

TITLE 38. PUBLIC CONTRACTS, WORKS AND IMPROVEMENTS

CHAPTER 10. PUBLIC CONTRACTS

PART I. GENERAL PROVISIONS

§2181. Venue of suits

A. A suit to annul a public contract on the ground of fraud, illegality, or violation of the contract, may be instituted against a contractor either in the parish of the domicile of the contractor or in the parish where the real or personal property involved is located, or in the parish, or any one of the parishes wherein the work under the contract is to be performed.

B. A suit arising under any public contract regarding the construction, alteration, or repair of any public works or for the purchase of materials or supplies, may be instituted either in the parish in which the public entity is located or in any other parish where, by law, such action may be instituted.

C. Any other provisions of the law to the contrary notwithstanding, the parties to a public contract may stipulate in the contract that the venue of any possible litigation arising under such contract shall be in the parish in which the public entity is located.

D. A suit to enjoin the award of a competitively bid public contract shall be instituted in the parish in which the public entity is located.

Acts 1991, No. 1044, §1; Acts 2003, No. 1061, §1.

§2182. Mandatory information requirement for contracts let without competition under the authority of an executive order

A. The provisions of this Section shall apply to any contract for a public work which is subject to the provisions of Chapter 10 of this Title, hereinafter referred to as "state Public Bid Law", which contract is let without competition pursuant to an executive order issued by authority granted under the Louisiana Homeland Security and Emergency Assistance and Disaster Act, which order grants exceptions to the requirements of the state Public Bid Law. Such provisions shall apply to contracts which have been or will be let without competition pursuant to executive orders related to Hurricane Katrina or Rita which granted exceptions to the requirements of the state Public Bid Law.

B.(1) For any contract subject to the provisions of this Section, the information cited in Subparagraphs (a) through (d) of this Paragraph shall be submitted by the primary contractor to the Office of Facility Planning and Control. The following information shall be submitted, in a format to be determined by such office, no later than forty-five days after the effective date of the contract, or forty-five days after June 29, 2006, whichever is later:

- (a) The name of the primary contractor.
- (b) The amount of the contract.
- (c) The name of each subcontractor.
- (d) The amount of each subcontract.

(2) Any change in subcontractors, or in the amount of a subcontract which exceeds twenty-five percent in the aggregate of the original subcontracted amount, shall necessitate the submission of updated information as required in Paragraph (1) of this Subsection.

(3) The primary contractor for each contract subject to the provisions of this Section shall be notified of the requirements of this Section by the contracting state agency. Such notification shall be made no later than ten days after June 29, 2006, for contracts which are currently in effect. Otherwise, the notification shall be made prior to execution of the contract.

C. The Office of Facility Planning and Control shall maintain a listing or registry of all information reported to it pursuant to the provisions of this Section.

D. Failure to submit all of the information required as provided in Subsection B of this Section shall be grounds for debarment. It shall be unlawful for any person to intentionally fail to submit such information, which failure is hereby deemed to be a violation of the duty to provide the mandatory information. Whoever violates such provisions of Subsection B of this Section shall be fined in an amount not to exceed one-half of the contract amount and imprisoned for not more than six months, or both.

E. The provisions of this Section shall not be subject to suspension pursuant to the authority granted to the governor by R.S. 29:721 et seq., the Louisiana Homeland Security and Emergency Assistance and Disaster Act.

Acts 2006, No. 726, §1, eff. June 29, 2006.

§2183. *Repealed by Acts 1991, No. 1044, §2.*

§2184. Preference given to supplies, material, or equipment produced or offered by Louisiana citizens

All public entities shall, in making purchase of supplies, material, or equipment, give preference to supplies, material, or equipment produced or offered by Louisiana citizens, the cost to the public entity and the quality being equal.

Acts 1991, No. 1044, §1.

§§2184.1-2187. *Repealed by Acts 1991, No. 1044, §2.*

§2188. Mandamus to compel performance of contract

A. In the event that any person shall contract with any public entity with reference to the paving, grading, repairing, reconstructing, or care of any street, highway, bridge, culvert, levee, canal, ditch, or crossing, and shall fail or neglect to perform the contract, the public entity, any officer, or any five taxpayers thereof, may proceed by a writ of mandamus to compel the performance of the contract, or any part of the contract. The writ of mandamus shall be made returnable in five days, shall be tried by preference over all other cases, without a jury, in vacation as well as in term time, and in case of appeal shall be tried by preference in the appellate court.

B. In case any person shall fail or neglect to comply satisfactorily with any judgment against it in such a proceeding within the time fixed by the court which shall be a period within which the work can be reasonably done, the court, on contradictory motion and proof taken in the same case, shall issue a writ of distringas against the person, order the sheriff to do the work required to be done, and to apply the revenues and property of the person to defray the expenses incurred in executing the judgment of the court.

Acts 1991, No. 1044, §1.

§2189. Prescription

Any action against the contractor on the contract or on the bond, or against the contractor or the surety or both on the bond furnished by the contractor, all in connection with the construction, alteration, or repair of any public works let by the state or any of its agencies, boards or subdivisions

shall prescribe 5 years from the substantial completion, as defined in R.S. 38:2241.1, or acceptance of such work, whichever occurs first, or of notice of default of the contractor unless otherwise limited in this Chapter.

Added by Acts 1962, No. 15, §1. Amended by Acts 1975, No. 250, §1.

§2189.1. Prescription; claims by contractors; surety

Any action by the contractor on the contract or on the bond, or by the contractor or the surety or both on the bond furnished by the contractor, against the state, or any of its agencies, boards or subdivisions, all in connection with the construction, alteration, or repair of any public works let by the state or any of its agencies, boards, or subdivisions, shall prescribe five years from the completion, the substantial completion, as defined in R.S. 38:2241.1, or acceptance of such work, whichever occurs first, or of notice of default of the contractor or other termination of the contract, unless otherwise limited in this Chapter. Any action which would be extinguished by the provisions of this Section may be brought within one year of the effective day of this Section.

Added by Acts 1982, No. 544, §1.

§2190. Architects and engineers prohibited under certain circumstances from owning substantial interest in organizations furnishing materials for construction of public work

A. Architects and engineers are prohibited from owning a substantial financial interest, either directly or indirectly, in any corporation, firm, partnership, or other organization which supplies materials for the construction of a public work when the architect or engineer has performed architectural or engineering services, either directly or indirectly, in connection with the public work for which the materials are being supplied.

B. For the purposes of this Section, a "substantial financial interest" shall exclude any interest in stock being traded on the American Stock Exchange or the New York Stock Exchange.

C. Whoever violates the provisions of Subsection A, shall be guilty of a misdemeanor and shall be fined not more than an amount equal to the total value of the materials involved in the violation of Subsection A of this Section, or not more than ten thousand dollars, whichever is greater, or imprisoned for not more than six months, or both.

Acts 1991, No. 1044, §1.

§2191. Payments under contract

A. All public entities shall promptly pay all obligations arising under public contracts when the obligations become due and payable under the contract. All progressive stage payments and final payments shall be paid when they respectively become due and payable under the contract.

B. Any public entity failing to make any final payments after formal final acceptance and within forty-five days following receipt of a clear lien certificate by the public entity shall be liable for reasonable attorney fees.

C. The provisions of this Section shall not be subject to waiver by contract.

D. Any public entity failing to make any progressive stage payments arbitrarily or without reasonable cause, or any final payment when due as provided in this Section, shall be subject to mandamus to compel the payment of the sums due under the contract up to the amount of the appropriation made for the award and execution of the contract.

Acts 1991, No. 1044, §1; Acts 2011, No. 184, §1.

§2192. Certain contract amendments and revisions; recordation

Each amendment or other revision to any service or insurance contract which adds an amount of ten percent or more of the original contract amount and which additional amount is at least ten thousand dollars or all amendments and other revisions to any service or insurance contract aggregating to an amount of twenty percent or more of the original contract amount and which additional amount is at least ten thousand dollars shall be recorded by the public entity which entered into the contract in the office of the recorder of mortgages in the parish where the public entity is domiciled not later than thirty days after the date of the amendment or other revision which requires that the recordation take place. In addition, the original contract shall be recorded together with the amendments or other revisions if not previously recorded.

Acts 2011, No. 343, §2.

§2193. Prohibited donation, loan or pledge of public credit or property; suits to invalidate contracts violative thereof

A. In any case in which the legislative auditor, by virtue of any audit conducted by him or on his behalf or filed with him, has reason to believe that any contract of the state or any political subdivision may violate the provisions of Article VII, Section 14 of the Louisiana Constitution of 1974, he shall submit the pertinent facts thereof to the attorney general, and in any case in which the legislature, or any of its members has reason to believe that any contract of the state or any political subdivision may violate the provisions of Article VII, Section 14, the legislature or the member thereof, as the case may be, shall submit the pertinent facts to the attorney general. Upon submission of such pertinent facts by the legislative auditor, the legislature, or its members, the attorney general shall institute a civil proceeding to invalidate the contract, if in his opinion such a proceeding is necessary for the assertion or protection of any right or interest of the state or political subdivision within the intendment of Article VII, Section 14 of the Louisiana Constitution of 1974. If in his opinion such a proceeding is not necessary, he shall submit in writing such opinion and his reasons therefor to the official or body which submitted such facts to him.

B. Additionally, the attorney general on his own initiative shall institute a civil proceeding to invalidate any contract of the state or a political subdivision, if in his opinion such a proceeding is necessary for the assertion or protection of any right or interest of the state or political subdivision within the intendment of Article VII, Section 14 of the Louisiana Constitution of 1974.

Added by Acts 1980, No. 797, §1.

§2194. Exemptions

Notwithstanding any provision of law to the contrary, the provisions of this Chapter shall not apply to purchases of natural gas by political subdivisions.

Acts 1987, No. 793, §1, eff. July 17, 1987.

§2195. Prohibited provisions

A. It is hereby declared that any provision contained in a public contract, other than a provision naming another as a co-insured or additional beneficiary in a contract of insurance, which requires a public entity to assume liability for damages arising out of injuries or property damage to the contracting parties or to third parties caused by the negligence of anyone other than the public body, its employees, or agents, is contrary to the public policy of the state of Louisiana. Any and all such provisions in any and all public contracts issued on or after October 1, 1988, are null and void.

B. The provisions of this Section shall be inapplicable with respect to intrastate intergovernmental contracts and to contracts with private providers for the placement and care of persons in the custody of the state.

C. The provisions of this Section shall not apply to contracts between any public entity and the owner of immovable property when the purpose of such contract is to grant the public entity a servitude, right of way, or other authority to go upon, construct works, perform activities, or otherwise exercise control over or use the owner's property.

Acts 1991, No. 734, §1; Acts 1991, No. 1044, §1.

§2196. Public contracts; certain provisions invalid

A. The legislature finds that, with respect to public contracts involving the state or a political subdivision of the state, when the work is to be done in this state, or the services are to be provided or the materials are to be supplied in this state, provisions in such agreements requiring disputes arising thereunder to be resolved in a forum outside of this state or requiring their interpretation to be governed by the laws of another jurisdiction are inequitable and against the public policy of this state.

B. The legislature hereby declares null and void and unenforceable as against public policy any provision in a public contract, as described in Subsection A, which requires either of the following:

- (1) That a suit or arbitration proceeding must be brought in a forum or jurisdiction outside of this state, instead of being pursued in accordance with the laws of this state governing such actions.
- (2) That the agreement must be interpreted according to the laws of another jurisdiction.

C. The provisions of this Section apply to public contracts, as described in Subsection A, entered into on or after June 5, 1992.

D. The governing authority of the state or a political subdivision may waive the prohibition of enforceability provision of this Section and comply with such contractual provisions upon a determination that to do so would be in the best interest of the state or political subdivision.

Acts 1992, No. 75, §1, eff. June 5, 1992.

§2196.1. *Repealed by Acts 2011, No. 343, §5.*

PART II. LETTING CONTRACTS

§2211. Definitions

A. As used in this Chapter unless the context clearly indicates otherwise, the following terms shall mean:

(1) "Bidding documents" means the bid notice, plans and specifications, bidding form, bidding instructions, addenda, special provisions, and all other written instruments prepared by or on behalf of a public entity for use by prospective bidders on a public contract.

(2) "Change order" means an alteration, deviation, addition, or omission as to a preexisting public work contract.

(3) "Change order outside the scope of the contract" means a change order which alters the nature of the thing to be constructed or which is not an integral part of the project objective.

(4) "Change order within the scope of the contract" means a change order which does not alter the nature of the thing to be constructed and which is an integral part of the project objective.

(5) "Contractor" means any person or other legal entity who enters into a public contract.

(6)(a) "Emergency" means an unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury or as the result of an order from any judicial body to take any immediate action which requires construction or repairs absent compliance with the formalities of this Part, where the mischance or court order will not admit of the delay incident to advertising as provided in this Part. In regard to a municipally owned public utility, an emergency shall be deemed to exist and the public entity may negotiate as provided by R.S. 38:2212(D) for the purchase of fuel for the generation of its electric power where the public entity has first advertised for bids as provided by this Part but has failed to receive more than one bid.

(b) An "extreme public emergency" means a catastrophic event which causes the loss of ability to obtain a quorum of the members necessary to certify the emergency prior to making the expenditure to acquire materials or supplies or to make repairs necessary for the protection of life, property, or continued function of the public entity.

(7) "Licensed design professional" means the architect, landscape architect, or engineer who shall have the primary responsibility for the total design services performed in connection with a public works project. Such professional shall be licensed as appropriate and shall be registered under the laws of the state of Louisiana.

(8)(a) "Louisiana resident contractor" for the purposes of this Section, includes any person, partnership, association, corporation, or other legal entity and is defined as one that either:

(i) Is an individual who has been a resident of Louisiana for two years or more immediately prior to bidding on work,

(ii) Is any partnership, association, corporation, or other legal entity whose majority interest is owned by and controlled by residents of Louisiana, or

(iii) For two years prior to bidding has maintained a valid Louisiana contractor's license and has operated a permanent facility in the state of Louisiana and has not had a change in ownership or control throughout those two years.

(b) For the purposes of Item (7)(a)(ii), ownership percentages shall be determined on the basis of:

(i) In the case of corporations, all common and preferred stock, whether voting or nonvoting, and all bonds, debentures, warrants, or other instruments convertible into common and/or preferred stock.

(ii) In the case of partnerships, capital accounts together with any and all other capital advances, loans, bonds, debentures, whether or not convertible into capital accounts.

(9) "Negotiate" means the process of making purchases and entering into contracts without formal advertising and public bidding with the intention of obtaining the best price and terms possible under the circumstances.

(10) "Public contract" or "contract" means any contract awarded by any public entity for the making of any public works or for the purchase of any materials or supplies.

(11) "Public entity" means and includes the state of Louisiana, or 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 in 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. "Public entity" shall not include a public body or officer where

the particular transaction of the public body or officer is governed by the provisions of the model procurement code.

(12) "Public work" means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

(13) "Written" or "in writing" means the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

B. Unless clearly indicated otherwise, compliance with this Part required of any public entity shall be done by the governing authority of such public entity if it has a governing authority.

