



The Legislative Auditor's Summary of the Louisiana Procurement Code

[R.S. 39:1551-1755](#)

[LAC 34:I.5101-5513 and 34:V.101-3301](#)

[Executive Order JBE 2016-39](#)

Overview

This paper is a summary of the laws related to the [Louisiana Procurement Code \(LPC\)](#). The summary is presented as a series of questions that include references to key statutes, Attorney General Opinions and case law to facilitate understanding of the LPC. The summary provides general principles of state procurement law that serve as a framework for the unique facts and circumstances encountered during an audit.

To facilitate your use of this document, numerous links will direct your attention to document text and to related documents posted on the LLA website and on external websites. For example, under the Table of Contents section, clicking the title of the section that you wish to view will take you directly to that section's text. Within a question, links will point to other areas of the document and to relevant external documents. Placing a mouse pointer over a link will open a box that will explain the use of the link.

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Introduction

What is the procurement code?

State and local governmental entities must follow specific 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. These laws also help 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 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.5101-5513](#)
and [34:V.101-3301](#)

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 boardwalk in a nature preserve. Major repairs do not, however, include construction funded through Capital Outlay.

The LPC applies to expenditures of both state and federal monies. In addition to the legal requirements found in statutes (R.S. 39:1551-1755), numerous administrative rules that must be followed are found in Title 34 of the Louisiana Administrative Code (See [LAC 34:I.5101-5513](#) and [34:V.101-3301](#)). These rules may provide definitions and procedures that are not found in the statutes.

Executive Orders

In addition to the LPC statutes and administrative rules, executive orders are also an important source of law. For example, [Executive Order JBE 16-39](#) 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).

[Executive Order JBE 16-39](#)

Which 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. Please see the LLA's Public Bid Law FAQ for more information concerning contract requirements for constructions of public works.

Which 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.

R.S. 17:3139.5(B) provides that eligible institutions of higher education may participate in the Higher Education Procurement Code established by LSU (See Part XIII of [Title 34 of the Louisiana Administrative Code](#)) in lieu of the State Procurement Code.

Which entities are exempt from the LPC?

The LPC does not apply to the legislative and judicial branches of state government nor to any agency within the legislative branch. However, these two branches of government may choose to subject themselves to the LPC.

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

R.S. 17:3139.5(B) provides that eligible institutions of higher education may participate in the Higher Education Procurement Code established by LSU (See Part XIII of [Title 34 of the Louisiana Administrative Code](#)) instead of the State Procurement Code.

How is “political subdivisions” defined?

Political subdivision is not defined in the LPC. Political subdivisions are, however, 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 from the LPC. The only definition of quasi-public entity is found in the audit law (R.S. 24:511, et seq.). R.S. 24:513(A)(1)(b). 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. Though exempt, political subdivisions may choose to make themselves subject to the LPC.

Which 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 to the purchase of certain services, materials and supplies (R.S. 38:2212.1). (For more information see the LLA Summary of the [Public Bid Law FAQ](#).)

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**.

Which laws address the construction of public works?

The Public Bid Law addresses the construction of public works. See the LLA's Public Bid Law FAQ for more information.

Which laws address the purchase of certain services, materials and supplies?

The Louisiana Procurement Code addresses the purchase of services, including professional, personal, consulting and social services, material and supplies for most state agencies within the Executive Branch. The Public Bid Law addresses the purchase of materials and supplies for all other public entities. Please see the LLA's Public Bid Law FAQ for additional information.

What is the Office of State Procurement?

Although much procurement occurs at the agency level, the Office of State Procurement (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://www.doa.la.gov/Pages/osp/Index.aspx>.

Act 864 of the 2014 Regular Session combined the Office of State Purchasing and the Office of Contractual Review into the current Office of State Procurement.

Does the law provide for exemptions 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. Other examples include 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 to the OSP.

Where may one find more information on OSP?

OSP's web site is a source of much useful purchasing information. There one can find a variety of resources including access to the procurement law, administrative rules, and various vendor lists. Go to <http://www.doa.la.gov/Pages/osp/Index.aspx>. A copy of OSP's Rules and Regulations may be found at <http://www.doa.la.gov/Pages/osp/legal-Index.aspx>

How does an entity 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 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.).

