

Regular Session, 1979

ENROLLED

HOUSE BILL NO. 365

BY MESSRS. R. J. LABORDE, GREGSON, HENRY AND BIGBY

ACT NO. 715

AN ACT

To amend Title 39 of the Louisiana Revised Statutes of 1950, by adding thereto a new Chapter, to be designated as Chapter 17 thereof, to be comprised of R.S. 39:1551 through R.S. 39:1736, and by amending Part I-A of Chapter 1 thereof by amending and reenacting Section 21 thereof and by enacting and adding thereto a new Section 22, all relative to procurement by public bodies, to enact a state procurement code, including but not limited to provisions for a central purchasing agency in the division of administration, for centralization of public purchasing, for procurement regulations, for source selection for items to be purchased and methods thereof, for bid procedures, for types of contracts, for specifications, for contract modification and termination and contract clauses, for legal and contractual remedies and for administrative appeals, for cooperative purchasing, for purchasing of insurance and acquisition of housing space, and for assistance to small and minority businesses, to provide for the procurement of cafeteria services for State Capitol Complex buildings, to provide definitions, to repeal certain provisions of law relative to purchasing and procurement being replaced by the provisions of the Act, to provide an effective date, and otherwise to provide generally and specifically with respect to public procurement.

Be it enacted by the Legislature of Louisiana:

Section 1. Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 39:1551 through R.S. 39:1736, is hereby enacted to read as follows:

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VISIONS

CHAPTER 17. ^uLOUISIANA PROCUREMENT CODE

PART I. GENERAL PROVISIONS

SUBPART A. SHORT TITLE, PURPOSES, CONSTRUCTION,
AND APPLICATION

§1551. Short title

This Chapter shall be known as and may be cited as the Louisiana Procurement Code.

§1552. Purposes, rules of construction

A. Interpretation. This Chapter shall be construed and applied to promote its underlying purposes and policies.

B. Purposes and Policies. The underlying purposes and policies of this Chapter are:

- (1) To simplify, clarify, and modernize the law governing procurement by this state.
- (2) To permit the continued development of procurement policies and practices.
- (3) To provide for increased public confidence in the procedures followed in public procurement.
- (4) To ensure the fair and equitable treatment of all persons who deal with the procurement system of this state.
- (5) To provide increased economy in state procurement activities by fostering effective competition.
- (6) To provide safeguards for the maintenance of a procurement system of quality and integrity.

§1553. Construction

A. Supplementary general principles of law applicable. To the extent not inconsistent with the particular provisions of this Chapter, the principles of Louisiana law shall supplement its provisions.

B. Obligation of good faith. Every contract or duty within this Chapter imposes an obligation of good faith in its performance or enforcement. "Good faith" means honesty in fact in the conduct or transaction concerned and the observance of reasonable commercial standards of fair dealing.

§1554. Application of this Chapter

A. General application. This Chapter applies only to contracts solicited or entered into after the effective date of this Chapter unless the parties agree to its application to a contract entered into prior to the effective date.

B. Application to state procurement. Except as provided in Subsections C and D below, this Chapter shall apply to every expenditure of public funds irrespective of their source, including federal assistance monies except as otherwise specified in Subsection F below, by this state, acting through a governmental body defined herein, under any contract for supplies, services, or major repairs defined herein, except that this Chapter shall not apply to either grants or contracts between the state and its political subdivisions or other governments, except as provided in Part VII (Intergovernmental Relations). Notwithstanding any other provision of this Chapter, the provisions of R.S. 38:2181 through R.S. 38:2316 shall govern the procurement of construction and the selection of architects, engineers, and landscape architects by governmental bodies of this state, and R.S. 38:2181 through R.S. 38:2316 shall not apply to any procurement of supplies, services, or major repairs by the state except that the provisions of R.S. 38:2301 shall be applicable to major repairs.

C. Procurement by the governor. Notwithstanding any other provisions of this Chapter, the governor shall procure all materials, supplies, equipment, and contractual services required for the governor's mansion, the cafeteria operated in the state capitol, and similar agencies. The procurement shall, insofar as practicable, be in accordance with the provisions of this Chapter.

D. Exclusions. This Chapter shall not be construed to change, affect, increase, or relieve the requirements of:

(1) R.S. 42:261 through R.S. 42:264 regarding the retaining and employment of lawyers;

(2) R.S. 39:1423 through R.S. 39:1473 regarding the procurement of professional, personal, and consulting services; or

(3) R.S. 43:1 through R.S. 43:232 regarding printing.

(4) R.S. 46:335 as regards the purchase of products or services from the blind.

E. Political subdivisions authorized to adopt this Chapter. The procurement of supplies, services, major repairs, and construction by political subdivisions of this state shall be in accordance with the provisions of R.S. 38:2181 through 38:2316, except that all political subdivisions are authorized to adopt all or any part of this Chapter and its accompanying regulations.

F. Compliance with federal requirements. Where a procurement involves the expenditure of federal assistance or contract funds, the procurement officer shall comply with such federal law and authorized regulations which are mandatorily applicable and which are not reflected in this Chapter.

SUBPART B. DEFINITIONS

§1556. Definitions

As used in this Chapter the words defined in this Section shall have the meanings set forth below unless the context in which they are used clearly requires a different meaning or a different definition is prescribed for a particular Part or provision:

(1) "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other legal entity.

(2) "Change order" means a written order signed by the procurement officer, directing the contractor to make changes which the changes clause of the contract authorizes the procurement officer to order without the consent of the contractor.

(3) "Chief procurement officer" means the state director of purchasing and the directors of purchasing of the departments exempt from central purchasing by R.S. 39:1572.

(4) "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.

(5) "Contract modification" means any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity, or other provisions of any contract accomplished by mutual action of the parties to the contract.

(6) "Contractor" means any person having a contract with a governmental body.

(7) "Data" means recorded information, regardless of form or characteristic.

(8) "Debarment" means the disqualification of a person to receive invitations for bids or requests for proposals, or the award of any contract by any governmental body, for a specified period of time commensurate with the seriousness of the offense or the failure or the inadequacy of performance.

(9) "Designee" means a duly authorized representative of a person holding a superior position.

(10) "Governmental body" means any department, office, division, commission, council, board, bureau, committee, institution, legislative body, agency, government corporation, or other establishment or official of the executive, legislative, or judicial branch of state government.

(11) "Grant" means the furnishing by the state of assistance, whether financial or otherwise, to any person to support a program authorized by law. It does not include an award whose primary purpose is to procure an end product, whether in the form of supplies, services, or major repairs; a contract resulting from such an award is not a grant but a procurement contract.

(12) "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.

(13) "May" denotes the permissive.

(14) "Person" means any business, individual, union, committee, club, or other organization or group of individuals.

(15) "Practicable" means that which can be done or put into practice; feasible.

(16) "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.

(17) "Procurement officer" means any person authorized by a governmental body, in accordance with procedures prescribed by regulations, to enter into and administer contracts and make written determinations and findings with respect thereto. The term also includes an authorized representative acting within the limits of authority.

(18) "Purchase request" means that document whereby a using agency requests that a contract be obtained for a specified need, and may include, but is not limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation of solicitees, suggested sources of supply, and information supplied for the making of any written determination and finding required by this Chapter.

(19) "Purchasing agency" means any governmental body which is authorized by this Chapter or its implementing regulations, or by way of delegation from the state director of purchasing, to contract on its own behalf rather than through the central contracting authority of the central purchasing agency.

(20) "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:

(a) employment agreements or collective bargaining agreements.

(b) personal, professional, or consultant services as provided by R.S. 39:1428 through R.S. 39:1473;

(c) services performed by lawyers as provided by R.S. 42:261 through R.S. 42:264.

(d) services performed by an architect, engineer, or landscape architect as provided by R.S. 38:2310 through R.S. 38:2314.

