisions. For procurement code purposes, Act 210 enacted R.S. [39:1554\(2\)](#) which allows any political subdivision not subject to the procurement code to use the reverse auction provisions enacted in R.S. 39:1598.1.

Act 210 of the 2011 Regular Session enacted the reverse auction method of procurement in R.S. 39:1598.1 for entities subject to the procurement code. The State Purchasing Director may in the future promulgate regulations and contract clause requirements relative to reverse auctions, including the resolution of disputes, so be on the lookout for those.

Act 210, enacting R.S. 39:1598.1, provides that a reverse auction may be utilized for the acquisition of materials, supplies, services, products, or equipment. The definition of “reverse auction” means a competitive online solicitation process on the Internet for materials, supplies, services, products, or equipment in which vendors compete against each other online in real time in an open and interactive environment. The state director of purchasing will develop policies, procedures, and promulgate regulations in the future. The Act suggests the following:

- (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.

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

Adequate public notice for the purchase of materials, supplies, services, or equipment using a reverse auction is required as follows:

(1) The advertisement or notice shall be published one time in the official journal of the state at least twenty days before the opening date of the reverse auction.

(2) In the case of any purchase to meet the needs of a single budget unit, the advertisement shall be published also in a newspaper of general circulation printed in the parish in which the budget unit is situated, or, if there is not a newspaper printed in the parish, in a newspaper printed in the nearest parish that has a general circulation in the parish in which the budget unit is situated.

### [ACT 369](#)

Act 369 enacted R.S. [39:1595.7](#) which added a preference for purchasing items manufactured in the United States, if Louisiana items are unavailable, with certain conditions, including price (no more than 5% more than other items) and it's the lowest bid of such items.

### [ACT 343](#)

Act 343 repealed R.S. 39:1758 which required that contracts be subject to the provisions of R.S. [38:2196.1](#) regarding the requirement for an affidavit of notice of fee disposition. This requirement was removed from several different Revised Statutes.

### **Change Orders**

Act 343 also enacted R.S. 39:1557.1, relevant to change orders. Each change order to a contract which adds an amount of ten percent or more of the original contract amount and which additional amount is at least ten thousand dollars or all change orders to a contract aggregating to an amount of twenty percent or more of the original contract amount and which additional amount is at least ten thousand dollars must be recorded by the governmental body which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done or where the entity is domiciled not later than thirty days after the date of the change order which requires that the recordation take place. In addition, the original contract shall be recorded together with the amendments or other revisions if not previously recorded. This provision does not apply to the office of facility planning and control, and the office of state purchasing.

## Legal Authorities

### What are some important definitions or terms?

[R.S. 39:1556](#)

You are going to encounter the terms defined below as you become acquainted with the procurement code. These terms are just a few of the words defined in the law. There are also other definitions in other sections of the law.

- "Contract" means all types of state agreements, regardless of what they may be called, for the purchase of supplies, services, or major repairs. It includes awards and notices of award; contracts of a fixed-price, cost, cost-plus-a-fixed-fee, or incentive type; contracts providing for the issuance of job or task orders; leases; letter contracts; and purchase orders. It also includes supplemental agreements with respect to any of the foregoing.
- "Governmental body" means any department, office, division, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive or judicial branches of state government.<sup>6 7</sup>
- "Installment-purchase contract" means a contract which is utilized to procure supplies or equipment from a contractor where payment for the supplies or equipment is made in a set of installment payments over a fixed period of time in accordance with the provisions of the contract, and in which the contractor agrees to deliver title of the property to the governmental body in accordance with the terms and conditions of the contract.
- "Major repairs" means those repairs payable with funds appropriated in the general appropriations act, except those funds transferred from the operating budget of one governmental body to supplement and complete a project under contract by the division of administration facility planning and control section.
- "Procurement" means the buying, purchasing, renting, leasing, or otherwise obtaining any supplies, services, or major repairs. It also includes all functions that pertain to the obtaining of any public procurement, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.
- "Services" means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than reports which are merely incidental to the required performance. This term shall not include:

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<sup>6</sup> AG Op. No. 04-0030A-The Louisiana Secretary of State, while a public entity under the Public Bid Law (R.S. 38:2211-2296) for new public work projects, is a governmental body as defined by the State Procurement Code (R.S. 39:1551, *et seq*) and must follow the State Procurement Code for the procurement of supplies, services and major repairs.

<sup>7</sup> AG Op. No. 99-247-The Board of Trustees for the State Employees Group Benefits Program is a "governmental body" and subject to the State Procurement Code.

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- Employment agreements or collective bargaining agreements.
- Personal, professional, consultant, or social services as provided by R.S. 39:1481 through R.S. 39:1526.
- Services performed by lawyers as provided by R.S. 42:261 through R.S. 42:264.
- Services performed by an architect, engineer, or landscape architect as provided by R.S. 38:2310 through R.S. 38:2314.

### What are the relevant statutes and rules?

The other relevant statutes found in the LPC are listed below. The administrative rules are noted where applicable.