How these questions are answered determines the type of purchasing process that is required by the law, regulation and/or Executive Order. Most purchases will be made from the state contracts list provided by OSP. To view the state contracts list, go to:

<https://wwwcfprd.doa.louisiana.gov/osp/lapac/pubMain.cfm>

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 OSP has approved its making a "non-contract" purchase.

NEW
2016

Act 510 of the 2016 Regular Session amends R.S. 38:321.1 relative to authorizing the utilization of existing public contracts of another political subdivision by levee districts in lieu of ordinary procurement provisions. Act 510 amends the statute to authorize State agencies, municipalities, parishes, and other political subdivisions to purchase items through existing (Louisiana) public contracts of other political subdivisions within one year of the opening of bids. State agencies may rely on certificates from the Office of State Procurement that the contract is in compliance with the Procurement Code and has been adopted as a statewide cooperative contract pursuant to R.S. 39:1702, et seq, or from a local political subdivision that the contract was bid in compliance with State law. State agencies should consult with OSP prior to utilizing this new provision.

What happens 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. To issue bids instead of purchasing the commodity from the state contract list, public entities that are subject to the OSP must provide a written valid business case. If OSP approves the entity's bidding out the item, the entity must use open specifications.

What are open specifications?

A public entity must use open specifications when soliciting bids. If doing so is clearly in the public interest, public entities may specify a particular brand, make, or manufacturer in the specifications let for public bid. While the entity may specify a model and catalog number in the bid, the bid documents must clearly state that equivalent products are acceptable.

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

The type of procurement procedure that a public entity, subject to the provisions of the Procurement Code, must use depends on several factors. One consideration is the cost of the items to be procured, another is the type of contract in question, i.e. purchasing materials and supplies versus contracts for personal, professional, consulting, or social services. The law does not require competitive bidding 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. Purchases 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 generally must be awarded through competitive sealed bidding, however there are exceptions. For example, contracts for professional services, as defined under the Procurement Code, are not required to be let through competitive sealed bidding, regardless of the amount of the contract. Additionally, the Procurement Code in R.S. 39:1595 authorizes the Commissioner of Administration to allow a State Agency to use competitive sealed proposals for supplies, services or major repairs when the State Chief Procurement Officer substantiates through written documentation that doing so would be in the best interest of the State.



Act 510 of the 2016 Regular Session amends R.S. 38:321.1 relative to authorizing the utilization of existing public contracts of another political subdivision by levee districts in lieu of ordinary procurement provisions. Act 510 amends the statute to authorize State agencies, municipalities, parishes, and other political subdivisions to purchase items through existing (Louisiana) public contracts of other political subdivisions within one year of the opening of bids. State agencies may rely on certificates from the Office of State Procurement that the contract is in compliance with the Procurement Code and has been adopted as a statewide cooperative contract pursuant to R.S. 39:1702, et seq, or from a local political subdivision that the contract was bid in compliance with State law. State agencies should consult with OSP prior to utilizing this new provision.

A summary of the required procurement procedures is provided in the table below.

Amount of purchase	Method
\$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	Advertise according to R.S. 39:1594

Source: *[Executive Order JBE 16-39](#).

What documentation should an entity maintain?

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 other means. The quotes must, however, be in writing if the price exceeds \$5,000. Awards shall be made to the lowest responsive quotation. Subject to some exceptions, the Executive Order provides an extensive list of items that are not subject to competitive bid regardless of price. (See Section 5 of [Executive Order JBE 16-39](#)).

Small Purchases

What does the LPC consider to be small purchases? [R.S. 39:1596](#) LAC 34: V.701

Small purchases are procurements priced below \$25,000 or as defined in the Governor’s Small Purchases Executive Order. The most current executive order addressing small purchase procedures is JBE 16-39. (The executive order declares that items covered by an existing state contract and public works contracts that are greater than \$5,000 and which are governed by R.S. 38:2241 are not subject to the procedures in the order.) Small purchases are specifically exempted from the competitive sealed bidding requirements of the LPC. In general, small purchases require a non-sealed bid solicitation. [E.O. JBE 16-39](#)

Competitive Sealed Bidding

What is competitive sealed bidding, and when is it used? [R.S. 39:1594](#) LAC 34:V 301-339

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 period 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 a requirement to re-advertise. The bid modification must be sent to all prospective bidders (LAC 34:I.305).