(21) "Shall" denotes the imperative.

(22) "State director of purchasing" means the person holding the position created in R.S. 39:1562, as the head of the central purchasing office of Louisiana.

(23) "Supplies" means all property, including but not limited to equipment, insurance, and leases on real property excluding land or a permanent interest in land.

(24) "Suspension" means the disqualification of a person to receive invitations for bids or requests for proposals, or the award of a contract by the state, for a temporary period pending the completion of an investigation and any legal proceedings that may ensue because a person is suspected upon probable cause of engaging in criminal, fraudulent, or seriously improper conduct or failure or inadequacy of performance which may lead to debarment.

(25) "Using agency" means any governmental body of the state which utilizes any supplies, services, or major repairs purchased under this Chapter.

SUBPART C. RECORDS; PUBLIC ACCESS

§1557. Public access to procurement information

Procurement information shall be a public record to the extent provided in Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950 and shall be available to the public as provided in such statute.

§1558. Determinations

Written determinations and findings required by this Chapter shall be retained in an official contract file in the central purchasing agency or purchasing agency or by the governmental body administering the contract.

PART II. PURCHASING ORGANIZATION

SUBPART A. DIVISION OF ADMINISTRATION

§1561. Authority and duties of the commissioner of administration

Except as otherwise provided in this Chapter, the commissioner of administration, hereinafter referred to as "the commissioner,"

shall have the authority and responsibility to promulgate regulations, consistent with this Chapter, governing the procurement, management, and control of any and all supplies, services, and major repairs required to be procured by the state. The commissioner shall consider and decide matters of policy within the provisions of this Chapter including those referred to him by the state director of purchasing. The commissioner shall have the power to audit and review the implementation of the procurement regulations and the requirements of this Chapter.

SUBPART B. CENTRAL PURCHASING AGENCY

§1562. Central purchasing agency; creation

There is hereby created, within the division of administration, the Central Purchasing Agency, headed by the State Director of Purchasing, hereinafter referred to as "the director".

§1563. Appointment and qualifications

The director shall be in the classified service of the state and shall be appointed in accordance with the provisions of Article X, Section 7 of the Louisiana Constitution of 1974. The director shall have had a minimum of eight years experience in the large scale procurement of supplies, services, or construction, involving specification development, the preparation of bid proposals and bid evaluation and award, including at least three years of supervisory experience. Preference shall be given to such experience in governmental purchasing.

§1564. Authority of the state director of purchasing

A. Central procurement officer of the state. The director shall serve as the central procurement officer of the state.

B. Power to adopt rules. Consistent with the provisions of this Chapter, the director may adopt rules governing the internal procedures of the central purchasing agency.

C. Duties. Except as otherwise specifically provided in this Chapter, the director shall, within the limitations of regulations promulgated by the commissioner:

- (1) Procure or supervise the procurement of all supplies, services, and major repairs needed by the state.

(2) Exercise supervision over all inventories of warehoused supplies belonging to the state.

(3) Establish and maintain programs for the inspection, testing, and acceptance of supplies, services, and major repairs.

§1565. Duties of the attorney general

The attorney general shall be the chief legal adviser to the director.

§1566. Appointment of assistants and other employees; delegation of authority by the state director of purchasing

Subject to the provisions of the Article X, Section 7 of the Louisiana Constitution of 1974, the director may employ and supervise such assistants and other persons as may be necessary and may delegate authority to such designees or to any governmental body as the director may deem appropriate within the limitations of state law and the state procurement regulations.

§1567. Reporting requirements

The director shall prepare any reports that the commissioner of administration may deem necessary and shall deliver such reports to such recipients as the commissioner may designate. As provided in R.S. 44:1 et seq., such reports shall be available to the public upon request.

SUBPART C. CENTRALIZATION OF PUBLIC PROCUREMENT

§1571. Centralization of procurement authority

Except as otherwise provided in this Subpart, all rights, powers, duties, and authority relating to the procurement of supplies, services, and major repairs now vested in or exercised by any state governmental body under the several statutes relating thereto are hereby transferred to the central purchasing agency.

§1572. Exemptions

A. Exemptions from central purchasing and regulations of commissioner. Procurement of the following items or by the following governmental bodies shall not be required through the central purchasing agency, but shall nevertheless be subject to the requirements of this Chapter and such regulations as may be promulgated by the head of such governmental body:

- (1) The Department of Transportation and Development; and
- (2) Textbooks, scientific and laboratory equipment, teaching materials, teaching devices, and teaching supplies procured by the Department of Education.

B. Exemptions from central purchasing only. Unless otherwise ordered by regulation of the commissioner with approval of the governor, the following governmental bodies shall not be required to conduct procurement through the central purchasing agency, but shall nevertheless be subject to the requirements of this Chapter and the regulations promulgated by the commissioner:

- (1) Louisiana State University System;
- (2) Southern University System;
- (3) Board of Trustees of State Colleges and Universities System;
- (4) Vocational-technical schools, special schools, and other institutions under the supervision of the Board of Elementary and Secondary Education; and
- (5) Department of Education for items other than those exempted in Paragraph A(2) of this Section.

C. Use of central purchasing by exempt agencies. A governmental body exempted from centralized purchasing may use the central purchasing facilities whenever the best interests of such governmental body and the state may be served.

SUBPART D. STATE PROCUREMENT REGULATIONS

§1581. State procurement regulations

A. Regulations. Regulations promulgated by the commissioner in accordance with the Administrative Procedures Act shall govern all procurements by all governmental bodies except for:

- (1) Regulations promulgated by the Secretary of the Department of Transportation and Development governing procurement by that department.
- (2) Regulations promulgated by the State Superintendent of Education governing the procurement of textbooks, scientific and laboratory equipment, teaching materials, teaching devices, and teaching supplies by the Department of Education.

B. Exempted departments. Secretaries of departments exempted under Subsection A of this Section shall promulgate regulations for the purposes set forth in accordance with the administrative procedures act. Such regulations shall not be inconsistent with the provisions of this Chapter.

C. Power to promulgate regulations shall not be delegated. The commissioner or secretary shall not delegate his power to promulgate regulations.

D. Regulations shall not change existing contract rights. No regulation shall change any commitment, right, or obligation of the state or of a contractor under a contract in existence on the effective date of such regulation.

E. Incorporation of required clauses into contracts by operation of law only with consent of both parties. No clause which is required by regulation to be included shall be considered to be incorporated by operation of law in any state contract without the consent of both parties to the contract to such incorporation; provided, however, that the parties to the contract may give such consent to incorporation by reference at any time after the contract has been entered into and without the necessity of consideration passing to either party.

SUBPART E. COORDINATION, TRAINING, AND EDUCATION

§1586. Relationship with using agencies

The commissioner and the director shall maintain a close and cooperative relationship with the using agencies. The director shall afford each using agency reasonable opportunity to participate in and make recommendations with respect to matters affecting such using agency. Any using agency may at any time make recommendations to the commissioner or the director, and the commissioner or director may at any time make recommendations to any using agency.

§1587. Procurement advisory council; other advisory groups

A. Procurement advisory council. The commissioner may establish a Procurement Advisory Council. If created, such council, upon adequate public notice, shall meet at least once a year for the discussion of problems and recommendations for improvement in

the procurement process. When requested by the commissioner, the procurement advisory council may conduct studies, research, and analyses and make such reports and recommendations with respect to such subjects or matters within the jurisdiction of the commissioner. The procurement advisory council shall consist of such qualified persons as the commissioner may deem desirable.

B. Other advisory groups. The director may appoint advisory groups to assist with respect to specifications and procurement in specific areas and with respect to any other matters within the authority of the director.