Acts 1977, No. 103, §1. Amended by Acts 1979, No. 795, §1; Acts 1984, No. 894, §1; SCR No. 10, 1988 1st Ex. Sess.; Acts 1991, No. 1043, §1, eff. July 26, 1991; Acts 1995, No. 538, §1; Acts 1997, No. 120, §1; Acts 2003, No. 828, §1; Acts 2003, No. 831, §1; Acts 2011, No. 134, §1, eff. June 24, 2011; Acts 2012, No. 655, §1.

§2212. Advertisement and letting to lowest responsible bidder; public work; electronic bidding; participation in mentor-protégé program; exemptions

A.(1)(a) All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised, and no such public work shall be done except as provided in this Part.

(b)(i) The provisions and requirement of this Section, those stated in the advertisement for bids, and those required on the bid form shall not be waived by any entity.

(ii)(aa) The division of administration, office of facility planning and control, shall develop and prescribe through the promulgation of rules and regulations in accordance with the Administrative Procedure Act the bid form necessary to obtain the information and to implement the sections of the bid form provided for in this Item to be utilized for the public bid of public works projects. The bid form developed shall require only the information necessary to determine the lowest bidder and the following sections and information: Bid Security or Bid Bond, Acknowledgment of Addenda, Base Bid, Alternates, Signature of Bidder, Name, Title, and Address of Bidder, Name of Firm or Joint Venture, Corporate Resolution, and Louisiana Contractors License Number, and on public works projects where unit prices are utilized, a section on the bid form where the unit price utilized in the bid shall be set forth; however, unit prices shall not be utilized for the construction of building projects, unless the unit price is incorporated into the base bid.

(bb) Other documentation and information required including but not limited to the low bidder's attestation pursuant to R.S. 38:2212.10 and 2227 shall be furnished by the low bidder within ten days after the bid opening. The ten-day period shall not be altered or waived by any public entity except the governing authority of any publicly owned commercial aviation airport, the Sewerage and Water Board of New Orleans, and all agencies of the City of New Orleans, including but not limited to the Regional Transit Authority and the New Orleans Aviation Board, who shall require that the other documentation and information referred to in this Subitem be furnished by the two lowest bidders three days after the bid opening.

(cc) Notwithstanding any other provision of law to the contrary, all bidders shall submit all bid forms required by statute or by the Louisiana Administrative Code to the governing authority of East Baton Rouge Parish prior to the opening of all bids relative to a contract for public works.

(iii) The provisions of this Subparagraph shall not apply to bid forms of the Department of Transportation and Development pursuant to Title 48 of the Louisiana Revised Statutes of 1950.

(c)(i) Evidence of agency, corporate, or partnership authority shall be required for submission of a bid to the division of administration or the state of Louisiana. The authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the following conditions are met:

(aa) The signature on the bid is that of any corporate officer listed on the most current annual report on file with the secretary of state, or the signature on the bid is that of any member of a partnership or partnership in commendam listed in the most current partnership records on file with the secretary of state.

(bb) The signature on the bid is that of an authorized representative of the corporation, partnership, or other legal entity and the bid is accompanied by a corporate resolution, certification as to the corporate principal, or other documents indicating authority which are acceptable to the public entity.

(cc) The corporation, partnership, or other legal entity has filed in the appropriate records of the secretary of state in which the public entity is located, an affidavit, resolution, or other acknowledged or authentic document indicating the names of all parties authorized to submit bids for public contracts. Such document on file with the secretary of state shall remain in effect and shall be binding upon the principal until specifically rescinded and canceled from the records of the office.

(ii) Except as provided in Subparagraph (f) of this Paragraph, each bid shall be either hand delivered by the bidder or his agent in which instance the deliverer shall be handed a written receipt, or such bid shall be sent by registered or certified mail with a return receipt requested. However, the requirement that all bids be sent by registered or certified mail shall not apply to bids received by municipal and parochial governing authorities. No public entity shall accept or take any bids, including receiving any hand delivered bids, on days which are recognized as holidays by the United States Postal Service. The Department of Transportation and Development and facility planning and control section under the division of administration shall keep on file a list of all states which have passed a bid preference law.

(d) The term "contract limit" as used herein shall be equal to the sum of one hundred fifty thousand dollars per project, including labor, materials, and equipment as per the rates in the latest edition of the Associated Equipment Dealers Rental Rate Book and administrative overhead not to exceed fifteen percent; however:

(i) When the Department of Public Safety and Corrections intends to use inmates as labor in connection with projects which occur on the grounds or to the buildings, structures, or facilities located on the grounds of prisons or correctional institutions, the term contract limit shall be fifty thousand dollars per project, for the calendar year 1982 and for each succeeding calendar year, shall be increased by a factor equal to three percent per year for each of the next ten calendar years.

(ii) *Repealed by Acts 2011, 1st Ex. Sess., No. 5, §2.*

(iii) Beginning September 1, 2005, when the Bossier Parish Police Jury intends to undertake a public works project with its own employees, the term "contract limit" shall be equal to the sum of one hundred thirty thousand dollars. Additionally, the police jury may adjust the contract limit provided for in this Item each year by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year. If the contract limit is increased, the Bossier Parish Police Jury shall publish the new contract limit for public works contracts in its official journal in February of each year.

(iv) *Repealed by Acts 2007, No. 336, §2, eff. July 31, 2008.*

(v)(aa) The annual limit by a public entity for any work to restore or rehabilitate a levee that is not maintained with federal funds, including mitigation on public lands owned by the state or a political subdivision, shall not exceed the sum of one million dollars, including labor, materials, and equipment, which is not publicly bid, as per the rates in the latest edition of the Associated Equipment Distributors Rental Rate Book, and administrative overhead not to exceed fifteen percent; provided that the work is undertaken by the public entity with its own resources and employees, or with the resources and employees of another public entity through a cooperative endeavor or other agreement with such entity.

(bb) The provisions of this Item shall remain effective until December 31, 2018.

(e)(i) Each public entity advertising and letting for bid a public works contract under the provisions of this Section shall furnish all prime bidders who request bid documents and who are properly licensed by the Louisiana State Licensing Board for Contractors with at least one set of complete bid documents. The public entity may require a deposit on the bid documents; however, the total cost of the deposit, including handling fees and other costs shall not exceed twice the actual cost of reproduction. Deposits on the first set of documents furnished bona fide prime bidders will be fully refunded upon return of the documents no later than ten days after receipt of bids. On other sets of documents furnished to bidders the deposit less actual cost of reproduction, will be refunded upon return of the documents no later than ten days after receipt of bids. Where the public entity, itself, prepares and distributes the contract documents, the public entity may, in lieu of a deposit, charge a fee for the documents, which shall not exceed the actual cost of reproduction.

(ii) Where the Sewerage and Water Board of New Orleans, itself, prepares and distributes electronic contract documents, the Sewerage and Water Board of New Orleans may, in lieu of a deposit, charge a fee for each paper document, which shall not exceed the actual cost of reproduction.

(f)(i) Contractors shall be provided the option to submit bids for public contracts through a uniform and secure electronic interactive system. Political subdivisions shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of information technology as provided for in LAC 4:XV.701, and shall make the appropriate provisions necessary for the acceptance of electronic bids for all purchases requiring competitive bidding as required by this Section. Any special condition or requirement for the submission shall be specified in the advertisement for bids required by this Section.

(ii) Public entities that are currently without available high speed Internet access will be exempt from this requirement until such time that high speed Internet access becomes available.

(iii) Any parish with a police jury form of government and a population of less than twenty thousand shall be exempt from the provisions of this Subparagraph.

(iv) Any city or municipality with a population of less than ten thousand shall be exempt from the provisions of this Subparagraph.

(v) Any special service district created by a police jury form of government and which is unable to comply with R.S. 38:2212(A)(1)(f)(i) without securing and expending additional funding shall be exempt from its requirements. The special service district shall be exempted from any expenditures for high-speed Internet access, software, personnel costs, training, or other office equipment directly relating to the receipt of bids via high-speed Internet access.

(vi) Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.

(vii) Public entities must include all bid documents as defined in R.S. 38:2211(A)(1), on the electronic website accepting the electronic bids.

(g) *Repealed by Acts 1999, No. 768, §2.*

(2) The bid specification may contemplate a fixed escalation or de-escalation in accordance with the United States Bureau of Labor Statistic's Consumer Price Index and/or Wholesale Price Index. Bids based on specifications which are subject to a recognized escalation index shall be legal and valid.

(3)(a) The advertisement required by this Section for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality, and the first advertisement shall appear at least twenty-five days before the opening of bids. In addition to the newspaper advertisement, a public entity may also publish an advertisement by electronic media available to the general public.

(b) The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until twenty-four hours before the bid opening date.

(c)(i) If at the end of the contract document phase, it is determined that the designer's estimate is more than the funds budgeted by the public entity for the project, the project shall not be advertised for bid. The designer's estimate shall be read aloud upon opening bids.

(ii) The bid form shall contain Bid Security or Bid Bond, Acknowledgment of Addenda, Base Bid, Alternates, Signature of Bidder, Name, Title, and Address of Bidder, Name of Firm or Joint Venture Corporate Resolution, and Louisiana Contractors License Number, and on public works projects where unit prices are utilized, their inclusion in the bid form; however, unit prices shall not be utilized for the construction of building projects, unless the unit price is incorporated into the base bid. Other documentation required shall be furnished by the low bidder within ten days after the bid opening. The governing authority of any publicly owned commercial aviation airport, the Sewerage and Water Board of New Orleans, and all agencies of the City of New Orleans, including but not limited to the Regional Transit Authority and the New Orleans Aviation Board shall require that the other documentation referred to above shall be furnished by the two lowest bidders three days after the bid opening. The division of administration, office of facility planning and control, shall develop and prescribe the necessary bid form for public works projects for public bid purposes and implement the provisions of this Section of the bid form in accordance with the Administrative Procedure Act.

(iii) The provisions of this Subparagraph shall not apply to bid forms of the Department of Transportation and Development pursuant to Title 48 of the Louisiana Revised Statutes of 1950.

(d)(i) When a design professional or public entity mandates attendance by bidders at pre-bid conferences as a prerequisite to bid, the date, place, and time of the pre-bid conference shall be stated in the first advertisement notice.

(ii) All prospective bidders in the orphan well plug and abandonment program within the Louisiana Department of Natural Resources shall be present at the beginning of the pre-bid conference and shall remain in attendance for the duration of the conference. Any prospective bidder who fails to attend the conference or remain for the duration shall be prohibited from submitting a bid for the project.

(e) Any proposal shall include no more than three alternates. An alternate bid by any name is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity shall reserve the right to accept alternates in any order which does not affect determination of the low bidder.

(f) Use of allowances in proposals shall be restricted to minor items and shall be limited to hardware, face brick, landscaping, electric light fixtures, and carpeting. Allowances may not be utilized by the design professional or public entity to control the selection of a subcontractor or supplier.

(g)(i) No construction manager or any other third-party consultant employed by a public entity may manage a construction project as a general contractor or act in the role of the general contractor to oversee, direct, or coordinate individual trade contractors on behalf of the public entity, or accept bids or itself bid on the public work or components of the public work with respect to which the manager or consultant is employed or contracted to manage or consult.

(ii) The provisions of Item (i) of this Subparagraph shall not apply to the initial construction of a hospital, medical facility, or a combination of both, constructed by the Orleans Hospital Service District, but shall apply to the construction of any additions or modifications of a hospital, medical facility, or a combination of both, constructed by the Orleans Hospital Service District following the completion of the initial construction. The provisions of this Item shall not relieve the Orleans Hospital Service District from complying with all other applicable provisions of this Title.

(iii) All construction contracts on public works shall be opened in a public meeting. All subcontractors bidding on the project shall be invited to the meeting and the general contractor shall list in the bid documents who the subcontractors will be on the project.

(4) All public work contracts shall contain provisions authorizing the issuance of change orders within the scope of the contract.

(5) All change orders shall be in writing.

(6) Any change order outside the scope of the contract in excess of the contract limit as defined herein shall be let out for public bid as provided by this Part.

(7) Any change order pertaining to public work, not required by this Part to be put out for public bid, shall either be negotiated in the best interest of the public entity or let out for public bid as provided by this Part. Where the change order is negotiated, the public entity shall require that said change order be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit and overhead. Where certain unit prices are contained in the initial contract, no deviations shall be allowed in computing negotiated change order costs.

(8)(a) Notwithstanding any other law to the contrary and in addition to any other requirements provided for in this Subsection, the Acknowledgment of Addenda of the bid form provided for in R.S. 38:2212(A)(1)(b)(ii) for the public bid of public works projects conducted by the New Orleans Sewerage and Water Board shall also include attachment of the addenda if pricing information is contained therein and the addenda specifies attachment.

(b) Notwithstanding any other law to the contrary and in addition to any other requirements provided for in this Subsection, the Acknowledgment of Addenda of the bid form for public works projects conducted by the New Orleans Sewerage and Water Board shall also include attachment of the addenda if pricing information is contained therein and the addenda specifies attachment.

B. Those contracts let by any public entity for public works estimated to cost in excess of the contract limit shall be advertised and let by contract to the lowest responsible bidder. Public works which are estimated to cost less than the contract limit may be undertaken by the public entity with its own employees.

C.(1) Except as provided by Paragraph (2) of this Subsection, the public entity may, through the issuance of an addendum, extend the bid period for up to thirty days, without the requirement of readvertising as provided by Subsection A of this Section.

(2)(a) If a public entity issues or causes to be issued on a public work exceeding the contract limit any addendum modifying plans and specifications within a period of seven days prior to the advertised time, or the time extended as provided for in this Section, for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays, then the public entity shall transmit a copy of the addendum to all prime bidders who have requested bid documents pursuant to Subparagraph (A)(1)(e). This shall be completed within twenty-four hours of the issuance of the addendum and may be delivered by either facsimile transmission, e-mail, other electronic means, or by hand, provided the prime bidder has supplied the facsimile transmission number or e-mail address to the public entity. In addition to the transmission required in this Paragraph, a copy of the addendum shall be sent by regular mail to all prime bidders who have requested bid documents pursuant to Subparagraph (A)(1)(e) of this Section. If the addendum cannot be transmitted by facsimile transmission, e-mail, or other electronic means, or otherwise effected by hand delivery, the public entity shall postpone the bid opening by at least seven days.

(b) No public entity shall issue or cause to be issued any addenda modifying plans and specifications within a period of seventy-two hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying plans and specifications within the seventy-two-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least seven but not more than twenty-one working days, without the requirement of readvertising as provided by Subsection A of this Section. The addendum shall state the revised time and date for the opening of bids.

D.(1)(a) This Section shall not apply in cases of public emergency where such emergency has been certified to by the public entity and notice of such public emergency shall, within ten days thereof, be published in the official journal of the public entity proposing or declaring such public emergency.

(b)(i) This Section shall not apply in the event that an extreme public emergency occurs.