Does the law provide exceptions to competitive sealed bidding?

Some exceptions to the competitive sealed bidding requirement exist. Some of the exceptions are found in the group purchasing portion of the Other Procurement Methods statute (R.S. 39:1600(B)) that uses a competitive request for proposal process. The preference statutes provide another exception. Public entities are allowed to make selections based on preferences for certain Louisiana goods or services based on specific criteria. (see R.S. 39:1601 – 1604.7)

Information Technology Procurement

[R.S. 39:196 through R.S. 39:200](#)

- Provides for the procurement of data processing equipment, related services, and software using a request for proposals (RFP) process (R.S. 39:198).
- Applicable to all state agencies in the executive branch, as defined in 36:3(1), except for any agency of a statewide elected official, with respect to the purchase, lease, and rental of all information technology equipment, related services, and software.
- The office of technology services has the sole authority and responsibility for defining the specific information technology systems and information technology services to which the provisions of this law shall apply. Rules and regulations shall be promulgated as necessary to carry out the provisions of the law.

- The office of technology services, through the office of state procurement, may, on behalf of any state agency, enter into contracts under R.S. 39:198.
- R.S. 39:199, in order to ensure the lowest price, states:
 - ❖ Any agency seeking to procure a new contract, a contract extension, or any other contract modification for software, software maintenance, and support services must show that the price received or negotiated is the lowest available price by exhibiting prices that may appear in a catalog, price list, schedule, Internet, or other form.

The Office of Telecommunications Management (OTM) is under the Office of Technology Services.

Emergency Procurement

[R.S. 39:1598](#)

LAC 34: V.1101-1111

How does an entity make purchases during an emergency?

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

What is considered an emergency?

LAC 34: V.1103

An emergency is a threat to "...public health, welfare, safety, or public property..." Many types of conditions, including floods, epidemics, and equipment failures, can create an emergency. The agency's chief procurement officer may identify other emergency conditions, which are those that create an immediate need for services, materials or supplies.

Which 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, however, that the chief procurement officer, or the equivalent person, approve all emergency procurements of \$5,000 or more.

What documentation is necessary for an emergency purchase?

The chief procurement officer must document the facts and circumstances of the emergency. Public entities subject to the Procurement Code are required to document and maintain in their contract files that they have followed 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 (except for standard equipment parts for which prices are established) are to be purchased on an emergency basis,;
- Immediate purchasing shall be discouraged to the extent practicable;
- When supplies, services, or major repairs are urgently required and time does not permit obtaining written quotations, a procurement officer may obtain quotations by telephoning or otherwise, but those quotations shall be made on the related 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 Procurement: <http://www.doa.la.gov/osp/agencycenter/publications/emergencyprocurement.pdf>
(Rev. August 2016)

Sole Source Procurements

[R.S. 39:1597](#)

LAC 34: V.901-907

What are sole source procurements?

Sole source procurement is used when only one source is available from which to make a particular purchase. Sole source procurement, like emergency procurement, does not require competition. An agency may use sole source when it submits to the OSP in writing that only one source can fill the need. The agency may not make sole source procurement until it receives approval from OSP. For a discussion of Sole Source consideration, see AG Op. No. 13-0078.

Which reporting requirements apply to sole source procurement?

An agency must submit a sole source procurement report to the Legislature annually. The report must include:

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

Local Political Subdivisions, Quasi-Public Entities and the LPC

[R.S. 39:1554](#)

[R.S. 39:1572](#)

Which 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.

May 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. Local political subdivisions and quasi-public entities, however, may adopt all or any part of the LPC and its regulations for the procurement of supplies, services, or major repairs.

Also, the law exempts some entities from the requirement to make procurements through the OSP and its regulations. Other entities are exempt from OSP but required to follow its regulations.

What procedure should an exempt entity use to adopt all or part of the LPC?