PART III. SOURCE SELECTION AND CONTRACT FORMATION

SUBPART A. DEFINITIONS

§1591. Definitions of terms used in this Part

(1) "Cost-reimbursement contract" means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with cost principles as provided for in regulations, and a fee, if any.

(2) "Established catalog price" means the price included in a catalog, price list, schedule, or other form that:

(a) is regularly maintained by a manufacturer or contractor;

(b) is either published or otherwise available for inspection by customers; and

(c) states prices at which sales are currently or were last made to a significant number of buyers constituting the general buying public for the supplies or services involved.

(3) "Invitation for bids" means all documents, whether attached or incorporated by reference, utilized for soliciting bids in accordance with the procedures set forth in R.S. 39:1594.

(4) "Purchase description" means specifications or any other document describing the supplies, services, or major repairs to be procured.

(5) "Request for proposals" means all documents, whether attached or incorporated by reference, utilized for soliciting proposals in accordance with the procedures set forth in R.S.

39:1595, R.S. 39:1596, R.S. 39:1597, or R.S. 39:1598.

(6) "Resident business" means one authorized to do and doing business under the laws of this state, which either:

- (a) maintains its principal place of business in the state; or
- (b) employs a minimum of two employees who are residents of the state.

(7) "Responsible bidder or offeror" means a person who has the capability in all respects to perform the contract requirements and the integrity and reliability which will assure good faith performance.

(8) "Responsive bidder" means a person who has submitted a bid under R.S. 39:1594 which conforms in all substantive respects to the invitation for bids, including the specifications set forth in the invitation.

SUBPART B. METHODS OF SOURCE SELECTION

§1593. Methods of source selection

Unless otherwise authorized by law, all state contracts shall be awarded by competitive sealed bidding, pursuant to R.S. 39:1594, except as provided in R.S. 39:1595 through R.S. 39:1598.

§1594. Competitive sealed bidding

A. Conditions for use. Contracts exceeding the amount provided by R.S. 39:1596 shall be awarded by competitive sealed bidding.

B. Invitation for bids. Competitive sealed bidding shall be initiated by the issuance of an invitation for bids containing a description of the supplies, services, or major repairs to be procured and all contractual terms and conditions applicable to the procurement.

C. Public notice.

(1) Adequate public notice of the invitation for bids shall be given at least ten days prior to the date set forth therein for the opening of bids. Such notice shall be by written notice mailed to persons in a position to furnish the supplies, services, or major repairs required, as shown by its records, and by advertising if the amount of the purchase is five thousand dollars or more.

(2) The advertisements or written notices shall contain general descriptions of the supplies, services, or major repairs for which

bids are wanted and shall state:

(a) the names and locations of the departments or institutions for which the purchases are to be made;

(b) where and how specifications and quotation forms may be obtained; and

(c) the date and time not later than which bids must be received and will be opened.

(3) Each advertisement shall be published in the official journal of the state. 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 no 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.

D. Bid opening. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. Each bid, together with the name of the bidder, shall be recorded and open to public inspection.

E. Bid evaluation. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria to determine acceptability such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, and criteria affecting price such as life cycle or total ownership costs. The invitation for bids shall set forth the evaluation criteria to be used. No criteria may be used in bid evaluation that are not set forth in the invitation for bids.

F. Correction or withdrawal of bids. Patent errors in bids or errors in bids supported by clear and convincing evidence may be corrected, or bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders, and such actions may be taken only to the extent permitted under regulations.

G. Award. The contract shall be awarded with reasonable promptness by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. Award shall be made by unconditional

acceptance of a bid without alteration or correction except as authorized in this Part.

H. Resident business preference. In state contracts awarded by competitive sealed bidding, resident businesses shall be preferred to nonresident businesses where there is a tie bid and where there will be no sacrifice or loss in quality.

§1596. Small purchases

Any procurement not exceeding the amount established by executive order of the governor may be made in accordance with small purchase procedures prescribed by such executive order, except that procurement requirements shall not be artificially divided so as to constitute a small purchase under this Section.

§1597. Sole source procurements

A contract may be awarded for a required supply, service, or major repair without competition when, under regulations, the chief procurement officer or his designee above the level of procurement officer determines in writing that there is only one source for the required supply, service, or major repair item.

§1598. Emergency procurements

A. Conditions for use. The chief procurement officer or his designee above the level of procurement officer may make or authorize others to make emergency procurements when there exists an imminent threat to the public health, welfare, safety, or public property under emergency conditions as defined in accordance with regulations.

B. Written quotations. 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. So far as practicable, quotations shall be secured from institutions of the state as provided by law.

C. Determination required. The Chief Procurement Officer shall make a written determination of the basis of the emergency that includes the facts and circumstances leading to the conclusion that such procurement was necessary as well as a written determination detailing the steps taken prior to selecting a particular contractor and the basis for the final selection.

The written determination shall be included in the contract file either prior to contracting or as soon thereafter as practicable.

SUBPART C. CANCELLATION OF INVITATIONS FOR
BIDS OR REQUESTS FOR PROPOSALS

\$1599. Cancellation of invitations for bids or requests
for proposals

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or all bids or proposals may be rejected, only if it is determined in writing by the chief procurement officer or his designee that such action is taken in the best interests of the state.

SUBPART D. QUALIFICATIONS AND DUTIES

\$1601. Responsibility of bidders and offerors

A. A reasonable inquiry to determine the responsibility of a bidder or offeror may be conducted. The unreasonable failure of a bidder or offeror promptly to supply information in connection with such an inquiry may be grounds for a determination of non-responsibility with respect to such bidder or offeror.

B. Whenever the Chief Procurement Officer, Commissioner or head of a governmental body with such authority proposes to disqualify the lowest bidder on bids of \$5,000 or more such individual shall:

- 1) Give written notice of the proposed disqualification to such bidder and include in the written notice all reasons for the proposed disqualification; and
- 2) Give such bidder who is proposed to be disqualified, a reasonable opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

§1602. Prequalification of suppliers

Prospective suppliers may be prequalified for particular types of supplies and services.

§1603. Cost or pricing data

A. Contractor certification. A contractor shall submit cost or pricing data and shall certify that, to the best of its knowledge and belief, the cost or pricing data submitted was accurate, complete, and current as of a mutually determined specified date prior to the date of:

(1) Pricing of any contract awarded by other than competitive sealed bidding, as provided in R.S. 39:1594, or small purchase procedures, as provided in R.S. 39:1496, where the total contract price is expected to exceed an amount established by regulations; or

(2) Pricing of any change order or contract modification which is expected to exceed an amount established by regulations.

B. Price adjustment. Any contract, change order, or contract modification under which a certificate is required shall contain a provision that the price to the state, including profit or fee, shall be adjusted to exclude any significant sums by which the procurement officer finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the parties.

C. Cost or pricing data not required. The requirements of this Section need not be applied to contracts:

(1) Where the contract price is based on adequate price competition;

(2) Where the contract price is based on established catalog or market prices of commercial items-sold in substantial quantities to the general public;

(3) Where contract prices are set by law or regulation; or

(4) In exceptional cases where it is determined in writing in accordance with regulations that the requirements of this Section may be waived, and the reasons for such waiver are stated in writing.

SUBPART E. TYPES OF CONTRACTS

§1611. Cost-plus-a-percentage-of-cost contracts

The cost-plus-a-percentage-of-cost system of contracting shall not be used.

§1612. Cost-reimbursement contracts

A. Determination required prior to use. No cost-reimbursement prime contract may be made unless it is determined in writing in accordance with regulations that such contract is likely to be less costly to the state than any other type of contract or that it is impracticable to obtain supplies, services, or major repairs of the kind or quality required except under such a contract.

B. Reimbursement of costs. All cost-reimbursement contracts shall contain a provision that only costs recognized as allowable in accordance with cost principles set forth in regulations will be reimbursable.