(ii) The president of the police jury, the president of the parish council, the mayor of the municipality, or a person designated to act on behalf of the governing authority of any other political subdivision, shall declare that an extreme emergency exists and shall cause such declaration to be published in the official journal within ten days or as soon as practicable thereafter.

(c) This Section shall not apply with respect to repairs administered by the office of facility planning and control for addressing damage caused by Hurricanes Katrina and Rita. However, the office of facility planning and control shall not be allowed to negotiate such projects, but shall be required to publicly advertise such projects in the official journal of the locality of the project and in the state's official journal. Public bids may be taken in a minimum of ten days after advertisement of such projects. However, if there are no bidders for such projects, the office of facility planning and control may enter into competitive bidding negotiations with no fewer than two contractors.

(2) Limitations. (a) Every contract negotiated by a public entity under the authority of this Subsection shall be supported by a written determination and findings by the public entity justifying use of the authority. (b) When contract action under this authority is taken pursuant to telephone or other oral offers, a written confirmation of the accepted offer shall be obtained and made a part of the contract case file. In addition, whenever contract action is taken as authorized by this Subsection, a record shall be established by the public entity which shall contain, as a minimum, the following information with respect to each offer: a description of the work to be performed, the name and address of each offeror quoting, and the performance time and terms of each offer. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded and made a part of the contract case file. Such records shall be retained for a minimum of six years following the purchase or completion of the public work.

(3) Notwithstanding any other law to the contrary, for the project to enclose approximately five hundred feet of Corporation Canal that runs adjacent to the University Laboratory School on the Baton Rouge campus, which has been funded as an emergency through appropriation of funds by the Interim Emergency Board to Louisiana State University, East Baton Rouge Parish shall be authorized to assist in the project through use of its own employees to undertake such project.

E.(1) A publicly owned utility may undertake a public works project, other than construction of a building, for the contract limit or less by either of the following methods:

- (a) Entry into contracts with or without public bid.
- (b) Use of the employees of the public entity owning the utility.

(2) Such public entities are herein prohibited from owning or operating manufacturing plants whereby such public entities manufacture construction materials. Any such facilities owned or operated prior to September 11, 1981, are excluded from these provisions.

(3) The provisions of this Section shall not prevent public entities from using their regular maintenance employees for labor necessary in the maintenance, construction, or extension of publicly owned and operated electric public utilities. With respect to the construction or extension of all other public utilities, the provisions of this Section shall not prevent public entities from using their regular maintenance employees when the cost of the work per project does not exceed one hundred thousand dollars, including labor and materials. All purchases of materials or supplies exceeding the sum provided for in Subsection A of this Section shall be let by public bid as provided in this Part.

F.(1) Whenever a public entity desires to purchase technical equipment, apparatus, machinery, materials, or supplies of a certain type and such purchases are clearly in the public interest, the public entity may specify a particular brand, make, or manufacturer in the specifications let out for public bid as provided by this Part. If a particular brand, make, or manufacturer is specified, the model or catalog number also shall be specified.

(2) Wherever in specifications the name of a certain brand, make, manufacturer, or definite specification is utilized, the specifications shall state clearly that they are used only to denote the quality standard of product 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 product desired; and that equivalent products will be acceptable. It shall be the responsibility of the professionally employed architect or engineer to determine what is considered an equivalent product on any and all projects in which he has been legally employed to perform his professional services.

G. Notwithstanding the provisions of Subsection M of this Section relative to the financing of public works contracts by a contractor, public entities are hereby authorized to enter into professional maintenance contracts for the repair and maintenance of water storage tanks owned, controlled, or operated by a public entity for a fixed annual fee. Such contracts shall extend for a duration of not less than two years. Any such contract entered into by a public entity shall include a nonappropriation clause and shall not be considered a debt of the public entity. Such a professional maintenance contract shall not be considered a public works contract.

H. Under no circumstances shall there be a division or separation of any public work project into smaller projects which division or separation would have the effect of avoiding the requirement that public work be advertised and let by contract to the lowest responsible bidder as provided in this Section.

I.(1) This Section shall not apply to labor necessary for the maintenance of public works built and completed.

(2) Volunteer citizen labor used for the construction of a project which is funded by the Louisiana Community Development Block Grant Louisiana Small Town Environment Program shall not be subject to the requirements of this Section. However, the value of the donated volunteer service shall not be used as a component of any bid if the public work has to be bid or to determine which is the lowest responsible bid.

J. If the public entity letting the contract proposes to disqualify any bidder, on grounds that such bidder is not a "responsible bidder" such public entity 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 the opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the disqualification.

K, L. *Repealed by Acts 1999, No. 768, §2.*

M. No public entity shall enter into a contract for the purpose of public works with a contractor who then finances the project. Under no circumstances shall the agreement of a contractor to finance a public works project be used in any way to avoid the requirement that public work be advertised and let by contract to the lowest responsible bidder as provided in this Section.

N. *Repealed by Acts 1999, No. 768, §2.*

O. Whenever evidence of agency, corporate, or partnership authority is required for submission of a bid to a public entity, such fact shall be contained in the bid documents and such proof shall be provided in accordance with the provisions of this Section. The authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the following conditions are met:

(1) The signature on the bid is that of any corporate officer listed on the most current annual report on file with the secretary of state, or the signature on the bid is that of any member of a partnership or partnership in commendam listed in the most current partnership records on file with the secretary of state.

(2) The signature on the bid is that of an authorized representative of the corporation, partnership, or other legal entity and the bid is accompanied by a corporate resolution, certification as to the corporate principal, or other documents indicating authority which are acceptable to the public entity.

(3) The corporation, partnership, or other legal entity has filed in the appropriate records of the secretary of state or the clerk of court of the parish in which the public entity is located, an affidavit, resolution, or other acknowledged or authentic document indicating the names of all parties authorized to submit bids for public contracts. Such document on file with the secretary of state or the clerk of court shall remain in effect and shall be binding upon the principal until specifically rescinded and canceled from the records of the respective offices.

P, Q. *Repealed by Acts 1999, No. 768, §2.*

R.(1) In the bid selection process for any contract for a public work or for all purchases of materials and supplies exceeding the sum of fifteen thousand dollars to be paid out of public funds under the provisions of this Chapter, any public entity may include bid selection provisions in bid documents relative to participation in a mentor-protégé program as provided by R.S. 51:1753.1.

(2) In determination of compensation, the agency may provide for additional incentives for mentor-protégé participants for any contract which provides incentives for work performed or

deliveries completed ahead of schedule. Incentives for mentor-protégé participants shall be not less than five percent greater than incentives awarded to persons who are not participants in the program.

(3) Advertisements for bids must specify bid selection and incentive provisions for mentor-protégé participation.

(4) Political subdivisions may participate in the mentor-protégé program as provided by R.S. 51:1753.1 or may adopt a program to provide for incentives in the bid selection process or incentives for participation.

S. The provisions of this Section shall not apply to purchases of materials and supplies by contractors awarded public works contracts by a public entity; or to subcontractors of said contractors, who have been appointed or designated agents for the purchase of materials and supplies to be incorporated into a public work pursuant to a contract properly bid in accordance with this Chapter when acting pursuant to said appointment or designation.

Acts 2001, No. 346, §1; Acts 2001, No. 1106, §1, eff. June 28, 2001; Acts 2001, No. 1114, §1, eff. June 28, 2001; Acts 2002, 1st Ex. Sess., No. 120, §1; Acts 2003, No. 348, §1, eff. July 1, 2003; Acts 2003, No. 524, §1, eff. June 22, 2003; Acts 2003, No. 828, §1; Acts 2003, No. 831, §1; Acts 2003, No. 958, §1; Acts 2004, No. 445, §1; Acts 2004, No. 458, §1, eff. June 24, 2004; Acts 2004, No. 522, §1, eff. June 25, 2004; Acts 2005, No. 44, §1; Acts 2006, No. 102, §1, eff. May 31, 2006; Acts 2006, No. 203, §1, eff. June 2, 2006; Acts 2006, No. 362, §1, eff. June 13, 2006, and §2, eff. July 31, 2007; Acts 2006, No. 652, §1, eff. June 29, 2006; Acts 2007, No. 336, §1, eff. July 31, 2007; Acts 2007, No. 336, §2, eff. July 31, 2008; Acts 2007, No. 373, §1, eff. July 10, 2007; Acts 2008, No. 117, §2; Acts 2008, No. 220, §11, eff. June 14, 2008; Acts 2008, No. 230, §1, eff. June 17, 2008; Acts 2008, No. 590, §1, eff. Jan. 1, 2009; Acts 2008, No. 726, §1; Acts 2008, No. 727, §1; Acts 2009, No. 161, §1; Acts 2009, No. 174, §1, eff. June 29, 2009; Acts 2009, No. 227, §1; Acts 2010, No. 1011, §1, eff. July 8, 2010; Acts 2011, 1st Ex. Sess., No. 5, §2; Acts 2011, No. 81, §1; Acts 2011, No. 281, §1; Acts 2011, No. 338, §1, eff. June 29, 2011; Acts 2012, No. 493, §1; Acts 2012, No. 823, §1; Acts 2013, No. 63, §1, eff. Jan. 1, 2014; Acts 2013, No. 125, §1, eff. June 5, 2013; Acts 2013, No. 364, §1, eff. June 17, 2013.

§2212.1. Advertisement and letting to lowest responsible bidder; materials and supplies; exemptions

A.(1)(a) All purchases of any materials or supplies exceeding the sum of thirty thousand dollars to be paid out of public funds shall be advertised and let by contract to the lowest responsible bidder who has bid according to the specifications as advertised, and no such purchase shall be made except as provided in this Part.

(b) However, purchases of ten thousand dollars or more, but less than thirty thousand dollars, shall be made by obtaining not less than three telephone or facsimile quotations. A written confirmation of the accepted offer shall be obtained and made a part of the purchase file. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded in the purchase file.

(2)(a) Any purchase by a local governmental unit of a used or new motor vehicle for conversion into a law enforcement vehicle, which purchase cost does not exceed the sum of twenty thousand dollars, shall not be subject to the threshold delineated in Paragraph (1) of this Subsection. Written specifications, quotations, and confirmation of accepted offers for such purchase shall be obtained and made a part of the purchase file. However, any such purchase which sum is in excess of twenty thousand dollars shall be advertised and let for bid under the procedures outlined by the provisions of this Section.

(b) Any purchase by a local government unit of road maintenance or improvement equipment, which purchase cost does not exceed the sum of twenty-five thousand dollars, shall not be subject to the threshold delineated in Paragraph (1) of this Subsection. Written specification, quotations, and confirmation of accepted offers for such purchase shall be obtained and made a part of the purchase file. However, any such purchase which sum is in excess of twenty-five thousand dollars shall be advertised and let for bid under the procedures outlined by the provisions of this Section.

B.(1) The advertisement required by this Section for any contract for materials or supplies shall be published two times in a newspaper in the locality, the first advertisement to appear at least fifteen days before the opening of the bids. In addition to the newspaper advertisement, a public entity may also publish an advertisement by electronic media available to the general public.

(2) The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until twenty-four hours before the bid opening date.

(3) Any proposal shall include no more than three alternates. An alternate bid by any name is still an alternate. Alternates, if accepted, shall be accepted in the order in which they are listed on the bid form. Determination of the low bidder shall be on the basis of the sum of the base bid and any alternates accepted. However, the public entity may accept alternates in any order which does not affect determination of the low bidder.

(4)(a) Contractors shall be provided the option to submit bids for public contracts through a uniform and secure electronic interactive system. Political subdivisions shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of information technology as provided for in LAC 4:XV.701, and shall make the appropriate provisions necessary for the acceptance of electronic bids for all purchases requiring competitive bidding as required by this Section. Any special condition or requirement for the submission shall be specified in the advertisement for bids required by this Section.

(b) Public entities that are currently without available high speed Internet access will be exempt from this requirement until such time that high speed Internet access becomes available.

(c) Any parish with a police jury form of government and a population of less than twenty thousand shall be exempt from the provisions of this Subparagraph.

(d) Any city or municipality with a population of less than ten thousand shall be exempt from the provisions of this Subparagraph.

(e) Any special service district created by a police jury form of government and which is unable to comply with R.S. 38:2212.1(B)(4)(a) without securing and expending additional funding shall be exempt from its requirements. The special service district shall be exempted from any expenditures for high-speed Internet access, software, personnel costs, training, or other office equipment directly relating to the receipt of bids via high-speed Internet access.

(f) Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.

C.(1) Whenever a public entity desires to purchase technical equipment, apparatus, machinery, materials, or supplies of a certain type and such purchases are clearly in the public interest, the public entity may specify a particular brand, make, or manufacturer in the specifications let out for public bid as provided by this Part. If a particular brand, make, or manufacturer is specified, the model or catalog number also shall be specified.

(2) Wherever in specifications the name of a certain brand, make, manufacturer, or definite specification is utilized, the specifications shall state clearly that they are used only to denote the quality standard of product 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 product desired; and that equivalent products will be acceptable.

D. The provisions of this Section shall not apply to a public entity purchasing surplus materials and supplies from another public entity or the government of the United States or when the particular transaction is governed by the procurement code.

E. Any public entity may procure materials, supplies, and equipment from federal General Services Administration supply schedules in compliance with the Federal Acquisitions Streamlining

Act (Public Law 103-355) and regulations adopted pursuant to that law, and with rules and regulations which may be adopted by the central purchasing agency of the division of administration. Such purchases need not comply with the competitive bidding requirements of this Chapter. However, such materials, supplies, or equipment shall not be purchased at a price higher than the price of the same item listed on any available state purchasing contract. No use shall be made of federal General Services Administration supply schedules under the provisions of this Section without the participation of a Louisiana licensed dealer or distributor.

F. Any public entity may purchase materials, supplies, and equipment pursuant to the cooperative purchasing provisions of Part VII of Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, R.S. 39:1701 et seq.

G.(1) Notwithstanding any provision of this Part, any hospital owned or operated by a hospital service district, a municipality, the state, or any other public entity may enter into an agreement with one or more qualified group purchasing organizations for the purpose of obtaining bids for the purchase of materials and supplies. Any such agreement shall provide that the qualified group purchasing organization shall submit a price list for those materials and supplies offered by it, and shall further provide that the prices quoted on the list shall remain in effect for a stated period of time not less than three months. Any such price list shall thereafter be considered for all purposes to be a valid and binding bid by the qualified group purchasing organization during the effective period of the agreement, and no additional bid by the qualified group purchasing organization shall be necessary.

(2) Any price lists submitted by a qualified group purchasing organization shall not be a public record and shall not be available for public inspection. The agreement setting forth the existence of the price list and the effective date thereof shall, however, be a public record, and that portion of the price list setting forth the price of the materials or supplies being purchased shall become a public record at the time of opening of bids for those materials or supplies.

(3) As used in this Section, "qualified group purchasing organization" shall mean an organization, whether for profit or not for profit, which has contracts for the sale of materials or supplies with at least fifteen hospitals within the United States.