#### Public Access and the Office of State Purchasing:

R.S. 39:1557-1558		Public access to procurement information
R.S. 39:1557	–	Public access to procurement information
R.S. 39:1558	–	Determinations
R.S. 39:1561-1567		Central Purchasing Agency
R.S. 39:1561	–	Authority and duties of the commissioner of administration
R.S. 39:1562	–	Creation of Central Purchasing Agency
R.S. 39:1563	–	Appointments and qualifications
R.S. 39:1564	–	Authority of the state director of purchasing
R.S. 39:1565	–	Duties of the Attorney General
R.S. 39:1566	–	Appointments of and delegation to assistants and employees
R.S. 39:1567	–	Reporting Requirements
R.S. 39:1571-1572		Centralization of Public Procurement and Exemptions
R.S. 39:1571	–	Centralization of procurement authority
R.S. 39:1572	–	Exemptions
LAC 34:I.1701-1703		Centralization of Public Procurement and Exemptions
LAC 34:I.1701		
R.S. 39:1581		State Procurement Regulations
R.S. 39:1586-1587		Coordination, Training and Education
R.S. 39:1586	–	Relationship with using agencies
R.S. 39:1587	–	Procurement advisory council; other advisory groups
R.S. 39:1593		Methods of Selection
R.S. 39:1593	–	Methods of source selection

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### Preferences in Contracting:<sup>8 9</sup>

R.S. 39:1595	Local Products
R.S. 39:1595.1	Local vendors, except for public works contracts
R.S. 39:1595.2	Local contractors for public works
R.S. 39:1595.3	Rodeos and Livestock shows
R.S. 39:1595.4	Workshops employing severely handicapped
R.S. 39:1595.5	Local retailers
R.S. 39:1595.6	Local steel

### General Provisions:

R.S. 39:1599	Cancellation of Bids
LAC 34:I.1301-1311	Cancellation of Bids
LAC 34:I.1301	– Scope
LAC 34:I.1303	– Policy
LAC 34:I.1305	– Cancellation of Solicitations - Notice
LAC 34:I.1307	– Reasons for Cancellation
LAC 34:I.1309	– Rejection of Individual Bids or Proposals
LAC 34:I.1311	– Disposition of Bids or Proposals
R.S. 39:1601-1603	Qualifications and duties of contractors
R.S. 39:1601	– Responsibility of bidders and offerors
R.S. 39:1602	– Prequalification of suppliers
R.S. 39:1603	– Cost or pricing data
LAC 34:I.1501-1511	Qualifications and duties of contractors
LAC 34:I.1501	– Definitions
LAC 34:I.1503	– Application
LAC 34:I.1505	– Standards of Responsibility
LAC 34:I.1507	– Ability to Meet Standards
LAC 34:I.1509	– Duty Concerning Responsibility
LAC 34:I.1511	– Written Determination of Nonresponsibility Required
R.S. 39:1611-1616	Types of Contracts

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<sup>8</sup> *Government Computer Sales, Inc. v. State through Div. of Admin., Office of State Purchasing*, 673 So.2d 718, 95 2262 (La.App. 1 Cir.,1996). The court examined what preferences may be applied to competitively bid contracts or to retail contracts.

<sup>9</sup> AG Op. No. 05-0109-R.S. 39:1595 provides a product or item preference but not a vendor or manufacturer preference and that pursuant to Section 1595(H)(1)-(3) there is a conditional ten percent purchasing preference to be applied to the purchase of fire apparatus/fire trucks that are produced, manufactured or assembled in Louisiana.

AG Op. No. 98-291-Discussion of the legislative history of preferences.

AG Op. No. 93-438-Discussion of “at retail” under R.S. 39:1595.5.

AG Op. No. 87-409A-Preference for La. products is mandatory on state agencies and other entities subject to La. Procurement Code for certain commodities and violations are subject to criminal penalties.