§1613. Use of other types of contracts

Subject to the limitations of R.S. 39:1611 and R.S. 39:1612, any type of contract which will promote the best interests of the state may be used, provided that the chief procurement officer must make a written determination justifying the listing of each of the supplies and services on multiple award schedules. An annual report on the number, types, and volume of such procurements shall be made to the commissioner or cabinet department head within ninety days after the end of the fiscal year.

§1614. Approval of accounting system

Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the chief procurement officer or his designee that:

- (1) The proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and
- (2) The contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

§1615. Multi-Year Contracts

A. Specified Period. Unless otherwise provided by law, a contract for supplies or services may be entered into for periods of not more than three years, if funds for the first fiscal year of the contemplated contract are available at the time of contracting. Payment and performance obligations for succeeding fiscal years shall be

subject to the availability and appropriation of funds therefor. No contract shall be entered into for more than one year unless the length of the contract was clearly stated in the specifications. Any lease or similar agreement affecting the allocation of space in the state capitol shall have the prior approval of the Legislative Budgetary Control Council if it extends for more than one year.

B. Determination Prior to Use. Prior to the utilization of a multi-year contract, it shall be determined in writing:

(1) That estimated requirements cover the period of the contract and are reasonably firm and continuing; and

(2) That such a contract will serve the best interests of the state by encouraging effective competition or otherwise prompting economies in state procurement.

A written resume of the supportive underlying facts for the foregoing determinations shall be included in the determination, and the resume shall state the estimated savings to be obtained by entering into a multiyear contract.

C. Termination Due to Unavailability of Funds in Succeeding Years. When funds are not appropriated to support continuation of performance in a subsequent year of a multi-year contract, the contract for such subsequent year shall be terminated. When a contract is terminated under these conditions, no additional funds shall be paid to the contractor as a result of such action.

SUBPART F. INSPECTION OF PLANT AND AUDIT OF RECORDS

§1621. Right to inspect plant

The state may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the state.

§1622. Right to audit records

A. Audit of persons submitting cost or pricing data.

The state may, at reasonable times and places, audit the books and records of any person who has submitted cost or pricing data pursuant to R.S. 39:1603 to the extent that such books and records relate to such cost or pricing data.

B. Contract audit. The state shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that such books and records relate to the performance of such contract or subcontract. Such books and records shall be maintained by the contractor for a period of five years from the date of final payment under the prime contract and by the subcontractor for a period of five years from the date of final payment under the subcontract.

SUBPART G. DETERMINATIONS AND REPORTS

§1625. Finality of determinations

The determinations required by R.S. 39:1595(A), R.S. 39:1595(E), R.S. 39:1597, R.S. 39:1598(C), R.S. 39:1599, R.S. 39:1601, R.S. 39:1603(C), R.S. 39:1612(A), R.S. 39:1613, and R.S. 39:1614 are final and conclusive unless they are clearly erroneous, arbitrary, capricious, or contrary to law.

§1626. Reporting of suspected collusive bidding or negotiations

A. Notification to the attorney general. When for any reason collusion is suspected among any bidders or offerors, a written notice of the relevant facts shall be transmitted to the attorney general.

B. Retention of all documents. All documents involved in any procurement in which collusion is suspected shall be retained for a minimum of six years or until the attorney general gives written notice that they may be destroyed, whichever period is longer. All retained documents shall be made available to the attorney general or a designee upon request and proper receipt therefor.

§1627. Record of certain procurement actions

The chief procurement officer shall retain all contracts made under R.S. 39:1597 or R.S. 39:1598 for a minimum of six years.

SUBPART H. INSURANCE

§1631. Direct purchase of insurance

Notwithstanding the provisions of R.S. 22:1171 or any other law to the contrary, the state may purchase insurance policies covering any property or insurable interests or activities of the

state directly from insurers or underwriters, without the necessity for signature or countersignature of such policies as provided by R.S. 22:1171, and in lieu thereof such policy shall be signed by an official or designated representative of the company issuing the policy. The insurers or underwriters making such direct sales to the state shall reduce the policy premiums by the amount of the commissions, which would have been paid, as required by R.S. 22:1171, but for the provisions of this Section. However, if any such insurance policy is purchased in accordance with the provisions of R.S. 22:1171, the agent may credit any portion of the commission to the state, through the division of administration. The state shall be advised of the amount of any such rebate at the time the agent furnishes a bid for such policy to the state, and the amount of such rebate shall be taken into consideration in determining the cost of such policy.

§1632. Splitting of commissions prohibited

It shall be unlawful for an agent to split, pass on, or share with any person, group, organization, or other agent, except the state of Louisiana, all or any portion of the commission derived from the sale of insurance to the state; except that on policies involving properties or exposure in more than one geographic area of the state, said commission may be split, shared, or passed on if authorized in writing by the commissioner of administration. In any such instance where the sharing of a commission on state insurance is authorized, it shall be only with a bona fide insurance agent. Whoever violates the provisions of this Section shall, upon conviction, be fined not less than one thousand dollars nor more than five thousand dollars and shall be imprisoned for not more than two years.

§1633. Authorization constitutes public record

Such written authorization as required by R.S. 39:1632 above shall constitute a public record as defined in Chapter 1 of Title 44 of the Louisiana Revised Statutes of 1950.

SUBPART I. ACQUISITION OF HOUSING SPACE

§1641. Budget for acquisition of housing space and leases by budget units

A. Contracts and agreements by and in name of state agencies.

All contracts and agreements for the lease or rental of space for the housing of state agencies, their personnel, operations, equipment, or activities shall be made in the name of and by the authorized representative or representative body of the state agency but shall be made and entered into only with the approval of the commissioner of administration. The cost of such housing shall be provided for in and defrayed from the budgets of the using agencies.

B. Contracts and agreements by and in name of state, executed by commissioner. Supplemental to Subsection A above and notwithstanding the provisions thereof, whenever a contract or agreement for the lease or rental of space for the housing of state agencies, their personnel, operation, equipment, or activities, shall pertain to more than one building or facility or shall pertain to a building or facility which is to house more than one state agency, their personnel, operation, equipment, or activities, such contract or agreement may be made in the name of the state and executed by the commissioner of administration, rather than in the name of and by the authorized representative or representative body of the state agency or agencies to be housed in such building or buildings or facility or facilities. The commissioner of administration shall allocate space to one or more state agencies in the building or buildings or facility or facilities to which such contract or agreement pertains and shall allocate the cost of such housing to or among such using agency or agencies, which cost shall be provided for in and defrayed from the budgets of the using agency or agencies. The commissioner shall determine the amount of the allocations of the costs of such housing to the various agencies using such building or buildings and facility or facilities in such manner so that the aggregate of the amount so allocated equals the total cost of such housing.

C. Definition of "agency." The definition of "agency"

stated in R.S. 39:2(1) shall be the sole definition of the term "state agency" employed in connection with the acquisition of housing space in this and following Sections, and the fact that an agency is supported by fees or taxes collected by, or dedicated to, the agency or which otherwise receives its operating funds through means other than direct appropriations, shall not be a test as to whether this Section shall be applicable to an agency of the state.

D. Applicability. Sections 1641 and 1642 shall be applicable to all agencies meeting the definition of R.S. 39:2(1) established by the laws of Louisiana, except those agencies mentioned in Sub-section E of this Section.

E. Exempt agencies. The provisions of this Section and of R.S. 39:1642 shall not apply to:

- (1) Colleges, universities and trade schools.
- (2) The Department of Transportation and Development.
- (3) The military department.
- (4) Any agency which is established as a corporate entity and enjoying corporate status.
- (5) Any agency or office exempted by executive order of the governor.

F. Exempt types of space. The provisions of this Section and of R.S. 39:1642 shall not apply to the following types of space:

- (1) Space for the storage of voting machines.
- (2) Institutional buildings such as hospitals, clinics, and buildings at educational, penal, and correctional institutions.