(4) A hospital owned by the state may purchase equipment from a qualified group purchasing organization if the price is less than that for the same or comparable equipment on the state bid list. For that equipment not contained on the state bid list, the Department of Health and Hospitals shall, pursuant to the Administrative Procedure Act, promulgate rules containing a mechanism for determining that the purchase of the equipment through a qualified group without bidding is cost effective and is in the best interest of the state. Until said rules become effective, no equipment not contained on the state bid list shall be purchased from qualified group purchasing organizations without complying with all other applicable laws.

H. The commissioners, governing board, or governing authority of any hospital owned or operated by a hospital service district, a public trust, any municipality, or any other public entity may authorize by resolution, and the secretary of the Department of Health and Hospitals for any hospital owned or operated by the state, may authorize the participation in, or the purchasing from, a qualified group purchasing organization for the purchase of supplies and materials, without complying with this Section or any other applicable provision of law when it appears to any such authority or said secretary that participation would affect the economic situation or efficiency of operations of the hospital in a positive manner. A positive effect on the economic situation or efficiency of operations shall be presumed when the total price of items to be purchased from the qualified group purchasing organization is less than the total price of those items if purchased from the state bid list.

I.(1) Whenever a political subdivision enters into an estimated use or delivery contract for a perishable food item, the political subdivision shall be prohibited from awarding another estimated

use contract for the same perishable food item without first having taken delivery of at least seventy-five percent of the perishable food item under the existing contract.

(2) "Perishable food items" as used in this Subsection shall mean consumable food items which have a shelf life of less than six months.

(3) Sheriffs and other political subdivisions which operate jails in the various parishes of the state shall be required to purchase food wholesale at the lowest prices quoted for quality products or at prices no greater than the wholesale rate for the same item.

J. The opening of bids shall be governed by the provisions of R.S. 38:2214.

K. The purchase of materials or supplies in the case of an extreme public emergency shall be governed by the provisions of R.S. 38:2212(D).

L. The public entity purchasing the materials or supplies may require a written contract or bond as provided in R.S. 38:2216(B).

M. Purchases made by a public safety agency following the guidelines and restrictions established pursuant to the expenditure of federal grant dollars shall be made by obtaining not less than three telephone or facsimile quotations.

Acts 1999, No. 768, §1; Acts 2002, 1st Ex. Sess., No. 120, §1; Acts 2003, No. 84, §1, eff. May 28, 2003; Acts 2003, No. 575, §1, eff. June 27, 2003; Acts 2006, No. 203, §1, eff. June 2, 2006; Acts 2008, No. 590, §1, eff. Jan. 1, 2009; Acts 2009, No. 227, §1; Acts 2009, No. 392, §1; Acts 2011, No. 81, §1.

§2212.2. Demolition of state buildings

A. No building or structure owned by the state of Louisiana, except highways, bridges, and railroads, may be razed, demolished, or otherwise disposed of unless all members of the legislature representing the district in which the state-owned building is located are notified by the division of administration at the initiation of the approval process that a request by any agency for such demolition has been received by that office or that office has determined that the approval process for such demolition shall be initiated, and until authority for such disposition has been approved in writing by the director of the office of facility planning and control, division of administration. Except as provided in Subsection C of this Section, in no case shall a request for such authority be approved before thirty days after legislative notification. The request for authority to raze or demolish any building or structure as described shall be in compliance with procedures adopted and promulgated by the division of administration. Such requests shall be accompanied by a resolution or other authorization of the agency, board, commission, or other governing authority.

B. The provisions of this Section shall not apply to buildings acquired with the right-of-way for construction or improvement of state highways.

C. The director of the office of facility planning and control, division of administration, may approve a request to raze or demolish any building or structure immediately after legislative notification in situations where a building or structure has been damaged as a result of fire, hurricane, or natural disaster and imminent danger is presented to life or property, as determined by the office of facility planning and control.

Added by Acts 1982, No. 537, §1. Redesignated by Acts 1999, No. 768, §3; Acts 2006, No. 13, §1, eff. May 4, 2006.

§2212.3. Right to reject bids from Communist countries

In awarding contracts for materials and supplies, any public entity is authorized to reject the lowest bid if received from a bidder domiciled in a Communist country, or if the materials or supplies are manufactured in a Communist country, including but not limited to the Soviet Union, China, North Korea, and Vietnam, and to award the contract to the next lowest bidder, provided this

Section shall not apply to any country having established trade relations agreements or approvals from the government of the United States.

Acts 1985, No. 922, §1. Redesignated by Acts 1999, No. 768, §3.

§2212.4. Purchase of materials, supplies, vehicles, or equipment from public trusts

A. The intent of this Section is to provide an alternate cost effective means of acquisition of materials, supplies, vehicles, or equipment for the efficient operation of public entities by allowing public entities to pool their acquisition needs and acquire in bulk transactions through a public trust which may also provide financing for such purchases at tax exempt rates. The legislature finds that bulk purchases of materials, supplies, vehicles, and equipment when combined with tax exempt financing can result in reduced costs to public entities.

B. Notwithstanding any provision of law to the contrary, the provisions of R.S. 38:2212 shall not apply to public entities acquiring through a purchase contract or lease/purchase contract, materials, supplies, vehicles, or equipment from a public trust organized pursuant to state law and having as its beneficiary the state. The acquisition of materials, supplies, vehicles, or equipment by the public trust shall be in accordance with the provisions of the Public Bid Law (Chapter 10 of Title 38 of the Louisiana Revised Statutes of 1950), at the direction and on behalf of a public entity, and shall be pursuant to a plan of financing offered to a public entity by the public trust. Any such plan of financing offered to a public entity by the public trust shall be subject to the approval of the State Bond Commission.

C. The acquisition of materials, supplies, vehicles, or equipment made by the public trust under the provisions of this Section shall be exempt from state and local sales and use taxes. However, if the public entity on whose behalf the acquisition is made would have been exempt from state and local sales and use taxes upon a direct acquisition, such taxes shall not apply to the purchase made by the public entity from the public trust.

D. Nothing contained in this Section shall be construed as a restriction or limitation upon any powers which any public entity might otherwise have under any laws of this state. This Section shall be regarded as supplemental and additional to powers conferred by other laws.

Acts 1989, No. 780, §1, eff. July 9, 1989. Redesignated by Acts 1999, No. 768, §3.

§2212.5. Prequalified bidders

Except for construction or repair of roads and bridges and those contractors providing materials and supplies for construction or repair of roads and bridges, the division of administration may prequalify bidders for historic restoration projects funded by the state. The division of administration shall promulgate rules and regulations setting forth procedures for such prequalification. Historic restoration projects as used herein means repairs, renovations, or reconstruction of state-owned structures which are listed on the National Register of Historic Places or state-owned structures which are eligible for inclusion on the National Register and shall also include the renovation of the Louisiana State University Student Union on the Baton Rouge campus, which has been acknowledged as a Nationally Recognized Architectural Building that is recognized by the American Institute of Architects as having received an Honor Award from the Gulf States Region. After the division of administration has prequalified such bidders, only prequalified bidders may submit bids on those designated projects, and the contracts on those designated projects shall be awarded to the prequalified bidder submitting the lowest responsible bid, which bid for the renovation project of the Louisiana State University Student Union on the Baton Rouge campus only may be for overhead and profit or lump sum. Prior to the execution of the contract for the renovation

project of the Louisiana State University Student Union on the Baton Rouge campus, it shall be submitted to the Joint Legislative Committee on the Budget for review and approval.

Acts 1991, No. 1040, §1, eff. July 26, 1991. Redesignated by Acts 1999, No. 768, §3; Acts 2005, No. 178, §1, eff. June 28, 2005.

§2212.6. Purchase of materials and supplies for homeland security

Notwithstanding any other provision of law to the contrary, any public procurement unit may procure materials, supplies, equipment, and services related to homeland security from federal General Services Administration supply schedules. Such purchases shall:

- (1) Utilize a Louisiana distributor.
- (2) Use the competitive ordering procedures of the federal General Services Administration.
- (3) Receive prior approval from the director of the Governor's Office of Homeland Security and Emergency Preparedness¹, or his designee.

Acts 2003, No. 575, §1, eff. June 27, 2003; Acts 2006, 1st Ex. Sess., No. 35, §8, eff. March 1, 2006.

¹*See Acts 2006, 1st Ex. Sess., No. 35, §8, which changes the term "State Office of Homeland Security and Emergency Preparedness" to "Governor's Office of Homeland Security and Emergency Preparedness" and §10, which provides for the termination of the Act and the reversion to the law in effect prior to the Act on July 1, 2010.*

§2212.7. Limitations on consultants competing for contracts

A. Any person contracting with an agency for the purposes of developing bidding documents, requests for proposals, or any other type of solicitation related to a specific procurement shall be prohibited from bidding, proposing, or otherwise competing for award of that procurement. Such persons shall further be prohibited from participating as subcontractors related to the award of that procurement.

B. For the purposes of this Section, the following activities shall not be considered "developing bidding documents, requests for proposals, or any other type of solicitation":

- (1) Architectural and engineering programming.
- (2) Master planning.
- (3) Budgeting.
- (4) Feasibility analysis.
- (5) Constructability review.
- (6) Furnishing specification data or other product information.
- (7) Any other services that do not establish selection qualifications or evaluation criteria for the procurement of an architect or engineer.

Acts 2008, No. 598, §1, eff. July 1, 2008; Acts 2009, No. 433, §1.

§2212.8. Prohibition of bids from or contracts with unlicensed dealers

A. A public entity shall not accept any bid from or enter into any contract or cooperative endeavor agreement, or any other transaction for the procurement of vehicles, with a dealer who does not possess a valid dealer's license issued under the provisions of R.S. 32:1254.

B. A public entity shall require that any bid submitted by, or a contract or cooperative endeavor agreement with, a dealer for the purchase of vehicles shall include a copy of a valid dealer's license issued under the provisions of R.S. 32:1254.

C. A public entity shall reject any bid submitted by a dealer for the purchase of vehicles which does not include a copy of a valid dealer license.

D. A public entity shall not sign a contract or cooperative endeavor agreement with a dealer for the purchase of vehicles which does not include a copy of a valid dealer license.

E. If in the course of an audit or review by the legislative auditor, pursuant to the powers and duties in R.S. 24:513, a violation of this Section is found, the legislative auditor shall report such findings to the Louisiana Motor Vehicle Commission.

Acts 2010, No. 376, §1.

§2212.9. Right to prohibit awards or procurement with individuals convicted of certain felony crimes

A. In awarding contracts, 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 public contracts under the provisions of Chapter 10 of this Title, professional, personal, consulting, and social services procurement under the provisions of Chapter 16 of Title 39 of the Louisiana Revised Statutes of 1950, or the Louisiana Procurement Code under the provisions of Chapter 17 of Title 39 of the Louisiana Revised Statutes of 1950.

B. Nothing in this Section shall impose a duty, responsibility, or requirement on a public entity to perform criminal background checks on contractors, vendors, or subcontractors. It shall be the responsibility of any person, company, or entity making an allegation of prior convictions on the part of any individual with an ownership interest of five percent or more in any bidder to present prima facie evidence to the public entity supporting their claim.

C. If evidence is submitted substantiating that any 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 under the laws listed in Subsection A of this Section 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.

Acts 2010, No. 864, §1.

§2212.10. Verification of employees involved in contracts for public works

A.(1) The legislature finds that when illegal immigrants are living in this state and are encouraged to reside here through the benefit of employment without verification of immigration status, the result is that the enforcement of federal immigration law is impeded and obstructed, the security of the nation's borders is undermined, and the privileges and immunities of the citizens of Louisiana are impermissibly restricted.

(2) The legislature further finds that it is a compelling public interest of this state to discourage illegal immigration by requiring employers who do business with the state of Louisiana to cooperate fully with federal immigration authorities in the enforcement of federal immigration law.

B. For the purposes of this Section, the following terms shall mean:

(1) "Legal alien" is a person who is or was lawfully present or permanently residing legally in the United States and allowed to work at the time of employment and remains so throughout the duration of that employment.

(2) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324(a), and operated by the United States Department of Homeland Security, known as the "E-Verify" program.

C. A private employer shall not bid on or otherwise contract with a public entity for the physical performance of services within the state of Louisiana unless the private employer verifies in a sworn affidavit attesting to both of the following:

(1) The private employer is registered and participates in a status verification system to verify that all employees in the state of Louisiana are legal citizens of the United States or are legal aliens.

(2) The private employer shall continue, during the term of the contract, to utilize a status verification system to verify the legal status of all new employees in the state of Louisiana.

(3) The private employer shall require all subcontractors to submit to the employer a sworn affidavit verifying compliance with Paragraphs (1) and (2) of this Subsection.

D.(1) Any private employer violating the provisions of this Section may be subject to cancellation of any public contract, resulting in ineligibility for any public contract for a period of not more than three years from the date the violation is discovered.

(2) Any private employer shall be liable for any additional costs incurred by a public entity, occasioned by the cancellation of a contract or loss of any license or permit to do business in the state, as provided in this Subsection.

(3) Any private employer penalized in accordance with this Section shall have the right to appeal to the appropriate agency, department, or other public entity sanctioning the employer or to a court of competent jurisdiction.

(4) Any person, contractor, or employer who complies with the provisions of this Section shall not be civilly or criminally liable under state law for either hiring or retaining in its employ an unauthorized alien, as defined by 8 U.S.C. 1324a(h)(3), if the information obtained in accordance with the status verification system indicated that the employee's federal legal status allowed the employer to hire that employee.

(5) Any person, contractor, or employer who complies with the provisions of this Section shall not be civilly or criminally liable under state law for a refusal to either hire or retain an individual in its employ if the information obtained in accordance with the status verification system indicated that the individual's federal legal status was that of an unauthorized alien, as defined in 8 U.S.C. 1324a(h)(3).

(6) No person, contractor, or employer shall be penalized under the provisions of this Section for the actions of a subcontractor unless such person, contractor, or employer had actual knowledge of such subcontractor's failure to comply with the provisions of this Section.

E. The provisions of this Section shall apply only to contracts entered into or bids offered on or after January 1, 2012.

F. The provisions of this Section shall apply only to contracts for public works. For purposes of this Section, "public works" means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.

G. In the event the status verification system expires and extensions are not approved by the federal government, the provisions of this Section shall no longer apply.

Acts 2011, No. 376, §1; Acts 2012, No. 142, §1.

§2213. Purchase and sale of land by public bodies; disclosure of names of appointed or elected officials with pecuniary interest prior to transaction; voting by members of body with pecuniary interest prohibited

A. Each public entity shall enter in the official record of the proceedings of such entity at least seven days prior to the purchase or sale of any land by it, the names of any person known by such entity to be:

(1) An elected official of the state or any of its political subdivisions and having a pecuniary interest in the purchase or sale of such land; or

(2) An appointed official or employee of the public entity making the purchase or sale and having a pecuniary interest in the purchase or sale of the land.

B. For purchases of this Section, "pecuniary interest" shall mean any interest in the consideration paid for the land. Provided, however, ownership of five percent or less of the capital stock of a partnership or limited partnership, shall not constitute "pecuniary interest" for purposes of this Section when the owner of such shares does not participate in any activity pertaining to the purchase or sale of the land.