A local political subdivision or quasi-public entity should provide written documentation showing that it has 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, the entity must follow the rules that apply to state agencies, until the local political subdivision or quasi-public entity formally rescinds such adoption. If a local political subdivision or quasi-public entity formally rescinds its adoption of all or part of the LPC, the political subdivision or quasi-public entity will resume being subject to the provisions of the Public Bid Law.

How else may an otherwise exempt entity become 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:V.2705).

For example, R.S. 38:2212.1(F) allows any public entity not subject to the Procurement Code to purchase materials, supplies, and equipment under the cooperative purchasing provisions of the Procurement Code found at R.S. 39:1702 – 1710. The contract thus entered into is subject to the relevant laws of the Procurement Code.

May a local governmental entity purchase an item from a local vendor at the state bid price?

[R.S. 39:1710](#)

Yes, R.S. 39:1710 allows this purchase, but also limits it. The statute provides that:

When a local governing authority purchases an item at the state bid price through a local vendor, the local governing authority may pay to the local vendor the costs for shipping, preparation, and delivery of the item, provided that these costs shall not exceed the state bid price by seven percent on purchases up to ten thousand dollars, five percent on purchases over ten thousand dollars and up to twenty thousand dollars, and three percent on purchases over twenty thousand dollars.

The Attorney General examined this statute in AG Op. No. 96-44, opining that the following steps would be required for compliance:

In order to facilitate use of these provisions, we would advise that the following steps be taken by a local governing authority:

- 1. Determine from State Central Purchasing if there is a competitively bid state contract for the needed material or supply and obtain the State Contract Number and the specification for the item on state contract.**

2. Contact a local vendor for the item to determine if he/she can provide the item meeting the exact same specification as the state contract item and obtain a written price quote for delivery of the item to the local governing authority. While the statute provides no definition for the word “local”, it is interpreted in this context to mean a vendor situated within the boundaries of the governing authority seeking to make the purchase.

3. If the delivered price offered by the local vendor is within the percentages set forth in the statute for contracts of various values, a purchase order may be issued by the local governing authority to the local vendor, reflecting the state contract number, state contract specification, state contract price and the markup allowed to the local vendor for shipping, preparation and delivery of the item(s).

4. A copy of the local governing authority's purchase order shall be furnished to the State Central Purchasing Office for monitoring compliance with the provisions of [R.S. 39:1710](#).

The statute in question is an exception to the otherwise sweeping requirement of R.S. 38:2212A(1)(a) that all purchases above the contract amount (presently \$10,000) [Now \$30,000] made by a public entity with public funds be made by sealed bid pursuant to advertising. The procedures set forth above are intended to assure compliance with the letter and spirit of both the Public Bid Law ([R.S. 38:2211-2237](#)) and [R.S. 39:1710](#).

Cooperative Purchasing

What is Cooperative Purchasing?

[R.S. 39:1702 -1710](#)
LAC 34: V.2701-2707

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, to achieve the best price, a state agency, a local parish government and a university may purchase some equipment via a cooperative purchase contract.

Does Cooperative Purchasing subject an otherwise exempt entity 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”¹ enters into a contract governed by the cooperative purchasing laws and regulations, the contract is subject to the LPC. (See LAC .34:V. 2705).

¹ R.S. 39:1556 (31) 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 that expends public funds for the acquisition or leasing of supplies, services, major repairs, and construction, and any nonprofit corporation operating a charitable hospital.

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 obtain permission from OSP prior to making the purchase.



NEW
2016

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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.

Can entities otherwise subject to LPC be exempt from its provisions relative to group and cooperative purchasing? [R.S. 39:196\(C\)](#) and [39:1554\(J\)](#)

Yes. Provided that certain conditions are met and that certain oversight limitations of the Legislature are honored, the Procurement Code provisions relative to group purchasing and cooperative purchasing shall not apply to any public postsecondary education institution if:

- (1) The public postsecondary education institution has requested its own group purchasing and cooperative purchasing procurement provisions and has obtained the approval of its management board and the Board of Regents.
- (2) The requesting public postsecondary education institution has adopted its own group purchasing and cooperative purchasing procurement provisions according to rules and regulations adopted in accordance with the APA.

Once these conditions are met, public postsecondary educational institutions may then be exempt from the provisions of Information Technology Procurement, R.S. 39:196 through 39:200.

What are open specifications?