§1642. Uniform space standards; inventory and evaluation of budget unit space utilization

A. Uniform space standards. The division of administration shall prepare and utilize a uniform set of standards for determining space needs for state agencies. These standards shall also provide for a uniform method of measuring square footage or other measurements used as the basis for lease payments or other charges.

B. Inventory of state space. The division of administration shall conduct and maintain a complete inventory of state space,

both owned and leased.

C. Evaluation of space utilization. The division of administration shall evaluate the utilization of all leased space on a continuing basis to determine the feasibility of locating state agencies in buildings to be purchased and/or constructed by the state.

§1643. Advertisement and award of lease bids

Every lease for the use of 2,500 square feet or more of space in a privately owned building entered into by a state agency as lessee shall be awarded pursuant to R.S. 39:1594 or R.S. 39:1595, in accordance with the conditions for use set forth in those sections. No such lease shall extend beyond a period of ten years.

PART IV. SPECIFICATIONS

SUBPART A. SPECIFICATIONS

§1651. Duties of the commissioner of administration

A. The commissioner shall promulgate regulations governing the preparation, maintenance, and content of specifications for supplies, services, and major repairs required by the state.

B. As used in this Part, the term "specification" means any description of the physical or functional characteristics, or of the nature of a supply, service, or major repair. It may include a description of any requirement for inspecting, testing, or preparing a supply, service, or major repair for delivery.

§1652. Duties of the chief procurement officer

The chief procurement officer shall prepare, issue, revise, and monitor the use of specifications for required supplies, services, and major repairs.

§1653. Exempted items

Specifications for supplies, services, or major repairs exempted pursuant to R.S. 39:1572 may be prepared by a purchasing agency in accordance with the provisions of this Part and regulations promulgated hereunder by the head of the governmental body granted authority to promulgate regulations by R.S. 39:1581.

§1654. Relationship with using agencies

The director shall obtain advice and assistance from personnel

of using agencies in the determination of needs and development of specifications and may delegate in writing to a using agency the authority to prepare and utilize its own specifications, subject to regulations.

§1655. Maximum practicable competition

A. All specifications shall seek to promote overall economy for the purposes intended and encourage competition in satisfying the needs of the state, and shall not be unduly restrictive. A specification may be drafted which describes a product which is proprietary to one company only where:

(1) No other kind of specification is reasonably available for the state to describe its requirements; or

(2) There is a requirement for specifying a particular design or make of product due to factors of compatibility, standardization, or maintainability; or

(3) Such specification includes language which specifically permits an equivalent product to be supplied. Such specification shall include a description of the essential characteristics of the product.

B. Except in Paragraph (2) of this Section, whenever such proprietary specifications are used, the specifications shall clearly state that they are used only to denote the quality standard of supplies, services, or major repairs desired and that they do not restrict bidders to the specific brand, make, manufacturer, or specification named; that they are used only to set forth and convey to prospective bidders the general style, type, character, and quality of supplies, services, or major repairs desired; and that equivalent supplies, services, or major repairs will be acceptable.

§1656. Escalation clause

Bid specifications may contemplate a fixed escalation or deescalation in accordance with the United States Bureau of Labor Statistics, Consumer Price Index and Wholesale Price Index.

Bids based on specifications which are subject to a recognized escalation index shall be legal and valid.

§1657. Specifications prepared by architects and engineers

The requirements of this Part regarding the purposes and nonrestrictiveness of specifications shall apply to all specifications, including but not limited to those proposed by architects, engineers, designers, and draftsmen for public contracts.

PART V. MODIFICATION AND TERMINATION OF CONTRACTS FOR
SUPPLIES, SERVICES, AND MAJOR REPAIRS

§1661. Contract clauses; administration

A. Contract clauses. Regulations may permit or require the inclusion of clauses providing for equitable adjustments in prices, time for performance, or other contract provisions, as appropriate, covering the following subjects:

(1) The unilateral right of the state to order in writing changes in the work within the general scope of the contract in any one or more of the following:

(a) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the state in accordance therewith;

(b) method of shipment or packing; or

(c) place of delivery.

(2) The unilateral right of the state to order in writing temporary stopping of the work or delaying of performance; and

(3) Variations between estimated quantities of work in a contract and actual quantities.

B. Additional contract clauses. Regulations may permit or require the inclusion in state contracts of clauses providing for appropriate remedies and covering the following subjects:

(1) Liquidated damages as appropriate;

(2) Specified excuses for delay or nonperformance;

(3) Termination of the contract for default; and

(4) Termination of the contract in whole or in part for the convenience of the state.

(5) Manufacturers' design drawings shall be supplied in duplicate for all state buildings, to the appropriate state agency at the conclusion of contract.

PART VI. LEGAL AND CONTRACTUAL REMEDIES

SUBPART A. PRE-LITIGATION RESOLUTION OF

CONTROVERSIES

§1671. Authority to resolve protested solicitations and awards

A. Right to protest. Any person who is aggrieved in connection with the solicitation or award of a contract may protest to the chief procurement officer. Protests with respect to a solicitation shall be submitted in writing prior to the opening of bids.

Protests with respect to the award of a contract shall be submitted in writing within sixty days after bid opening or fourteen days after contract award, whichever is later.

B. Authority to resolve protests. The chief procurement officer or his designee shall have authority, prior to the commencement of an action in court concerning the controversy, to settle and resolve a protest of an aggrieved person concerning the solicitation or award of a contract. This authority shall be exercised in accordance with regulations.

C. Decision. If the protest is not resolved by mutual agreement, the chief procurement officer or his designee shall, within fourteen days, issue a decision in writing. The decision shall:

- (1) State the reasons for the action taken; and
- (2) Inform the protestant of its right to administrative and judicial review as provided in this Part.

D. Notice of decision. A copy of the decision under Subsection C of this Section shall be mailed or otherwise furnished immediately to the protestant and any other party intervening.

E. Finality of decision. A decision under Subsection C of this Section shall be final and conclusive unless:

- (1) The decision is fraudulent; or
- (2) The person adversely affected by the decision has timely appealed administratively to the Commissioner in accordance with R.S. 39:1683.

F. Stay of procurements during protests. In the event of a timely protest under Subsection A of this Section, the state shall not proceed further with the solicitation or with the awarding of the contract unless the chief procurement officer makes a written

determination that the awarding of the contract is necessary without delay to protect the substantial interests of the state. Upon such determination by the chief procurement officer, no court shall enjoin progress under the award except after notice and hearing.

G. Award of costs to protestants. In addition to any other relief, when the protest is administratively or judicially sustained and the protesting bidder or offeror should have been awarded the contract but is not, the protesting bidder or offeror shall be entitled to the reasonable costs incurred in connection with the solicitation, including bid preparation costs other than attorney's fees, provided that any administrative determination of such costs shall be subject to the written concurrence of the attorney general.

§1672. Authority to debar or suspend

A. Applicability. This Section applies to a debarment for cause from consideration for award of contracts or a suspension from such consideration during an investigation where there is probable cause for such a debarment.

B. Authority. After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the chief procurement officer shall have authority to suspend or debar a person for cause from consideration for award of contracts, provided that doing so is in the best interests of the state. The causes for debarment are set forth in Subsection C of this Section. The chief procurement officer may suspend a person from consideration for award of contracts if he determines that there is probable cause to believe that such person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding six months. The authority to debar or suspend shall be exercised in accordance with regulations.

C. Causes for debarment. The causes for debarment include the following:

- (1) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records,

receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a state contractor;

(3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the chief procurement officer to be so serious as to justify debarment action:

(a) deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(b) a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

(5) Any other cause the chief procurement officer determines to be so serious and compelling as to affect responsibility as a state contractor, including debarment by another governmental entity for any cause listed in regulations; and

(6) Violation of the ethical standards set forth in Chapter 15 of Title 42.