C. Every elected or appointed official, as defined in this Section, having a pecuniary interest in the purchase or sale of such land and knowing that he has a pecuniary interest shall notify the participating public entity concerning the extent of his pecuniary interest at least five days before the date of the purchase or sale.

D. Any elected or appointed official, as defined in this Section, who has the power to vote on the decision whether to make such a purchase or sale of land, and who has a pecuniary interest in the purchase or sale of such land shall be prohibited from voting on the transaction. Voting on the sale or purchase of property by an elected or appointed official in violation of this Subsection shall constitute malfeasance in office.

E. For the purposes of this Section, the purchase of land through expropriation proceeding shall not be construed as a purchase on which an elected or appointed official is prohibited from voting, if his only pecuniary interest is in the title to the property.

F. For purposes of this Section, the purchase or sale of land shall include, but not be limited to, the purchase or sale of mineral rights, timber rights, and the letting, or acquiring of a leasehold interest, or any other interest in land.

G. The provisions of this Section shall not be construed in any way as affecting the provisions of R.S. 42:1111 et seq. relative to governmental ethics, or R.S. 47:2178 et seq. relative to sales of tax adjudicated lands; nor shall the provisions of this Section, or the failure to comply with them, be construed as affecting the merchantability of the title of the subject land.

Acts 1977, No. 103, §1.

§2214. Designation of time and place for opening bids; right to reject bids

A. The public entity desiring to let a public contract shall, in the advertisement for bids, designate the time and place that the bids will be received and shall at that time and place publicly open the bids and read them aloud; however, no public entity shall accept or take any bids, including receiving any hand-delivered bids, on days which are recognized as holidays by the United States Postal Service.

B. The public entity may reject any and all bids for just cause. Just cause for the purpose of the construction of public works is defined, but is not limited to the following circumstances:

(1) The public entity's unavailability of funds sufficient for the construction of the proposed public work.

(2) The failure of any bidder to submit a bid within an established threshold of the preconstruction estimates for that public work, as part of the bid specifications.

(3) A substantial change by the public entity prior to the award in the scope or design of the proposed public work.

(4) A determination by the public entity not to build the proposed public work within twelve months of the date for the public opening and reading of bids.

(5) The disqualification by the public entity of all bidders.

C. Bids containing patently obvious, unintentional, and substantial mechanical, clerical, or mathematical errors, or errors of unintentional omission of a substantial quantity of work, labor, material, or services made directly in the compilation of the bid, may be withdrawn by the contractor if clear and convincing sworn, written evidence of such errors is furnished to the public entity within forty-eight hours of the bid opening excluding Saturdays, Sundays, and legal holidays. Such errors must be clearly shown by objective evidence drawn from inspection of the original work papers, documents, or materials used in the preparation of the bid sought to be withdrawn. If the public entity determines that the error is a patently obvious mechanical, clerical, or mathematical error, or unintentional omission of a substantial quantity of work, labor, material, or services, as opposed to a judgment error, and that the bid was submitted in good faith it shall accept the withdrawal and return the bid security to the contractor.

D.(1) A contractor who attempts to withdraw a bid under the provisions of this Section shall not be allowed to resubmit a bid on the project. If the bid withdrawn is the lowest bid, the next lowest bid may be accepted. If all bids are rejected no withdrawal of the bid which would result in the award of the contract on another bid of the same bidder, his partner, or to a corporation or business venture owned by or in which he has an interest shall be permitted. No bidder who is permitted to withdraw a bid shall supply any material or labor to, or perform any subcontract work agreement for, any person to whom a contract or subcontract is awarded in the performance of the contract for which the withdrawn bid was submitted.

(2) Whoever violates the provisions of the foregoing sentence shall be imprisoned for not more than six months, or fined not more than two thousand dollars, or both.

Acts 1991, No. 1043, §1, eff. July 26, 1991; Acts 1995, No. 484, §1; Acts 2010, No. 625, §1.

§2215. Time period for holding bids; issuance of work orders to commence work; exceptions

A. The state or any state agency upon receipt of bids for the undertaking of any public works contract shall act within thirty calendar days of such receipt to award said contract to the lowest responsible bidder or reject all bids. A political subdivision upon receipt of bids for the undertaking of any public works contract shall act within forty-five calendar days of such receipt to award said contract to the lowest responsible bidder or reject all bids. However, the public entity and the lowest responsible bidder, by mutually written consent, may agree to extend the deadline for award by one or more extensions of thirty calendar days.

B. The provisions of this Section shall not be applicable when the contract is to be financed by bonds which are required to be sold after receipt of bids on the contract, or when the contract is to be financed in whole or in part by federal or other funds which will not be readily available at the time bids are received, or on contracts which require a poll of the legislature of Louisiana before funds are available to fund the contract. In the event the time limit stipulated herein is not applicable because of one of the exceptions outlined above, this fact shall be mentioned in the specifications for the project and in the official advertisement for bids required in accordance with R.S. 38:2212.

C. If the contractor has provided all necessary documents to the public entity within ten days of the opening of bids and no bid challenge has been submitted to the public entity, the contractor

and public entity shall execute the contract not later than forty-five days from the public entity's acceptance of the lowest responsible bid.

D. Upon the execution of the contract, the public entity, within thirty days thereafter, shall issue to the contractor a notice to proceed with the project. However, upon mutual consent by both parties, the notice to proceed may be extended.

E. These provisions shall not be subject to waiver.

Acts 1991, No. 1043, §1, eff. July 26, 1991; Acts 1997, No. 1031, §1; Acts 2012, No. 647, §1, eff. July 1, 2012.

§2216. Written contract and bond

A.(1) When any bid is accepted for the construction or doing of any public works, a written contract shall be entered into by the successful bidder and the public entity letting the contract, and the party to whom the contract is awarded shall furnish good and solvent bond in an amount not less than one-half of the amount of the contract, for the faithful performance of his duties.

(2) *Repealed by Acts 2001, No. 138, §1, eff. July 1, 2001.*

B. When any bid is accepted for the purchase of materials or supplies, the public entity purchasing the materials or supplies may require that a written contract be entered into between the successful bidder and the public entity and further, the public entity may require that the successful bidder shall furnish good and solvent bond in an amount not less than one-half of the amount of the contract, for the faithful performance of his duties. Any such requirements shall be incorporated in the specifications and advertisement.

C.(1) On public contracts of two hundred thousand dollars or less, small businesses, as defined by the Department of Economic Development, shall only be required to furnish one-half the amount of bond, as called for in the bid, as provided in Subsections A and B, and by meeting the qualifications specified in Subsection D hereof.

(2)(a) For purposes of this Subsection, "responsible bidder" shall mean a contractor or subcontractor who has an established business and who has demonstrated the capability to provide goods and services in accordance with the terms of the contract, plan, and specifications without excessive delays, extensions, cost overruns, or changes for which the contractor or subcontractor was held to be responsible, and who does not have a documented record of past projects resulting in arbitration or litigation in which such contractor or subcontractor was found to be at fault.

(b) A responsible bidder shall have a negotiable net worth, or shall be underwritten by an entity with a negotiable net worth, which is equal to or exceeds in value the total cost amount of the public contract as provided in the bid submitted by such bidder. All property comprising the negotiable net worth shall be pledged and otherwise unencumbered throughout the duration of the contract period.

D. In order to qualify for the one-half bond requirements set forth in Paragraph (C)(1) hereof, a bidder shall have the following characteristics:

(1) Qualifies as a small business, as certified by the Department of Economic Development.

(2) Is a responsible bidder in accordance with Paragraph (C)(2) hereof.

(3) Has been certified by the director of the Department of Economic Development to be in compliance with the criteria set forth by the Department of Economic Development.

(4) Has been operating as the same business for a continuous period of at least three years.

(5) Has been denied guaranteed bond by the Small Business Administration or denied a performance bond by an established security firm as required under the provisions of Subsections A(1) and B of this Section, for reasons other than the applicant has a previous history of performance default.

E. In the event the responsible bidder, though meeting the requirements of Subsection D of this Section, is unable to secure the performance bond required under Paragraph (C)(1) of this Section, the responsible bidder shall pay a fee equal to the cost of a Small Business Administration guaranteed bond, as provided for under the provisions of Paragraph (C)(1) of this Section. All such fees shall be paid into the state treasury by the commissioner of administration and shall be credited to the Bond Security and Redemption Fund.

F. The provisions of Subsections C, D, and E of this Section shall be administered by the Department of Economic Development which shall promulgate all rules and regulations necessary for their effectuation.

G. It is hereby declared that any provision contained in a public contract, other than a contract of insurance, providing for a hold harmless or indemnity agreement, or both,

(1) From the contractor to the public body for damages arising out of injuries or property damage to third parties caused by the negligence of the public body, its employees, or agents, or,

(2) From the contractor to any architect, landscape architect, engineer, or land surveyor engaged by the public body for such damages caused by the negligence of such architect, landscape architect, engineer, or land surveyor is contrary to the public policy of the state, and any and all such provisions in any and all contracts are null and void.

H. Any provision contained in a public contract which purports to waive, release, or extinguish the rights of a contractor to recover cost of damages, or obtain equitable adjustment, for delays in performing such contract, if such delay is caused in whole, or in part, by acts or omissions within the control of the contracting public entity or persons acting on behalf thereof, is against public policy and is void or unenforceable. When a contract contains a provision which is void and unenforceable under this Subsection, that provision shall be severed from the other provisions of the contract and the fact that the provision is void and unenforceable shall not affect the other provisions of the contract.

I.(1) On public contracts of fifty thousand dollars or less, a performance bond as required by this Section may be waived by the public entity for a contractor or subcontractor who:

(a) Meets the definition and requirements of a "responsible bidder" as set forth in Paragraph C(2) of this Section.

(b) Has been operating as the same business for a continuous period of at least three years.

(c) Has been denied a performance bond by an established security firm, for reasons other than that the applicant has a previous history of performance default.

(d) Provides an irrevocable letter of credit, property bond, or other authorized form of security that is acceptable to the public entity and is in an amount of not less than the amount of the contract, for the faithful performance of his duties.

(2) The public entity may adopt rules and regulations in accordance with law to effectuate the provisions of this Subsection.

J. The provisions of this Section shall not be subject to waiver by contract.

K. The performance bond described by this Section shall inure solely to the benefit of the obligee named therein and his successors or assigns, and no other person shall have any right of action based thereon.

L.(1) There shall be no provision contained in a contract for public works which requires a contractor to reimburse a design professional for additional costs incurred by any design professional for inspections of the contracted project which occur outside of normal working hours.

(2) Notwithstanding the provisions of Paragraph (1) of this Subsection, in Jefferson Parish and in the city of New Orleans, the parish or municipality may require a contractor to pay for the additional costs incurred by a parish or municipality with respect to inspections of the contracted project provided the additional costs for inspections are above the budgeted amount for the contracted project, and further provided that the specifications or bidding documents include the average hourly rate to be charged for inspection and specify a reasonable budget for such inspections.

M. Any term, provision, or condition of any contract for public works which is contrary to or in violation of the provisions of the Public Bid Law, Chapter 10 of this Title, is against public policy and shall be invalid and unenforceable. When a contract contains a provision which is invalid and unenforceable under this Subsection, that provision shall be severed from the other provisions of the contract and the fact that the provision is void and unenforceable shall not affect the other provisions of the contract.

Acts 1977, No. 103, §1. Amended by Acts 1979, No. 389, §1; Acts 1980, No. 683, §1, eff. July 24, 1980; Acts 1981, No. 878, §1; Acts 1982, No. 251, §1; Acts 1982, No. 597, §1; Acts 1985, No. 667, §1; Acts 1986, No. 888, §1; Acts 1989, No. 13, §1; Acts 1989, No. 333, §1, eff. June 27, 1989; Acts 1989, No. 831, §1; Acts 1990, No. 304, §1; Acts 1995, No. 477, §1; Acts 1997, No. 1150, §1; Acts 1999, No. 744, §1; Acts 2001, No. 138, §1, eff. July 1, 2001; Acts 2003, No. 742, §1, eff. June 27, 2003; Acts 2011, 1st Ex. Sess., No. 5, §1; Acts 2012, No. 834, §8, July 1, 2012.

§2217. Independent arbitration; judicial review; evidence

In all public building, construction or other contracts which do not provide the right to independent arbitration with both parties having equal authority in selection of the arbitrator or arbitrators, the right of each party to such contract to judicial review of and redress for any action, determination or interpretation made under or with respect to such contract shall not be denied. In any such judicial action, no prior nonjudicial decision, determination or interpretation shall have any binding or conclusive or presumptive effect, nor shall there be any limitation upon the evidence which may be introduced in such action except the limitations arising out of the application of the rules of evidence applicable in courts of this state. The provisions of this Section may not be waived.

Acts 1977, No. 103, §1.

§2218. Evidence of good faith; countersigning

A. The public entity advertising for bids for work shall require the bidders to attach a certified check, cashier's check, or bid bond for not more than five percent of the contract price of work to be done, as an evidence of good faith of the bidder. The public entity advertising for bids for work may require the bidders to attach a certified check, cashier's check, or bid bond for not more than five percent of the estimated price of supplies or materials, as evidence of good faith of the bidder.

B. *Repealed by Acts 2001, No. 138, §1, eff. July 1, 2001.*

C. If bid bond is used, it shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to ten percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide or by an insurance company in good standing licensed to write bid bonds which is either domiciled in Louisiana or owned by Louisiana residents.

Acts 1977, No. 103, §1; Acts 1983, No. 105, §1; Acts 1990, No. 139, §1; Acts 1991, No. 748, §1, eff. July 18, 1991; Acts 1995, No. 718, §1, eff. June 21, 1995; Acts 2001, No. 138, §1, eff. July 1, 2001.

§2219. Procurement of surety bonds and insurance

A.(1)(a) Any surety bond written for a public works project shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an A- rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to ten percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide, or by an insurance company that is either domiciled in Louisiana or owned by Louisiana residents and is licensed to write surety bonds.

(b) For any public works project, no surety or insurance company shall write a bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an A- rating by A.M. Best up to a limit of ten percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the treasury list shall not write a bond when the penalty exceeds fifteen percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Department of Insurance.

(c) In addition, any surety bond written for a public works project shall be written by a surety or insurance company that is currently licensed to do business in the state of Louisiana.

(2) Notwithstanding Paragraph (1) of this Subsection, a surety bond for the faithful performance of a contractor on a public works project, the primary purpose of which is asbestos abatement, shall be deemed sufficient and acceptable under this Section if the surety thereon is an insurance company which is admitted to do business in Louisiana, provided all of the following conditions are met:

(a) The applicability of this Paragraph to the public entity for all such contracts has been specifically authorized:

(i) By the municipality or parish, through the adoption of an ordinance, after public hearing thereon, and with the written approval of the ordinance by its chief executive officer.

(ii) By any other public entity, through the adoption of a resolution, after public hearing thereon, together with the approval of the governing authority of the municipality as to public works projects located within the municipality, or the approval of the governing authority of the parish as to public works projects not located within a municipality, by resolution, after public hearing thereon, and with written approval of the chief executive officer of the municipality or parish.