A public entity must use open specifications in its solicitation for bids. If clearly in the public interest, public entities may specify a particular brand, make, or manufacturer in the specifications let out for public bid. The model and catalog number may 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), open specifications are still required. As the LPC mandates, the bid specifications must clearly state that equivalent products are acceptable even if specifications include a brand or model number.

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 comply with the provisions of the Public Bid Law.

Right to Prohibit Procurement with Individuals Convicted of Certain Felonies

According to R.S. 38:2212.9, R.S. 39:2191 and 2192, any public entity 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:

- 1) public contracts under the provisions of Chapter 10 of this Title; or
- 2) the Louisiana Procurement Code under the provisions of Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950 (including contracts for professional, personal, consulting, and social services).

The public entity has no duty to perform criminal background checks on contractors, vendors, or subcontractors.

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 is responsible for presenting prima facie evidence to the public entity supporting his or her claim.

If evidence is submitted substantiating that an individual with an ownership interest of five percent or more in the lowest bidder 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 and the public entity rejects the lowest bid, 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.

“Public entity” in the case of the procurement code means any 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, Section 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.

Reverse Auction

Act 210 of the 2011 Regular Session enacted several 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 reverse auctions may be found in the [Public Bid Law FAQ](#) regarding R.S. [38:2271](#) for political subdivisions. For procurement code purposes, R.S. [39:1554\(E\)\(2\)](#), allows any political subdivision not subject to the procurement code to use the reverse auction provisions enacted in [R.S. 39:1600\(D\)](#).

R.S. 39:1600(D) provides for use of a reverse auction method for entities subject to the procurement code. Agencies should review the rules promulgated by the state chief procurement officer relative to reverse auctions, which can be found in Chapter 5 of Part V of Title 34 of the Louisiana Administrative Code.

[R.S. 39:1600\(D\)](#), provides that a reverse auction may be used 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.

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.

Change Orders

[R.S. 39:1557.1](#) provides that the governmental body that entered into the contract must record 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 a change order that requires that the recordation take place:

- (1) Each change order to a contract that adds an amount of ten percent or more of the original contract amount if the additional amount is at least ten thousand dollars; or
- (2) All change orders to a contract aggregating to an amount of twenty percent or more of the original contract amount if the additional amount is at least ten thousand dollars.

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 procurement.

Unemployment Compensation

Unemployment Compensation law provides that the collection of contributions, assessments or penalties that are owed by employers but not properly remitted to the La. Workforce Commission are tantamount to a judgment executed by a court.

[R.S. 23:1726\(B\)](#) prohibits any employer against whom an assessment has been levied related to unemployment compensation from submitting a bid or proposal for any public contracts until full payment of the amount due under the assessment is made.

Independent Contractor or Employee Status

[R.S. 23:1711\(G\)\(3\)](#) provides that upon a final determination that an employer knowingly or willfully failed to properly classify an individual as an employee and failed to pay unemployment, then the employer will be prohibited from contracting with any state agency or political subdivision of the state for a period of three years from the date upon which the determination becomes final.

The division of administration will place the employer on a list of such employers, maintain the list, and make the list available to state agencies and political subdivisions of the state.

Exceptions for Procurement of Insurance

[R.S. 39:1540](#)

La. R.S. 39:1540 provides that consulting services for the procurement of insurance may be obtained without the necessity of complying with the La. Procurement Code if the services are ancillary to the contract. The statute authorizes the office of risk management, under the direction of the commissioner of administration, to contract for consulting services with one or more licensed insurance producers if the commissioner finds that the contract is in the best interest of the state.

2016 LEGISLATIVE UPDATES

Cooperative Purchasing



NEW
2016

- **Act 510 of the 2016 Regular Session** (Effective August 1, 2016)
 - ❖ Act 510 amends R.S. 38:321.1 relative to authorizing the utilization of existing public contracts of another political subdivision by levee districts in lieu of ordinary procurement provisions. Act 510 amends the statute to authorize State agencies, municipalities, parishes, and other political subdivisions to purchase items through existing (Louisiana) public contracts of other political subdivisions within one year of the opening of bids. State agencies may rely on certificates from the Office of State Procurement that the contract is in compliance with the Procurement Code and has been adopted as a statewide cooperative contract pursuant to R.S. 39:1702, et seq, or from a local political subdivision that the contract was bid in compliance with State law.