D. Decision. The chief procurement officer shall issue a written decision to debar or suspend. The decision shall:

(1) State the reasons for the action taken; and

(2) Inform the debarred or suspended person involved of its rights to administrative and judicial review as provided in this Part.

E. Notice of decision. A copy of the decision under Subsection D of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person and any other party intervening.

F. Finality of decision. A decision under Subsection D of this Section shall be final and conclusive unless:

(1) The decision is fraudulent; or

(2) The debarred or suspended person has timely appealed administratively to the Commissioner in accordance with R.S. 39:1684. §1673. Authority to resolve contract and breach of contract controversies

A. Applicability. This Section applies to controversies between the state and a contractor and which arise under or by virtue of a contract between them. This includes without limitation controversies based upon breach of contract, mistake, misrepresentation, or other cause for contract modification or rescission.

B. Authority. The chief procurement officer or his designee is authorized, prior to the commencement of an action in court concerning the controversy, to settle and resolve, with the approval of the attorney general, a controversy described in Subsection A of this Section. This authority shall be exercised in accordance with regulations.

C. Decision. If such a claim or controversy is not resolved by mutual agreement, the chief procurement officer or his designee shall promptly issue a decision in writing. The decision shall:

(1) State the reasons for the action taken; and

(2) Inform the contractor of its right to administrative and judicial review as provided in this Part.

D. Notice of decision. A copy of the decision under Subsection C of this Section shall be mailed or otherwise furnished immediately to the contractor.

E. Finality of decision. The decision under Subsection C of this Section shall be final and conclusive unless:

(1) The decision is fraudulent; or

(2) The contractor has timely appealed administratively to the Commissioner in accordance with R.S. 39:1685.

F. Failure to render timely decision. If the chief procurement officer or his designee does not issue the written decision required under Subsection C of this Section within sixty days after written request for a final decision, or within such longer period as may be agreed upon by the parties, then the contractor may proceed as if an adverse decision had been received.

SUBPART B. SOLICITATIONS OR AWARDS IN
VIOLATION OF LAW

§1676. Applicability of this Subpart

The provisions of this Subpart apply where it is determined administratively, or upon administrative or judicial review, that a solicitation or award of a contract is in violation of law.

§1677. Remedies prior to an award

If it is determined prior to award that a solicitation or proposed award of a contract is in violation of law, then the solicitation or proposed award shall be cancelled.

§1678. Remedies after an award

If it is determined after an award that a solicitation or award of a contract is in violation of law, then:

(1) If the person awarded the contract has not acted fraudulently or in bad faith:

(a) the contract may be ratified and affirmed, provided it is determined in writing by the commissioner that doing so is in the best interests of the state and the law violation had no significant effect on the outcome of the contract award; or

(b) the contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract prior to the termination, provided that any administrative determination of such costs shall be subject to the written concurrence of the attorney general.

(2) If the person awarded the contract has acted fraudulently or in bad faith, the contract shall be declared null and void.

SUBPART C. ADMINISTRATIVE APPEALS PROCEDURES

§1681. Authority of the Commissioner of Administration

The Commissioner of Administration shall have the authority to review and determine any appeal by an aggrieved person from a determination by the State Director of Purchasing or his designee which is authorized by R.S. 39:1671, R.S. 39:1672, or R.S. 39:1673.

§1682. Exempted departments

The secretary who is vested with authority to promulgate

regulations by R.S. 39:1531 shall have, within his department, the same authority and responsibilities to review and determine appeals of decisions of the chief procurement officer of his department as are vested in the Commissioner of Administration by this Subpart.

§1683. Protest of solicitations or awards

A. Scope. This Section applies to an appeal addressed to the Commissioner of a decision under R.S. 39:1671(C).

B. Time limitation on filing an appeal. The aggrieved person shall file an appeal within seven days of receipt of a decision under R.S. 39:1671(C).

C. Decision. On any appeal under Subsection A of this Section, the Commissioner shall decide within fourteen days whether the solicitation or award was in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. Any prior determinations by the director or his designee shall not be final or conclusive.

D. Notice of decision. A copy of the decision under Subsection C of this Section shall be mailed or otherwise furnished immediately to the protestant or any other party intervening.

E. Finality of decision. A decision under Subsection C of this Section shall be final and conclusive unless:

- (1) The decision is fraudulent; or
- (2) The person adversely affected by the decision has timely appealed to the court in accordance with R.S. 39:1691(A).

§1684. Suspension or debarment proceedings

A. Scope. This Section applies to a review by the commissioner of a decision under R.S. 39:1672.

B. Time limitation on filing an appeal. The aggrieved person shall file its appeal with the Commissioner within fourteen days of the receipt of a decision under R.S. 39:1672(D).

C. Decision. The Commissioner shall decide within fourteen days whether, or the extent to which, the debarment or suspension was in accordance with the constitution, statutes, regulations, and the best interests of the state, and was fair. Any prior determination by the director or his designee shall not be final or conclusive.

D. Notice of decision. A copy of the decision under Subsection

C of this Section shall be mailed or otherwise furnished immediately to the debarred or suspended person or any other party interviewing.

E. Finality of decision. A decision under Subsection C of this Section shall be final and conclusive unless:

(1) The decision is fraudulent; or

(2) The debarred or suspended person has timely appealed an adverse decision of the Commissioner to the court in accordance with R.S. 39:1691(B).

§1685. Contract and breach of contract controversies

A. Scope. This Section applies to a review by the Commissioner of a decision under R.S. 39:1673.

B. Time limitation on filing an appeal. The aggrieved contractor shall file its appeal with the Commissioner within fourteen days of the receipt of the determination under R.S. 39:1673(C).

C. Decision. The Commissioner shall decide within fourteen days the contract or breach of contract controversy. Any prior determination by the director or his designee shall not be final or conclusive.

D. Notice of decision. A copy of the decision under Subsection C of this Section shall be mailed or otherwise furnished immediately to the contractor.

E. Finality of decision. A decision under Subsection C of this Section shall be final and conclusive unless:

(1) The decision is fraudulent; or

(2) The contractor has timely appealed an adverse decision of the Commissioner to the court in accordance with R.S. 39:1691(C).

**SUBPART D. ACTIONS BY OR AGAINST THE
STATE; PRESCRIPTION**

§1691. Actions by or against the state in connection with contracts

A. Solicitation and award of contracts. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder, offeror, or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation. Such actions

shall extend to all kinds of actions, whether for monetary damages or for declaratory, injunctive, or other equitable relief.

B. Debarment or suspension. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a person who is subject to a suspension or debarment proceeding, to determine whether the debarment or suspension is in accordance with the constitution, statutes, and regulations. Such actions shall extend to actions for declaratory, injunctive, or other equitable relief.

C. Actions under contracts or for breach of contract. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a contractor who contracts with the state, for any cause of action which arises under or by virtue of the contract, whether the action is on the contract or for a breach of the contract or whether the action is for declaratory, injunctive, or other equitable relief.

D. Limited finality for administrative determinations. In any judicial action under this Section, factual or legal determination by employees, agents, or other persons appointed by the state shall have no finality and shall not be conclusive, notwithstanding any contract provision, regulation, or rule of law to the contrary, except to the extent provided in: R.S. 39:1625, R.S. 39:1671(E), R.S. 39:1672(F), R.S. 39:1673(E), R.S. 39:1683(E), R.S. 39:1684(E), and R.S. 39:1685(E).

§1692. Prescription on actions

A. Protested solicitations and awards. Any action under R.S. 39:1691(A) shall be commenced within fourteen days after receipt of the decision of the Commissioner under R.S. 39:1633(C).