(b) The contract is bid, let, and entered into on or prior to July 1, 1990.

(3) Notwithstanding any provision of law to the contrary, particularly the provisions of R.S. 33:4085, all contracts with the New Orleans Sewerage and Water Board for the purchase of goods and services, professional and nonprofessional, involving an amount less than one hundred thousand dollars shall not be subject to requirements for performance or surety bond. Any company or individual who defaults on performance of such a contract without bond and any individual or company having more than a fifty percent ownership interest in the defaulting company shall be prohibited from bidding on future contracts with the New Orleans Sewerage and Water Board for five years from the date of such default. Any company in which a defaulting company or individual has more than a fifty percent ownership interest shall also be prohibited from bidding on future contracts with the board for five years from the date of default.

B. No officer or employee of a public entity, or any person acting or purporting to act on behalf of any such officer or employee, shall with respect to any public building or construction contract or any other public contract, which is about to be, or which has been competitively bid, require the bidder to make application to or to procure any of the surety bonds or insurance specified by law or

in connection with such contracts, from a particular surety or insurance company, or through a particular agent or broker in any particular locality.

Acts 1977, No. 103, §1. Amended by Acts 1982, No. 761, §1; Acts 1986, No. 442, §1; Acts 1989, No. 734, §2, eff. July 8, 1989; Acts 1990, No. 314, §1; Acts 1990, No. 1086, §1; Acts 1994, 3rd Ex. Sess., No. 111, §2, eff. July 7, 1994; Acts 2005, No. 139, §1, eff. June 28, 2005.

§2220. Purchase or contract contrary to provisions of this Part void

A. Any purchase of materials or supplies, or any contract entered into for the construction of public works, contrary to the provisions of this Part shall be null and void.

B. The district attorney in whose district a violation of this Part occurs, the attorney general, or any interested party may bring suit in the district court through summary proceeding to enjoin the award of a contract or to seek other appropriate injunctive relief to prevent the award of a contract which would be in violation of this Part, or through ordinary proceeding to seek appropriate remedy to nullify a contract entered into in violation of this Part.

C. Where a judgment of nullity is rendered in any action brought by a district attorney or by the attorney general pursuant to Subsection B of this Section the district court may award a civil penalty not in excess of fifty thousand dollars against each offending member of the governing authority of the public entity who authorized the violation.

Acts 1977, No. 103, §1. Amended by Acts 1979, No. 795, §1; Acts 1990, No. 869, §1, eff. July 25, 1990.

§2220.1. Civil action for violations of this Part; legislative intent

It is the intent of the legislature in enacting R.S. 38:2220.1 through 2220.4 to authorize private citizens and other entities to institute a civil action against public entities to deter the construction of public works or the purchase of materials and supplies in violation of the provisions of R.S. 38:2211 et seq. The provisions of these Sections shall not be construed to eliminate or reduce any causes of action or other forms of relief provided by existing law, including but not limited to suits authorized by R.S. 38:2220.

Acts 1999, No. 1050, §1.

§2220.2. Violation of Public Bid Law; civil actions; requirements

A. Any person, association, corporation, or other business entity with direct knowledge of an alleged violation by a public entity of the provisions of R.S. 38:2212 et seq., may institute a civil action in district court against the public entity to seek a declaration that such violation has occurred. The procedure for the civil action shall comply with the provisions of this Section and R.S. 38:2220.3.

B. The civil action shall be well-grounded in fact and comply with the provisions of Code of Civil Procedure Article 863. An action based solely upon hearsay shall be deemed not to have complied with the provisions of Article 863. The information upon which the action is based shall be obtained independently and shall not be based upon any of the following:

(1) A disclosure of allegations or transactions in a criminal, civil, or administrative hearing or as the result of disclosure of a governmental audit report, investigation, or hearing, unless the person bringing the action has independent knowledge of the alleged violation.

(2) A disclosure through the news media, unless the person bringing the action has independent knowledge of the alleged violation.

C. Any action brought pursuant to the provisions of this Section shall be afforded preferential hearing by the court pursuant to summary proceeding provisions in Code of Civil Procedure Articles 2591 et seq.

Acts 1999, No. 1050, §1.

§2220.3. Procedures; notification to attorney general; requirements

A. Prior to initiation of the civil action, the complainant shall inform the attorney general of the alleged violation and all direct information he possesses regarding the alleged violation. The information shall be sent to the attorney general by certified mail, return receipt requested, within fifteen days from the date of discovery of the alleged violation by the complainant.

B. The attorney general may conduct an investigation or take other actions as deemed appropriate, including after investigation the institution of a civil action authorized in R.S. 38:2220.2.

C. If the attorney general does not initiate a civil action within thirty days from the date of receipt of information concerning the alleged violation, the complainant may initiate the civil action. The attorney general may thereafter intervene in the action as provided by law.

D. The attorney general shall maintain the confidentiality of all information provided to his office by the complainant. Notwithstanding any other provision of law to the contrary, the complaint and information sent to the attorney general shall not be subject to discovery or become public record until service of a civil action instituted under the provisions of this Section has been made upon a defendant.

Acts 1999, No. 1050, §1.

§2220.4. Order; recovery to plaintiff; protection from disciplinary action

A. The court shall enter an order declaring whether a violation of R.S. 38:2211 et seq. has occurred. The declaration shall have the force and effect of a final judgment or decree.

B.(1) The court shall also award to the principal plaintiff as determined by the court, if successful in his action, reasonable attorney fees. The court shall also award to any prevailing defendant costs and reasonable attorney fees. However, if the court finds fraud on behalf of a defendant, the award to the plaintiff shall be twice the amount of reasonable attorney fees.

(2) When the public entity has depended upon the written opinion of the attorney general that the action taken by the public entity would be in compliance with law, the public entity shall not be liable for the costs and attorney fees of the adverse party.

C. A person providing information to the attorney general or bringing a civil action under the provisions of R.S. 38:2220.2 and 2220.3 shall not be subject solely for such reason to dismissal, suspension, or any other form of disciplinary action by an employer, unless the civil action is found by the court to be frivolous.

Acts 1999, No. 1050, §1.

§2221. Cost-plus contracts prohibited; exceptions

A. Except as provided herein, no contract shall be let on a cost-plus basis.

B. Any hospital owned or operated by a hospital service district, a municipality, the state, or any other public entity may purchase materials and supplies through cost-plus contracts entered into with a qualified group purchasing organization, as defined in R.S. 38:2212(A)(1)(f)(iii), under the following circumstances:

(1) The wholesale price of the materials or supplies for which a cost-plus bid is submitted is listed in a regional or national periodic publication which is approved by the division of administration for that purpose. A regional or national periodic publication shall be considered approved by the division of administration on the thirty-first day after delivery of the regional or national periodic publication to the division of administration by hand or by certified mail, return receipt requested, if the publication is not disapproved by the division within thirty days after such delivery.

(2) The bid submitted by the qualified group purchasing organization uses the wholesale price of the item listed in the approved publication as the basis for cost.

(3) The actual price of the material or supply to the hospital under the cost-plus bid at the time of opening of the bid is used to determine which is the lowest responsible bid.

Acts 1989, No. 596, §1.

§2222. Change orders; recordation

Each change order to a public works contract or to a contract for materials and supplies which adds an amount of ten percent or more of the original contract amount and which additional amount is at least ten thousand dollars or all change orders to a contract aggregating to an amount of twenty percent or more of the original contract amount and which additional amount is at least ten thousand dollars shall be recorded by the public entity which entered into the contract in the office of the recorder of mortgages in the parish where the work is to be done or, if not a public work, where the entity is domiciled not later than thirty days after the date of the change order which requires that the recordation take place. In addition, the original contract shall be recorded together with the change orders if not previously recorded. The provisions of this Section shall not apply to the office of facility planning and control, and the office of state purchasing.

Acts 2011, No. 343, §2.

§2223. Issuance of work orders and commencement of work

A.(1) Whenever any public entity enters into a contract for the construction, alteration, or repair of any public work, the public entity through its official representatives shall, before the issuance of any work order and before the commencement of any work, give notice of such contract, in writing, to all utility, communication, and public service companies and all public agencies and boards who furnish any utility, gas, water, electrical, communication, sewerage, or drainage services which may have underground pipes, cables, or any other underground installation which may be within the right-of-way where the public work is to be constructed, altered, or repaired. Municipalities owning their own utilities are excluded from the provisions hereof. Said written notice shall require that the person, partnership, corporation, board, or agency so notified shall furnish to the public entity within a period of thirty days after receipt of notice, unless such time is extended by the public entity, a diagram or plat showing the location of such underground installations within the right-of-way, a copy of which shall be furnished by the public entity to the contractor before commencement of work under the contract. If such diagram or plat is not furnished within the time specified or any extension thereof granted by the public entity, the work order may be issued and the work commenced. As used in this Paragraph, "written" or "in writing" means the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

(2) Should the diagram or plat not be furnished or the location of the underground cables, pipes, or other underground installations be inaccurately shown thereon, the public entity and the contractor

shall be released from any responsibility in connection with their damage unless such damage is caused by the negligence of the public entity or contractor.

B. This Section shall not relieve any public entity or contractor from the responsibility to give notice of intent to excavate or demolish to the regional notification center or centers serving the area in which the proposed work is to take place in order to be in compliance with the provisions of the "Louisiana Underground Utilities and Facilities Damage Prevention Law" as provided for in R.S. 40:1749.11 through 1749.22.

Acts 1977, No. 103, §1; Acts 1995, No. 501, §1; Acts 2000, 1st Ex. Sess., No. 134, §1, eff. April 19, 2000.

§2224. Affidavit attesting that public contract was not secured through employment or payment of solicitor

A. All architects, landscape architects, engineers, contractors, subcontractors, or any person, corporation, firm, association, or other organization receiving value for services rendered in connection with a contract for the construction, alteration or demolition of a public building or project shall execute an affidavit attesting:

(1) That affiant employed no person, corporation, firm, association, or other organization, either directly or indirectly, to secure the public contract under which he received payment, other than persons regularly employed by the affiant whose services in connection with the construction, alteration or demolition of the public building or project or in securing the public contract were in the regular course of their duties for affiant; and

(2) That no part of the contract price received by affiant was paid or will be paid to any person, corporation, firm, association, or other organization for soliciting the contract, other than the payment of their normal compensation to persons regularly employed by the affiant whose services in connection with the construction, alteration or demolition of the public building or project were in the regular course of their duties for affiant.

B. No public contract shall be granted to any person, corporation, firm, association, or other organization refusing to execute the affidavit required by Subsection A above.

Acts 1977, No. 103, §1. Amended by Acts 1982, No. 713, §1.

§2225. Preference in letting contracts for public work

A. *Repealed by Acts 1984, No. 894, §3, eff. July 1, 1987.*

B. If a nonresident contractor bidding on public work in the state of Louisiana is domiciled in a state that provides a percentage preference in favor of contractors domiciled in that state over Louisiana resident contractors for the same type of work, then every Louisiana resident contractor shall be granted the same preference over contractors domiciled in the other state favoring contractors domiciled therein whenever the nonresident contractor bids on public work in Louisiana.

C. Any local law, either by legislative act or otherwise, ordinance, or executive order enacted prior to the effective date of this Act, or enacted hereinafter in conflict with this Section, or granting any local contractor or subcontractor preference over other Louisiana resident contractors shall be contrary to the provision of this Section.

D. The provisions and requirements of this Section shall not be waived by any public entity.

Acts 1983, No. 43, §1, eff. June 17, 1983. Acts 1984, No. 894, §2.

§2225.1. Contracts in which the state or political subdivision are participants; preferences; assistance; exclusions

A. When a participating state agency lets a contract for a public works project that is to be administered by or paid for, in whole or in part by state funds, the agency may require as a condition of letting the contract that not less than eighty percent of the persons employed in fulfilling that contract shall be residents of the state of Louisiana.

B.(1) When a participating political subdivision lets a contract for a public works project that is to be administered by or paid for, in whole or in part, by said political subdivision's funds, the governing authority of the political subdivision may require, as a condition of letting the contract, that not less than eighty percent of the persons employed in fulfilling that contract be residents of the state of Louisiana.

(2) In addition, when the governing authority of Calcasieu Parish may, upon a finding that there is substantial cause to counteract grave economic and social ills, require, as a condition of letting contracts for public works to be paid for solely with parish funds, that not less than fifty percent of the persons employed in fulfilling that contract be residents of Calcasieu Parish. Notwithstanding the provisions of this Paragraph, management personnel and persons whose skills are unavailable for performing the work may be excluded from the requirements of this Paragraph, as said governing authority may determine and provide for in the bid specifications.

C. The Louisiana Department of Labor, upon request of any state agency, the governing authority of a political subdivision, or a contractor awarded a contract under the provision of this Section, shall assist in identifying craftsmen, laborers, and any other personnel necessary to comply with the requirements of this Section.

D. Notwithstanding the provisions of this Section, management personnel, and persons whose skills are unavailable for performing the work, shall be excluded from the requirements of this Section.

Acts 1984, No. 361, §1; Acts 1989, No. 787, §1; Acts 1992, No. 447, §4, eff. June 20, 1992.

§2225.2. Design-build contracts

Neither the state nor any local entity, unless specifically authorized by law, may execute any agreement for the purchase of unimproved property which contains provisions related to the successful design and construction of a construction project prior to the transfer of title to the state or local entity.

Acts 2004, No. 361, §1, eff. June 21, 2004.

§2225.2.1. Design-build contracts; authorized use by certain public entities in areas damaged by Hurricane Katrina, Hurricane Rita, or both

A.(1) Notwithstanding any law to the contrary, the following public entities may use the design-build method in the construction or repair of any public building or structure which has been destroyed or damaged by Hurricane Katrina, Hurricane Rita, or both, or any public building or structure to be constructed or repaired to meet a homeland security or criminal justice need pursuant to a hurricane recovery plan: the division of administration, the Recovery School District, the Orleans Parish School Board, the city of New Orleans, the Sewerage and Water Board of New Orleans, sheriffs, housing authorities, and parish governments in Calcasieu, Cameron, Jefferson, Orleans, Plaquemines, St. Bernard, St. Tammany, and Vermilion parishes and the Port of New Orleans.

(2) Whenever the governing authority of the public entity resolves to construct or repair any public building or structure using the design-build method as authorized by Paragraph (1) of this

Subsection, it shall adopt a list of projects under which design-build contracts will be utilized; and adopt the selection process promulgated by the division of administration, office of facility planning and control, specifying the selection process for the awarding of a design-build contract in compliance with the provisions of this Section.

(3) For the purposes of this Section, "design-builder" means the entity contractually responsible for delivering the project design and construction.

(4) Except as provided in Paragraphs (5) and (6) of this Subsection, the authority to use the design-build method shall extend for six years from July 10, 2007, after which time only those projects that were contracted for prior to that date may proceed.

(5) The authority to use the design-build method shall extend for seven years from July 10, 2007, for the following schools, after which time only those projects that were contracted prior to that date may proceed:

- (a) Edna Karr High School.
- (b) G. W. Carver High School.
- (c) Martin Behrman High School.
- (d) Sherwood Forest Elementary School.
- (e) Paul B. Habans Elementary School.