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R.S. 39:1611	–	Cost-plus-a-percentage-of-cost contracts
R.S. 39:1612	–	Cost-reimbursement contracts
R.S. 39:1613	–	Use of other types of contracts
R.S. 39:1614	–	Approval of accounting system
R.S. 39:1615	–	Multiyear contracts
R.S. 39:1616	–	Installment-purchase contract
R.S. 39:1621-1622		Right to inspect and audit
R.S. 39:1621	–	Right to inspect plant
R.S. 39:1622	–	Right to audit records
LAC 34:I.2201-2203		Right to inspect and audit
LAC 34:I.2201	–	Inspection
LAC 34:I.2203	–	Audit of Records
R.S. 39:1625-1627		Finality of determinations; reporting requirements
R.S. 39:1625	–	Finality of determinations
R.S. 39:1626	–	Reporting of suspected collusive bidding or negotiations
R.S. 39:1627	–	Record of certain procurement actions
R.S. 39:1631-1633		Insurance
R.S. 39:1631	–	Direct purchase of insurance
R.S. 39:1632	–	Splitting of commissions prohibited
R.S. 39:1633	–	Authorization constitutes public record
R.S. 39:1641-1644		Acquisition of Housing Space
R.S. 39:1641	–	Budget for acquisition of housing space and leases by budget units
R.S. 39:1642	–	Uniform space standards
R.S. 39:1643	–	Advertisement and award of lease bids
R.S. 39:1644	–	Amendment of leases
R.S. 39:1645		Acquisition of Used Equipment
R.S. 39:1651-1658		Various Specifications (including escalation clauses)
R.S. 39:1651	–	Duties of the commissioner of administration
R.S. 39:1651.1	–	Shrimp specifications
R.S. 39:1652	–	Duties of the chief procurement officer
R.S. 39:1653	–	Exempted items
R.S. 39:1654	–	Relationship with using agencies
R.S. 39:1655	–	Maximum practicable competition
R.S. 39:1656	–	Escalation clause
R.S. 39:1657	–	Specifications prepared by architects and engineers
R.S. 39:1658	–	Mandatory information requirement for contracts let without competition under the authority of an executive order
LAC 34:I.301-309		Various Specifications (including escalation clauses)
LAC 34:I.301	–	General Purpose and Policies
LAC 34:I.303	–	Availability of Documents
LAC 34:I.305	–	Authority to Prepare Specifications
LAC 34:I.307	–	Procedures for the Development of Specifications
LAC 34:I.309	–	Definitions and Use
R.S. 39:1661		Contract Clauses

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R.S. 39:1671-1673		Legal and Contractual Remedies <sup>10 11</sup>
R.S. 39:1671	–	Authority to resolve protested solicitations and awards
R.S. 39:1672	–	Authority to debar or suspend
R.S. 39:1673	–	Authority to resolve contract and breach of contract controversies
R.S. 39:1676-1679		Solicitations or awards in violation of the law
R.S. 39:1676	–	Applicability of this Subpart
R.S. 39:1677	–	Remedies prior to an award
R.S. 39:1678	–	Remedies after an award
R.S. 39:1678.1	–	Damages
R.S. 39:1679	–	Violations and penalties
R.S. 39:1681-1685		Administrative Appeals Procedures
R.S. 39:1681	–	Authority of the commissioner of administration
R.S. 39:1682	–	Exempted departments
R.S. 39:1683	–	Protest of solicitations or awards
R.S. 39:1684	–	Suspension or debarment proceedings
R.S. 39:1685	–	Contract and breach of contract controversies
R.S. 39:1691-1692		Actions by or Against the State; Prescription
R.S. 39:1691	–	Actions by or against the state in connection with contracts
R.S. 39:1692	–	Commencement of actions
R.S. 39:1695-1697		Delinquent Payment Penalties
R.S. 39:1695	–	Late payment to business; penalty paid by state agency
R.S. 39:1696	–	Reporting requirements
R.S. 39:1697	–	Disputed claims
R.S. 39:1716		Contract Controversies
R.S. 39:1731-1736		Assistance to Small, Minority and Women Owned businesses
R.S. 39:1731	–	Short title
R.S. 39:1732	–	Definitions
R.S. 39:1733	–	Procurement from small businesses
R.S. 39:1734	–	Assistance to small businesses
R.S. 39:1735	–	Determination of disadvantaged
R.S. 39:1736	–	Reports
R.S. 39:1751-1755		Telecommunications Procurement
R.S. 39:1751	–	Application
R.S. 39:1752	–	Definitions
R.S. 39:1753	–	Types of contracts permitted
R.S. 39:1754	–	Methods of procurement
R.S. 39:1755	–	General provisions

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<sup>10</sup> *McElwee v. State ex rel. Department of Transp. and Development*, 729 So.2d 695, (La.App. 1 Cir., 1999). The court found that DOTD must provide written reasons for the disqualification of the Plaintiff-Bidder.

<sup>11</sup> *Inferno Associates, Inc. v. Division of Admin., Office of State Purchasing*, 692 So.2d 1280, 96 1150 (La.App. 1 Cir.,1997). The court found the bid specifications were inadequate and the bids could not be properly evaluated. Therefore, the invitation for bids was properly withdrawn.

### **What is an Executive Order?**

Executive orders are issued by the governor to provide guidance to executive agencies in the operation of government. Executive orders have the force and effect of law unless they are contrary to the Constitution or law. (See AG Op. No. 80-281). There are two executive orders dealing with procurement. They are [BJ 10-08](#) dealing with emergency procedures for conducting state business and [BJ 10-16](#) dealing with small purchase procedures.

Executive orders issued by a governor terminate on the date provided in the order or in a later order. If the order does not contain a termination date, the order terminates 60 days after "...adjournment *sine die* of the regular session of the legislature after the issuing governor leaves office." See R.S. 49:215 (C). The executive orders provided below will terminate 60 days after the current regular session of the legislature.

Two relevant executive orders governing purchases under the LPC are listed below. Click on the links to see the full text.

1. [Executive Order BJ 10-08](#) **Emergency Procedures for Conducting State Business**
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2. [Executive Order BJ 10-16](#) **Small Purchase Procedures**
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