B. Debarments and suspensions for cause. Any action under R.S. 39:1691(B) shall be commenced within six months after receipt of the decision of the Commissioner under R.S. 39:1634(C).

C. Actions under contracts or for breach of contract controversies. Any action under R.S. 39:1691(C) shall be commenced within six months after receipt of the decision of the Commissioner under R.S. 39:1635(C).

PART VII. INTERGOVERNMENTAL RELATIONS

SUBPART A. DEFINITIONS

§1701. Definitions of terms used in this Part

(1) "Cooperative purchasing" means procurement conducted by or on behalf of more than one public procurement unit or by a public procurement unit with an external procurement activity.

(2) "External procurement activity" means any buying organization not located in this state which, if located in this state, would qualify as a public procurement unit. An agency of the United States government is an external procurement activity.

(3) "Local public procurement unit" means 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.

(4) "Public procurement unit" means either a local public procurement unit or a state public procurement unit.

(5) "State public procurement unit" means the central purchasing agency and any other purchasing agency of this state.

SUBPART B. COOPERATIVE PURCHASING

§1702. Cooperative purchasing authorized

Any public procurement unit may either participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any supplies, services, major repairs, or construction with one or more public procurement units or external procurement activities in accordance with an agreement entered into between the participants. Such cooperative purchasing may include, but is not limited to, joint or multiparty contracts between public procurement units and open-ended state public procurement unit contracts which are made available to local public procurement units.

§1703. Sale, acquisition, or use of supplies by a public procurement unit

Any public procurement unit may sell to, acquire from, or use any supplies belonging to another public procurement unit or external

procurement activity independent of the requirements of Part III of this Chapter or of Title 38.

§1704. Cooperative use of supplies or services

Any public procurement unit may enter into an agreement, independent of the requirements of Part III of this Chapter or Title 38, with any other public procurement unit or external procurement activity for the cooperative use of supplies or services, under the terms agreed upon between the parties.

§1705. Joint use of facilities

Any public procurement unit may enter into agreements for the common use or lease of warehousing facilities, capital equipment, and other facilities with another public procure unit or an external procurement activity under the terms agreed upon between the parties.

§1706. Supply of personnel, information, and technical services

A. Supply of personnel. Any public procurement unit is authorized, in its discretion, upon written request from another public procurement unit or external procurement activity, to provide personnel to the requesting public procurement unit or external procurement activity. The public procurement unit or external procurement activity making the request shall pay the public procurement unit providing the personnel the direct and indirect cost of furnishing the personnel, in accordance with an agreement between the parties.

B. Supply of services. The informational, technical, and other services of any public procurement unit may be made available to any other public procurement unit or external procurement activity provided that the requirements of the public procurement unit tendering the services shall have precedence over the requesting public procurement unit or external procurement activity. The requesting public procurement unit or external procurement activity shall pay for the expenses of the services so provided, in accordance with an agreement between the parties.

C. State information services. Upon request, the chief procurement officer may make available to public procurement units the following services, among others:

- (1) Standard forms;
- (2) Printed manuals;
- (3) Product specifications and standards;
- (4) Quality assurance testing services and methods;
- (5) Qualified products lists;
- (6) Source information;
- (7) Common use commodities listings;
- (8) Supplier prequalification information;
- (9) Supplier performance ratings;
- (10) Debarred and suspended bidders lists;
- (11) Forms for invitations for bids, requests for proposals, instructions to bidders, general contract provisions, and other contract forms; and
- (12) Contracts or published summaries thereof, including price and time of delivery information.

D. State technical services. The state, through the chief procurement officer may provide the following technical services, among others:

- (1) Development of products specifications;
 - (2) Development of quality assurance test methods, including receiving, inspection, and acceptance procedures;
 - (3) Use of state product testing and inspection facilities;
- and
- (4) Use of state personnel training programs.

E. Fees. The chief procurement officer may enter into contractual arrangements and publish a schedule of fees for the services provided under Subsections C and D of this Section.

§1707. Use of payments received by a supplying public procurement unit

All payments from any public procurement unit or external procurement activity received by a public procurement unit supplying personnel or services shall be available to the supplying public procurement unit as authorized by law.

§1708. Public procurement units in compliance with code requirements

Where the public procurement unit or external procurement activity

administering a cooperative purchase complies with the requirements of this Chapter, any public procurement unit participating in such a purchase shall be deemed to have complied with this Chapter. Public procurement units may not enter into a cooperative purchasing agreement for the purpose of circumventing this Chapter.

§1709. Review of procurement requirements

To the extent possible, the chief procurement officer shall collect information concerning the type, cost, quality, and quantity of commonly used supplies, services, major repairs, or construction being procured or used by state public procurement units. The chief procurement officer may also collect such information from local public procurement units.

SUBPART C. CONTRACT CONTROVERSIES

§1716. Contract controversies

Under a cooperative purchasing agreement, controversies arising between an administering public procurement unit and its bidders, offerors, or contractors shall be resolved in accordance with Part VI of this Chapter, where the administering public procurement unit is a state public procurement unit or otherwise subject to Part VI.

**PART VIII. ASSISTANCE TO SMALL AND DISADVANTAGED
BUSINESSES**

§1731. Short title

The provisions of this Part shall be known and may be cited as the Louisiana Small Business Procurement Act.

§1732. Definitions of terms used in this Part

As used in this Part, the following words and phrases shall have the meaning ascribed to them in this Section, except as otherwise may be provided or unless a different meaning is plainly required by the context:

- (1) "Small business" means a business entity organized for profit, including an individual, partnership, corporation, joint venture, association or cooperative which is domiciled in and has its principal place of business in Louisiana and which is not either dominant in its field of operation or an affiliate or subsidiary of a business in its field of operation.

(2) "Dominant in its field of operation" means exercising a controlling or major influence in a business activity in which a number of businesses are engaged. In determining if a business is dominant, the following criteria, among others, shall be considered: number of employees; volume of business; financial resources; competitive status or position; ownership or control of materials, processes, patents, license agreements and facilities; sales territory; and nature of business activity. The following businesses shall be deemed dominant in their field of operation:

(a) manufacturing businesses which employ more than one hundred persons and have in the preceding three fiscal years exceeded a total of fifteen million dollars in gross receipts; and

(b) nonmanufacturing businesses which employ more than twenty-five persons and have in the preceding three fiscal years exceeded a total of three million dollars in gross receipts.

(3) "Affiliate or subsidiary of a business dominant in its field of operation" means a business which is at least twenty percent owned by a business dominant in that field of operation, or by partners, officers, directors, majority shareholders, or their equivalent of a business dominant in that field of operation.

(4) "Socially or economically disadvantaged person" means a person who has been deprived of the opportunity to develop and maintain a competitive position in the economy because of social or economic disadvantage. This disadvantage may arise from cultural, social or economic circumstances or background or physical location.

§1733. Procurement from small businesses

A. Set aside. The commissioner of the division of administration shall for each fiscal year designate and set aside for awarding to small businesses, an amount not to exceed ten percent of the value of anticipated total state procurement of goods and services excluding construction. The commissioner shall divide the procurements so designated into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses. In making his annual designation of set aside procurements the commissioner shall attempt to vary the included procurements so that a variety of goods and services produced by different small

businesses shall be set aside each year. The failure of the commissioner to set aside particular procurements shall not be deemed to prohibit or discourage small businesses from seeking the procurement award through the normal solicitation and bidding processes.

B. Contract procedure. The commissioner shall establish a contract procedure in accordance with law, for the awarding of a procurement contract under the set aside program established in this Part. Surety bonds guaranteed by the federal small business administration shall be acceptable security for a construction award under this Part.

C. Responsibility of bidder or offeror. Before making a set aside award, the commissioner shall evaluate whether the small business scheduled to receive the award is able to perform the set aside contract. This determination shall include consideration of production and financial capacity and technical competence.