(6) The authority to use the design-build method shall extend for eight years from July 10, 2007, for the Sewerage and Water Board of New Orleans, in a power plant not to exceed thirty million four hundred thousand dollars, after which time only those projects that were contracted prior to that date may proceed.

B. Every design-builder shall be duly licensed and registered to do business in the state of Louisiana as either an architect, an engineer, or a general contractor. Each design-builder shall have the following rights and powers:

(1) The design-builder may sublet responsibility for professional design services to an individual, firm, or corporation duly licensed and registered in the state of Louisiana to provide professional design services.

(2) The design-builder may sublet responsibility for construction or other services requiring a contractor's or trade subcontractor's license to persons or entities duly registered, licensed, or otherwise qualified to provide those services as required by law.

C. Prior to letting any such contract, the governing authority of the public entity shall adopt an ordinance adopting procedures promulgated by the division of administration, office of facility planning and control, establishing procedures for developing plans, specifications, qualifications, and other matters pertaining to procedures for advertising, reviewing and selecting design-builders, and letting such design-build contracts for public work as specified in Paragraph (A)(2) of this Section.

D. The procedures promulgated by the division of administration, office of facility planning and control, provided for in Subsection C of this Section shall include, at a minimum, the following provisions:

(1) Requirements that:

(a) All engineering and surveying firms providing design and design related services with the design-builder to which the design-build contract is awarded shall be licensed to perform these services by the Louisiana Professional Engineering and Land Surveying Board.

(b) All architectural firms providing design services with the design-builder to which the design-build contract is awarded shall be licensed to perform the services by the Louisiana Board of Architectural Examiners.

(c) All contractors performing construction work for the design-build program shall be licensed by the State Licensing Board for Contractors.

(2) A two stage selection process that will utilize a request for qualifications graded and judged by a primary evaluation committee and a request for technical proposals graded and judged by a separate technical review committee shall be used to select the design-builder and shall include the following specific provisions:

(a)(i) Public announcement procedures for solicitation of interested design-build competitors and a procedure for requesting letters of interest and statements of qualifications from qualified firms or teams.

(ii) Such public announcement procedures shall include a requirement for advertisement in the Daily Journal of Commerce, the Baton Rouge Advocate, the New Orleans Times-Picayune, the Shreveport Times, the Monroe News Star, the Lake Charles American Press and by appearance on the Internet home page of the political subdivision, if any.

(iii) All notices of intent to select design-build contractors shall be advertised a minimum of thirty days prior to the deadline for receipt of responses and shall contain a brief description of the project, the required scope of services, and sufficient information for design-build entities to determine their interest.

(b) These decisions shall be made on the basis of the criteria set forth in this Subsection. Members of the technical review committee shall not have served as members of the primary evaluation committee. Each member of the technical review committee shall score assigned elements. Such scores shall be considered public record.

(3) The public entity shall provide a request for a qualifications package to design-builders who submit a letter of interest. All required information shall be identified in the request for qualifications package and in the standard response forms. The response to a request for qualifications package shall include statements of qualification by credentials and experience of design component members for the areas of expertise specific to the project and statements of qualification by experience and resources of the construction team component. The completed response form and any other required information shall be transmitted by the responding design-builder by the deadline to submit such forms and information as provided in the request for qualifications package. Any response failing to meet all of the requirements contained in the request for qualifications package shall not be considered. False or misrepresented information furnished in response to a request for qualifications package shall be grounds for rejection.

(4)(a) A primary design-build evaluation committee shall evaluate the responses to the request for qualifications package received by the department. The following general criteria used by the primary evaluation committee in evaluating responses to the request for qualifications package for design-build services shall apply to both the design and construction components of any responding entity:

(i) Professional training and experience of both the design and construction entity components and of key personnel in general and as related to the project under consideration.

(ii) Capacity for timely completion of the work.

(iii) Past performance on public projects or projects of a similar nature to the project described in the notice of intent.

(iv) The quantity and value of public entity work awarded to both the design and construction entity components.

(v) Any project-specific criteria as may apply to project needs.

(b) The primary design-build evaluation committee shall consist of a minimum of three members designated by the head of the public entity according to the rules established pursuant to this Subsection.

(c) The primary evaluation committee shall evaluate the qualifications of responding design-builders on the basis of the criteria set forth in this Subsection and the rules established pursuant to this Subsection and shall select a short list of not fewer than three of the highest rated entities; however, if fewer than three responses are received, the head of the public entity may approve proceeding with the design-build process. The primary evaluation committee may, at its discretion, be assisted by other public entity personnel in its evaluation of a design-builder's qualifications. The primary design-build evaluation committee shall present its short list to the head of the public entity. The short-listed design-builders shall be invited to submit a detailed technical proposal for the design-build project. The invitation to the short-listed entities shall specify a deadline for submission of such proposals.

(5)(a) The specific requirements of the technical proposal shall be identified by the public entity to the design-builders making the short list by means of a "Scope of Services Package". Generally, the technical proposal shall include discussions of design strategy and preliminary design concepts, space standards, space planning, fundamental requirements, quality standards, capacities, other design related issues, materials, the schedule for commencement and completion of all phases of work, and a lump sum cost for all services in fulfillment of the requirements and within the constraints of the "Scope of Services Package".

(b) For more complex projects and projects with scopes which permit flexibility and innovation in the design approach, the public entity may compensate unsuccessful and responsive short-listed entities for the expense of preparing the technical proposal. The determination of whether or not compensation will be paid for the technical proposal and the amount shall be predetermined by the public entity and shall be included in the scope of services package. The public entity may use concepts submitted by any paid short-listed design-builder in the construction of the project.

(6) A technical review committee for evaluation of design-build proposals shall be established according to the rules established pursuant to this Subsection. This committee shall be made up of building construction professionals as defined in the rules established pursuant to this Subsection. The technical review committee shall identify specific technical elements of the project, depending on the characteristics of the project, to be included in the technical score. The technical review committee may select additional engineering, architectural and technical experts, and nationally recognized design-build experts to serve as committee members to score each technical element of the project.

(a) An adjusted score approach shall be used by the public entity in determining the winning proposal. An adjusted score shall be determined using the following components:

(i) The technical score determined by the technical review committee. Weighing factors may be assigned to each element depending on its relative magnitude or significance to the overall project. Each technical review committee member shall rate his assigned element of the proposal from each of the design-builders on the short list and shall submit such scores to the chairman of the technical review committee. The schedule and price bid shall not be made known to the technical review committee during the scoring process. The chairman of the technical review committee shall adjust the scores for any applicable weighing factors and shall determine the total technical score for each proposal. Prior to determining the adjusted score, the chairman of the technical review

committee shall notify each design-builder, in writing, of each design-builder's final total technical score.

(ii) The time value, consisting of the product of the proposed contract time expressed in calendar days multiplied by the value-per-calendar-day expressed in dollars established by the public entity and included in the "Scope of Services Package".

(iii) The price proposal.

(b) The winning proposal shall be the proposal with the lowest adjusted score. The adjusted score for each entity's design-build proposal shall be determined by the following formula: Adjusted Score = (Price Bid + Time Value) divided by Technical Score. Use of the Time Value is not mandatory and if it is not used, the Adjusted Score shall be determined by the following formula: Adjusted Score = Price Bid divided by Technical Score.

(7) Design-builders who have submitted bona fide proposals may, within seven days of the announcement of the award, challenge the award based on any of the foregoing reasons, and only those reasons, by submitting a letter to the head of the public entity describing in detail the reasons for the challenge. The head of the public entity shall have the authority to resolve any challenge concerning the award of a contract. A written decision shall be rendered within fourteen days and shall be mailed or otherwise furnished immediately to the design-builder making the challenge. The decision shall be final and conclusive unless:

(a) The decision is fraudulent; or

(b)(i) If the public entity is a state entity, the person adversely affected by the decision has timely appealed to the court in accordance with R.S. 39:1691(A).

(ii) If the public entity is a nonstate entity, the person adversely affected by the decision has timely appealed to the court of proper venue for the public entity.

E. Once the design-builder has been chosen and a contract for a stipulated schedule and sum certain price is executed, the price of the design-build contract shall not be increased other than for inflation as prescribed in the contract and for site or other conditions of which the design-builder had no knowledge and should not have had knowledge as a reasonable possibility existing at the site or concerning the design and construction.

F. The provisions of this Section shall supersede any conflicting provisions of any other law, including but not limited to the requirements of Chapter 10 of this Title.

Acts 2007, No. 373, §1, eff. July 10, 2007; Acts 2009, No. 184, §1, eff. June 29, 2009; Acts 2010, No. 819, §1; Acts 2011, No. 170, §1; Acts 2012, No. 354, §1, eff. July 1, 2012; Acts 2012, No. 777, §1, eff. June 12, 2012; Acts 2013, No. 321, §1, eff. July 1, 2013.

§2225.2.2. Design-build contracts; authorized use by city of Slidell; Hurricane Katrina, Hurricane Rita, or both damage

A.(1) Notwithstanding any law to the contrary, the governing authority for the city of Slidell may utilize the design-build method in the construction or repair of any public building or structure which has been destroyed or damaged by Hurricane Katrina, Hurricane Rita, or both.

(2) Whenever the governing authority resolves to construct or repair any public building or structure using the design-build method as authorized by Paragraph (1) of this Subsection, it shall adopt a list of projects under which design-build contracts will be utilized; and an ordinance adopting the selection process promulgated by the division of administration, office of facility planning and control, specifying the selection process for the awarding of a design-build contract in compliance with the provisions of this Section.

(3) For the purposes of this Section, "design builder" means the entity contractually responsible for delivering the project design and construction.

(4) This authority shall extend for two years from July 1, 2008, after which time only those projects that were contracted for prior to that date may proceed.

B. Every design builder shall be duly licensed and registered to do business in the state of Louisiana as either an architect, an engineer, or a general contractor. Each design builder shall have the following rights and powers:

(1) The design builder may sublet responsibility for professional design services to an individual, firm, or corporation duly licensed and registered in the state of Louisiana to provide professional design services.

(2) The design builder may sublet responsibility for construction or other services requiring a contractor's or trade subcontractor's license to persons or entities duly registered, licensed, or otherwise qualified to provide those services as required by law.

C. Prior to letting any such contract, the governing authority shall adopt an ordinance adopting procedures promulgated by the division of administration, office of facility planning and control, establishing procedures for developing plans, specifications, qualifications, and other matters pertaining to procedures for advertising, reviewing and selecting design builders, and letting such design-build contracts for public work as specified in Paragraph (A)(2) of this Section.

D. The procedures promulgated by the division of administration, office of facility planning and control, provided for in Subsection C of this Section shall include, at a minimum, the following provisions:

(1) Requirements that:

(a) All engineering and surveying firms providing design and design related services with the design builder to which the design-build contract is awarded shall be licensed to perform these services by the Louisiana Professional Engineering and Land Surveying Board.

(b) All architectural firms providing design services with the design builder to which the design-build contract is awarded shall be licensed to perform the services by the Louisiana Board of Architectural Examiners.

(c) All contractors performing construction work for the design-build program shall be licensed by the Louisiana State Licensing Board for Contractors.

(2) A two-stage selection process that will utilize a request for qualifications graded and judged by a primary evaluation committee and a request for technical proposals graded and judged by a separate technical review committee shall be used to select the design builder and shall include the following specific provisions:

(a)(i) Public announcement procedures for solicitation of interested design-build competitors and a procedure for requesting letters of interest and statements of qualifications from qualified firms or teams.

(ii) Such public announcement procedures shall include a requirement for advertisement in the official journal for the city of Slidell.

(iii) All notices of intent to select design-build contractors shall be advertised a minimum of thirty days prior to the deadline for receipt of responses and shall contain a brief description of the project, the required scope of services, and sufficient information for design-build entities to determine their interest.

(b) These decisions shall be made on the basis of the criteria set forth in this Subsection. Members of the technical review committee shall not have served as members of the primary evaluation committee. Each member of the technical review committee shall score assigned elements. Such scores shall be considered public record.

(3) The governing authority shall provide a request for a qualifications package to design builders who submit a letter of interest. All required information shall be identified in the request for qualifications package and in the standard response forms. The response to a request for qualifications package shall include statements of qualification by credentials and experience of design component members for the areas of expertise specific to the project and statements of qualification by experience and resources of the construction team component. The completed response form and any other required information shall be transmitted by the responding design builder by the deadline to submit such forms and information as provided in the request for qualifications package. Any response failing to meet all of the requirements contained in the request for qualifications package shall not be considered. False or misrepresented information furnished in response to a request for qualifications package shall be grounds for rejection.

(4)(a) A primary design-build evaluation committee shall evaluate the responses to the request for qualifications package received by the governing authority. The following general criteria used by the primary evaluation committee in evaluating responses to the request for qualifications package for design-build services shall apply to both the design and construction components of any responding entity:

(i) Professional training and experience of both the design and construction entity components and of key personnel in general and as related to the project under consideration.

(ii) Capacity for timely completion of the work.

(iii) Past performance on public projects or projects of a similar nature to the project described in the notice of intent.

(iv) The quantity and value of governing authority work awarded to both the design and construction entity components.

(v) Any project-specific criteria as may apply to project needs.

(b) The primary design-build evaluation committee shall consist of a minimum of three members designated by the head of the governing authority according to the rules established pursuant to this Subsection.

(c) The primary evaluation committee shall evaluate the qualifications of responding design builders on the basis of the criteria set forth in this Subsection and the rules established pursuant to this Subsection and shall select a short list of not fewer than three of the highest rated entities; however, if fewer than three responses are received, the head of the governing authority may approve proceeding with the design-build process. The primary evaluation committee may, at its discretion, be assisted by other city of Slidell personnel in its evaluation of a design builder's qualifications. The primary design-build evaluation committee shall present its short list to the head of the governing authority. The short-listed design builders shall be invited to submit a detailed technical proposal for the design-build project. The invitation to the short-listed entities shall specify a deadline for submission of such proposals.

(5)(a) The specific requirements of the technical proposal shall be identified by the governing authority to the design builders making the short list by means of a "Scope of Services Package". Generally, the technical proposal shall include discussions of design strategy and preliminary design concepts, space standards, space planning, fundamental requirements, quality standards, capacities, other design related issues, materials, the schedule for commencement and completion of all phases

of work, and a lump sum cost for all services in fulfillment of the requirements and within the constraints of the "Scope of Services Package".

(b) For more complex projects and projects with scopes which permit flexibility and innovation in the design approach, the governing authority may compensate unsuccessful and responsive short-listed entities for the expense of preparing the technical proposal. The determination of whether or not compensation will be paid for the technical proposal and the amount shall be predetermined by the governing authority and shall be included in the scope of services package. The governing authority may use concepts submitted by any paid short-listed design builder in the construction of the project.