Legislative Review/Approval of Contracts

- **Act 408 of the 2016 Regular Session** (Effective June 6, 2016) *
 - ❖ Act 408 amends R.S. 39:1590 relative to requirements for Joint Legislative Committee on the Budget (JLCB) approval of contracts for professional, personal and consulting contracts. As amended by Act 408, R.S. 39:1590 now requires JLCB approval of all contracts for professional, personal, consulting, and social services with a total dollar amount of \$40,000 or more per year prior to the contract becoming effective. Act 408 removed language limiting requirement for JLCB approval for contracts only funded with discretionary funds from the State General Fund or Overcollections Fund.

* See **Act 589** which removes JLCB approval requirement and increases threshold to \$50,000.

- **Act 589 of the 2016 Regular Session** (Effective July 1, 2016)
 - ❖ Act 589 removes the requirement for JLCB approval of professional, personal, consulting and social services contracts under R.S. 39:1590. As amended by Act 589, R. S. 39:1590 now requires that such contracts which are \$50,000 or more be reported to JLCB and the Contract Services Joint Legislative Task Force for review. Act 589 amends R.S. 39:1567 to provide for the contents of reporting on contracts and enacts Section F to provide for the creation of the Contract Services Joint Legislative Task Force to study, review and make recommendations on contracts to the Legislature.

Electronic Bids

- **Act 420 of the 2016 Regular Session** (Effective on August 1, 2016)
 - ❖ Act 420 amends R.S. 39:1594 regarding competitive sealed bids and R.S. 39: 1595 regarding competitive sealed proposals relative to the submission of electronic bids and exceptions.

[Recent Attorney General Opinions](#)

Discussion of a true sole source situation. [R.S. 39:1597](#) is the “sole source” provision of the Louisiana Procurement Code. The Louisiana Cattleman’s Association can be considered the sole source provider to administer the Program, since it is the only industry organization in Louisiana recognized by the National Cattlemen’s Beef Association [AG Op. No. 13-0078](#).

The exclusion of small business set-asides for construction projects found in R.S. 39:1733(A) is not applicable to political subdivisions of the state [AG Op. No. 12-0059](#).

Based on the jurisprudence and past opinions of his office, the AG continues to be of the opinion that absent statutory authority (such as the exception found in La. R.S. 38:2212.5), the Louisiana Public Bid Law prohibits the prequalification of bidders [AG Op. No. 12-0059](#).

The Procurement Code is intended for the use by state agencies for the buying, purchasing, renting, leasing, or the obtaining of supplies, services, or major repairs. In other words, the Procurement Code is used when state entities expend funds [AG Op. No. 10-0297](#).

[Select Definitions](#)

What are some important definitions or terms?

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

Agencies will encounter the terms defined below as they work under the procurement code. These terms are just a few of the words defined in the law. Other definitions appear in other sections of the law.

- **"Contract"** means all types of state agreements, regardless of what they may be called, including orders and documents purporting to represent grants, which are for the purchase or disposal of supplies, services, major repairs, or any other item. 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 branch of state government. For purposes of procurement of personal, professional, consulting, or social services contracts, governmental shall not include the judicial branch of state government.
- **"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 whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.

Services include but are not limited to the following:

- Maintenance, overhaul, repair, servicing, rehabilitation, salvage, modernization, or modification of supplies, systems, or equipment.
- Routine recurring maintenance of immovable property.
- Housekeeping services.
- Operation of government owned equipment, immovable property, and systems.
- Information technology services..

The term "**services**" shall not include:

- Employment agreements or collective bargaining agreements.
- Personal, professional, consultant, or social services as defined under the Procurement Code.
- 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.

Executive Orders

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). Two executive orders deal with procurement. Orders JBE 16-55 deals with emergency procedures for conducting state business and [JBE 16-39](#) deals 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).

Two relevant executive orders governing purchases under the LPC are listed below:

Click on the links to see the full text.

1. [Executive Order JBE 16-39](#) Small Purchase Procedures
 2. [Executive Order JBE 16-55](#) Emergency Procedures for Conducting State Business
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