D. Preference to disadvantaged persons. At least ten percent of the value of the procurements designated for set aside awards shall be awarded, if possible to businesses owned and operated by socially or economically disadvantaged persons. In the event small businesses owned and operated by socially or economically disadvantaged persons are unable to perform at least ten percent of the set aside awards, then the commissioner shall award the balance of the set aside contracts to other small businesses.

E. Award of contracts after unsuccessful set aside procedures. In the event that the provisions of this Part do not operate to extend a contract award to a small business, the award shall be placed pursuant to the existing solicitation and award provisions established by law. The commissioner shall thereupon designate and set aside for small businesses additional state procurements corresponding in approximate value to the contract unable to be awarded pursuant to the provisions of this Part.

F. Conflict with other code provisions. All laws and rules pertaining to solicitations, bid evaluations, contract awards and other procurement matters shall apply as consistent to procurements set aside for small businesses. In the event of conflict with other rules, the provisions of this Part shall govern.

§1734. Louisiana office of minority business enterprise

A. Creation. There is hereby created the Louisiana Office of Minority Business Enterprise within the division of administration. The commissioner of administration shall appoint the director of the Louisiana office of minority business enterprise.

B. Encouragement of participation by small businesses. The commissioner of administration and the director of the Louisiana office of minority business enterprise shall publicize the provisions of the set aside program, attempt to locate small businesses able to perform set aside procurement awards, and encourage participation. When the commissioner of administration determines that a small business is unable to perform under a set aside contract, he shall so inform the commissioner of economic development who shall assist the small business in attempting to remedy the causes of the inability to perform a set aside award. In assisting the small business, the director of the Louisiana office of minority business enterprise, in cooperation with the commissioner of administration, shall use any management or financial assistance programs that may be available by or through the Louisiana office of minority business enterprise or other state or governmental agencies.

§1735. Determination of disadvantaged

The commissioner of administration shall promulgate regulations, rules, standards and procedures for certifying that small businesses and small businesses owned and operated by socially or economically disadvantaged persons are eligible to participate under the requirements of this Part. The procedure for determination of eligibility may include self certification by a business, provided that the commissioner retains the ability to verify a self certification. The commissioner shall promulgate other regulations and rules as may be necessary to carry out the duties set forth in this Part.

§1736. Reports

A. Annual report by the commissioner of administration

The commissioner of administration shall submit an annual report to the governor and the legislature with a copy thereof going to the Louisiana office of minority business enterprise, indicating the progress being made toward the objectives and goals of this Part

during each fiscal year. This report shall include the following information:

(1) The total dollar value and number of potential set aside awards identified during this period and the percentage of total state procurement this figure reflects;

(2) The number of small businesses identified by and responding to the set aside contracts actually awarded to small businesses with appropriate designation as to the total number and value of set aside contracts awarded to each small business, and the total number of small businesses that were awarded set aside contracts;

(3) The total dollar value and number of set aside contracts awarded to small businesses owned and operated by economically or socially disadvantaged persons with appropriate designation as to the total number and value of set aside contracts awarded to each small business, and the percentages of the total state procurements the figures of total dollar value and the number of set asides reflect; and

(4) The number of contracts which were designated and set aside but which were not awarded to a small business, the estimated total dollar value of these awards, the lowest offer or bid on each of these awards made by the small business and the price at which these contracts were awarded pursuant to the normal procurement procedures.

3. Annual report by the director of the Louisiana office of minority business enterprise. The director of the Louisiana office of minority business enterprise shall submit an annual report to the governor and the legislature with a copy to the commissioner of administration. This report shall include the following information:

(1) The efforts undertaken to publicize the provisions of the set aside program during the preceding fiscal year;

(2) The efforts undertaken to identify small businesses including those owned and operated by socially or economically disadvantaged persons, and the efforts undertaken to encourage participation in the set aside programs;

(3) The efforts undertaken by the director to remedy the inability of small businesses to perform on potential set aside awards; and

(4) The commissioner's recommendations for strengthening the set aside program and delivery of services to small businesses.

Section 2. All laws or parts of laws in conflict herewith are hereby repealed.

Section 3. R.S. 39:171 through R.S. 39:195 and R.S. 38:2227 through R.S. 38:2232 are hereby repealed.

Section 4. This Act shall have general applicability as provided herein and is intended to provide model coverage of its subject matter. Therefore, no part of Chapter 17 of Title 39 of the Louisiana Revised Statutes as herein enacted or later amended shall be deemed to be impliedly repealed by subsequent legislation if such construction of the subsequent legislation can be reasonably avoided.

Section 5. Part I-A of Chapter 1 of Title 39 of the Louisiana Revised Statutes of 1950 is hereby amended by amending and reenacting Section 21 thereof and by enacting and adding thereto a new Section 22, all as follows:

Part I-A. State Capitol Complex Cafeterias

§21. Definitions

As used in this Part,

(1) "Cafeteria services" means those services which include the taking possession of all cafeteria facilities -- including kitchen, food preparation, food serving, and eating areas -- within the buildings designated, preparing and serving, on a continuing basis, those meals and those food items during those hours and on those days as contracted for, purchasing all food items to be prepared and served, providing for the overall management and pricing of food items prepared and served, collecting of payment for food items sold, maintaining and cleaning all utensils, equipment, tables, chairs, and facility areas, and all other services implied in or incidental to the management and operation of a food cafeteria system.

(2) "State Capitol Complex Buildings" means those state-owned office buildings at the seat of state government on and adjacent to the state capitol grounds, including the State Capitol Building, the State Capitol Annex Building, the State Lands and Natural Resources Building, the State Education Building, the State Library Building,

the State Insurance Building, the State Welfare (Division of Family Services) Building, the State Transportation and Development Building, the State Labor and Employment Security Building, the State Pentagon Courts Buildings, and the former Our Lady of the Lake Hospital Building.

(3) "Without recourse" means that the action which is allowed to be taken "without recourse" shall not give rise to any liability or obligation and that the persons who are allowed to take such action "without recourse" and their successors, assigns, and principals shall have immunity with respect thereto.

§22. Procurement of cafeteria services for State Capitol

Complex buildings

A. The Commissioner of Administration shall have the power to procure in accordance with Chapter 17 of this Title, cafeteria services to be rendered in any one or more or all of the State Capitol Complex buildings and to procure all such services at one time, in one request for proposals and in one contract.

B. The contractor procured to render such cafeteria services shall not be paid nor shall retain for himself any monies collected for food items sold in such cafeterias but shall use all such cafeteria proceeds solely to operate such cafeteria. Such contractor shall be paid only a fixed and set sum of money, payable in installments over the period of the contract, in return for rendering such cafeteria services, all as negotiated and awarded in the state contract for such services. The proper balancing of the quality, variety, and portion-size of the food items served, the lowness of the prices charged therefor, and the overall efficiency of cafeteria operation relevant thereto, shall be the greatest single evaluator of performance.

C. A contract for such cafeteria services may be entered into for a multi-year term, not to exceed three years, but shall, in any event, be cancellable unilaterally by the Commissioner of Administration, without recourse, at the end of each six-month period thereof, if the Commissioner of Administration determines in writing and with specificity that the contractor has not performed satisfactorily.

Section 6. If any provision or item of this Act or the application thereof is held invalid, such invalidity shall not affect other provisions,

items, or applications of this Act which can be given effect without the invalid provisions, items, or applications, and to this end the provisions of this Act are hereby declared severable.

Section 7. Sections 1, 3, and 4 of this Act shall become effective on July 1, 1980. Section 5 of this Act shall become effective upon signature by the Governor, if not signed by the Governor, upon expiration of the time for the bills to become law without signature by the Governor, as provided by Article III, Section 18 of the Constitution.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

*Signed by Gov. Edwards
on July 20, 1979*

END