(6) A technical review committee for evaluation of design-build proposals shall be established according to the rules established in this Subsection. This committee shall be made up of building construction professionals as defined by the rules established in this Subsection. The technical review committee shall identify specific technical elements of the project, depending on the characteristics of the project, to be included in the technical score. The technical review committee may select additional engineering, architectural and technical experts, and nationally recognized design-build experts to serve as committee members to score each technical element of the project.

(a) An adjusted score approach shall be used by the governing authority in determining the winning proposal. An adjusted score shall be determined using the following components:

(i) The technical score determined by the technical review committee. Weighing factors may be assigned to each element depending on its relative magnitude or significance to the overall project. Each technical review committee member shall rate his assigned element of the proposal from each of the design builders on the short list and shall submit such scores to the chairman of the technical review committee. The schedule and price bid shall not be made known to the technical review committee during the scoring process. The chairman of the technical review committee shall adjust the scores for any applicable weighing factors and shall determine the total technical score for each proposal. Prior to determining the adjusted score, the chairman of the technical review committee shall notify each design builder, in writing, of each design builder's final total technical score.

(ii) The time value, consisting of the product of the proposed contract time expressed in calendar days multiplied by the value-per-calendar-day expressed in dollars established by the governing authority and included in the "Scope of Services Package".

(iii) The price proposal.

(b) The winning proposal shall be the proposal with the lowest adjusted score. The adjusted score for each entity's design-build proposal shall be determined by the following formula: Adjusted Score = (Price Bid + Time Value) divided by Technical Score. Use of the Time Value is not mandatory and if it is not used, the Adjusted Score shall be determined by the following formula: Adjusted Score = Price Bid divided by Technical Score.

(7) Design builders who have submitted bona fide proposals may, within seven days of the announcement of the award, challenge the award based on any of the foregoing reasons, and only those reasons, by submitting a letter to the head of the governing authority describing in detail the reasons for the challenge. The head of the governing authority shall have the authority to resolve any challenge concerning the award of a contract. A written decision shall be rendered within fourteen days and shall be mailed or otherwise furnished immediately to the design builder making the challenge. The decision shall be final and conclusive unless the decision is fraudulent or if the person adversely affected by the decision has timely appealed to the court of proper venue for the governing authority.

E. Once the design builder has been chosen and a contract for a stipulated schedule and sum certain price is executed, the price of the design-build contract shall not be increased other than for inflation as prescribed in the contract and for site or other conditions of which the design builder had no knowledge and should not have had knowledge as a reasonable possibility existing at the site or concerning the design and construction.

F. The provisions of this Section shall supersede any conflicting provisions of any other law, including but not limited to the requirements of Chapter 10 of this Title.

G. For the purposes of this Section, "governing authority" shall mean the governing authority for the city of Slidell.

Acts 2008, No. 391, §1.

§2225.2.3. Construction management at risk

A.(1) Notwithstanding any provisions of law to the contrary, the New Orleans Aviation Board, hereinafter referred to as the board, may award a public works contract for the initial construction of an airport terminal and related support facility, aviation facility, or any combination thereof by the construction management at risk method as set forth in this Section.

(2) However, the provisions of this Section shall not apply to the construction of any additions or modifications of an airport terminal and related support facility, aviation facility, or any combination thereof, constructed by the board following the completion of the initial construction of such terminal or facility.

(3) For purposes of this Section, the following terms shall be assigned the following definitions:

(a) "Construction management at risk method" shall mean a delivery method by which the board utilizes architects or engineers employed by the board or contracts with an architect or engineer for design and construction management services and contracts separately with a construction manager at risk to serve as the general contractor and to provide consultation during the design and construction of a facility.

(b) "Construction manager at risk" shall mean a sole proprietorship, partnership, corporation, or other legal entity that assumes the risk for the initial construction of an airport terminal and related support facility, aviation facility, or any combination thereof at the contracted price as a general contractor and provides consultation to the board regarding construction of the facility.

B.(1) Should the board choose to award a public works contract by the construction management at risk method, prior to the advertisement for such services, the board shall prepare a written statement justifying why the construction management at risk method is preferred over the design-bid-build, the design-build, or public bid methods allowed by statute for the particular project in question.

(2) The written statement shall identify the specific benefits to the public which the board determines will result from the use of the construction management at risk method.

(3) This written statement shall be published by the board in the advertisement required by Subsection C of this Section.

C. A request for proposals (RFP) to award a contract for construction manager at risk services shall be advertised in the official journal of the board and, if one exists, the Internet website of the board. Additionally, the board may select other publications deemed appropriate by the board for advertisement of the notice. All RFPs shall be advertised two times within a thirty-day time period prior to the deadline for receipt of responses.

D. Construction management at risk services. (1) Construction management at risk proposers awarded a contract pursuant to this Section shall act as the general contractor for the project and shall be properly licensed, bonded, and insured.

(2) Construction management at risk services shall be for the performance of the project work and shall guarantee the maximum price for the project.

E. Guaranteed maximum price. (1) The guaranteed maximum price for the project may be set by the board.

(2) If the board sets the guaranteed maximum price for the project, that guaranteed maximum price shall be disclosed in the RFP and shall include the maximum number of construction days required to complete the project.

(3) If the guaranteed maximum price will not be set by the board until after the selection of the construction manager at risk, as provided in Paragraph (2) of this Subsection, then the advertisement for the RFP shall disclose this fact and proposals submitted in response to the RFP shall not be required to include a guaranteed maximum price for the project.

F. Request for proposals (RFP). (1) The RFP shall include the following as well as any other pertinent information that a proposer would need to submit to respond to an RFP:

- (a) Requirements for the project.
- (b) Procedures for construction of the project.
- (c) Grading criteria of responses to the RFP.
- (d) Scoring methodology of responses to the RFP.

(2) The RFP may request that proposers include the following in response to the RFP, as well as any other appropriate factors that would demonstrate the capability of the proposer to perform the role of construction manager at risk for the project:

- (a) Bonding capacity of the proposer.
- (b) Competence of the proposer.
- (c) Construction methodology previously utilized by the proposer on other projects.
- (d) Experience of the proposer with the construction management at risk method and other methods of project delivery.
- (e) Extent to which the proposer intends to self-perform portions of the work.
- (f) Financial capacity of the proposer.
- (g) Past performance by the proposer including timely completion of other public works projects.

- (h) Proposed management and staffing for the project.
- (i) The proposer's last safety record.

(3) The responses to the RFPs shall include the following:

- (a) A guaranteed maximum price if required by the advertisement as published by the board.
- (b) Total fees and compensation to be paid to the construction manager at risk if selected by the board to receive the contract for the project.

G.(1) The proposals submitted shall be reviewed and graded by a review committee comprised of at least five individuals appointed by the board, including but not limited to the following:

- (a) One or more representatives of the board.

- (b) One design professional not involved in the project.
- (c) One construction industry representative not involved as a proposer on the project.
- (d) One representative of the Department of Transportation and Development.
- (e) One representative of the office of facility planning and control.

(2) The review committee shall evaluate, grade, and score the responses to the RFP in the areas set out in the RFP. The portion of the response to the RFPs addressing total fees and compensation to be paid to the construction manager at risk will be considered by a review committee only after its consideration of all other factors contained in the proposals.

(3) The results of the review committee, inclusive of its findings, grading, score sheets and recommendations shall be available for review by all proposers and shall also be subject to a public records request.

H. Within forty five days after the deadline for responses to the RFP to be submitted, the review committee shall make a recommendation to the board as to which proposer it recommends should be awarded the contract. The proposer recommended by the committee to serve as the construction manager at risk shall work with the board's design professional for the project on constructability, the construction phasing and sequencing prior to the board awarding the contract.

I.(1) Any non-recommended proposers shall have the opportunity to protest the review committee's recommendation and the board's award.

(2)(a) Any non-recommended proposer may ask for a hearing before the board within ten days following the receipt of the review committee's recommendation.

(b) The board shall then conduct a public hearing to consider any protest or protests no later than ten days following the last request for a hearing by a non-recommended proposer.

(c) Following any hearing required by Subparagraph (b) of this Paragraph, any non-recommended proposer may seek legal review in the state judicial district court where the project is to be constructed.

J.(1) If the guaranteed maximum price and maximum number of construction days required to complete the project were set forth in the RFP and the board and the recommended proposer agree on constructability, the construction phasing and sequencing, the board shall award the construction management at risk contract to the proposer recommended by the committee.

(2) If the guaranteed maximum price for the project was not set by the board in the RFP, then within thirty days of the completion of the plans, specifications and scope of the project, the recommended proposer shall furnish the board a guaranteed maximum price for the project including the maximum number of construction days required for completion of the project.

(3) If the board and recommended proposer are able to agree upon constructability, construction phasing and sequencing, a guaranteed maximum price for the project, and the maximum number of construction days for completion of the project, the board shall then award the construction management at risk contract to the proposer recommended by the review committee.

(4) If the guaranteed maximum price provided by the recommended proposer exceeds the board's construction budget for the project, then the board and recommended proposer shall enter into negotiations to establish an agreed upon guaranteed maximum price.

(5) If the board and the recommended proposer are unable to agree upon a guaranteed maximum price for the project, and the maximum number of construction days for completion of the project, then the project will be re-advertised and publicly bid as per this Section.

K. The provisions of this Section shall supersede any conflicting provisions of any law including but not limited to the requirements of Chapter 10 of this Title. However, the provisions of this Section shall not relieve the board from complying with Federal Aviation Administration guidelines or all other applicable provisions of this Title that do not conflict with the provisions of this Section.

Acts 2013, No. 119, §1.

§2225.3. Public works; prohibited agreements; exceptions

A. The state shall not let any contract for a public work project with any person that is to be administered by or paid for, in whole or in part, with state funds, under which the person is to construct a building or other structure which, upon completion, is to be purchased or leased by the state or leased with an option to purchase upon termination of the lease by the state.

B. No political subdivision of the state shall let any contract for a public work project with any person that is to be administered by or paid for, in whole or in part, with the political subdivision's funds, under which the person is to construct a building or other structure which, upon completion, is to be purchased or leased by the political subdivision or leased with an option to purchase upon termination of the lease by the political subdivision.

C. The provisions of this Section shall not apply to any activities or contracts involving the following entities:

(1) Activities of the Correctional Facilities Corporation pursuant to Chapter 17-B of Title 39 of the Louisiana Revised Statutes of 1950.

(2) Activities of the Louisiana Office Building Corporation pursuant to Chapter 17-C of Title 39 of the Louisiana Revised Statutes of 1950.

(3) Activities of the Office Facilities Corporation pursuant to Chapter 17-D of Title 39 of the Louisiana Revised Statutes of 1950.

(4) Contacts executed under provisions of the Louisiana Corrections Private Management Act as provided in Chapter 17-E of Title 39 of the Louisiana Revised Statutes of 1950.

D. The division of administration shall promulgate rules and regulations to provide policies and procedures governing the design, construction, and letting of contracts for public works by agencies in the executive branch using a methodology in which public work is completed by the person and then leased or purchased by the state agency upon completion of the work or leased by the agency with an option to purchase upon termination of the lease.

Acts 2004, No. 361, §1, eff. June 21, 2004.

§2225.4. Expansion of certain convention centers

A political subdivision of the state in Orleans Parish which has been involved in litigation before the highest court of this state pertaining to the award of a contract for the construction of the expansion of a convention center to be funded with funds of the state and the political subdivision may negotiate with respect to the price, conditions, and terms of the contract to be entered into with the party that is awarded the contract pursuant to a writ of mandamus from a district court and affirmed by the appellate courts. Prior to the execution of the contract, it shall be submitted to the Joint Legislative Committee on the Budget for review and approval. If approved by the Joint Legislative Committee on the Budget, the execution of the contract shall resolve any and all claims and disputes between the parties arising out of the award of the public bid.

Acts 2005, No. 178, §1, eff. June 28, 2005; Acts 2011, 1st Ex. Sess., No. 5, §1.

§2225.5. Contracts in which public entities are participants; prohibitions and duties; contractors' rights

A. Except as provided in Subsection E of this Section or as required by federal law, each public entity, when engaged in procuring products or services or letting contracts for construction, manufacture, or operation of public works paid for in whole or in part by state or local funds, or when overseeing or administering such procurement, construction, manufacture, or operation, shall ensure that bid specifications, project agreements, and other controlling documents, entered into, required, or subject to approval by the public entity do not:

(1) Require bidders, offerors, contractors, subcontractors, or operators to:

(a) Enter into or adhere to agreements with one or more labor organizations on the same or related projects.

(b) Enter into any agreement whereby the public entity is required to remain neutral toward any labor organization.

(c) Pay predetermined or prevailing wages.

(2) Discriminate against bidders, offerors, contractors, subcontractors, or operators for refusing to:

(a) Become or remain signatories or otherwise adhere to agreements with one or more labor organizations on the same or related projects.

(b) Enter into any agreement whereby the public entity is required to remain neutral toward any labor organization.

(3) Require any bidders, offerors, contractors, subcontractors, or operators to enter into, adhere to, or enforce any agreement that requires any employee as a condition of employment to:

(a) Become a member of or become affiliated with a labor organization.

(b) Pay dues or fees to a labor organization over the employee's objection.

B. No public entity shall provide financial assistance, issue a grant, or enter into a cooperative agreement for any project a condition of which requires that bid specifications, project agreements, or other controlling documents pertaining to the financial assistance, grant, or cooperative agreement contain any of the elements prohibited in Subsection A of this Section.

C. Nothing herein shall prohibit contractors or subcontractors from voluntarily entering into agreements described in this Section.

D. Any interested party, which shall include a bidder, offeror, contractor, subcontractor, operator, or taxpayer, shall have standing to challenge any bid specification, project agreement, neutrality agreement, controlling document, grant, or cooperative agreement which violates the provisions of this Section. Furthermore, such party is authorized to and shall receive injunctive relief to prevent violations of this Section upon a proper showing under the standards of the Code of Civil Procedure.

E. The provisions of this Section shall not apply to the following:

(1) Any inmate work-release program.

(2) Any contract pursuant to the Louisiana Quality Jobs Program.

(3) Any contract or cooperative endeavor agreement pursuant to the Incumbent Worker Training Program.

(4) Any public-private agreement for any construction or infrastructure project in which the private entity, as a condition of its investment or partnership with the public entity, requires that the

private entity have the right to control its labor relations policy with its own employees and the employees of its contractors and subcontractors in any manner permitted by the National Labor Relations Act, 29 U.S.C. 151 et seq.

Acts 2011, No. 134, §1, eff. June 24, 2011.

§2226. Exclusion of certain contractors from water well contracts

A. A contractor who is a resident of a state which has more stringent licensing requirements for the business of drilling, reworking, or otherwise constructing water wells at or in connection with the construction of a public park, roadside park, or other similar facility for public use than the licensing requirements of the state of Louisiana shall not be awarded a contract for the drilling, reworking, or otherwise constructing of a water well by the state or any of its departments, boards, commissions, or agencies or any political subdivision of the state.

B. Upon application to the attorney general by a public entity, the attorney general shall make the determination as to whether the licensing requirements of a state are more stringent than applicable laws of this state. The denial by the licensing authorities of another state of a license to a contractor who is a resident of and licensed in this state, when the denial is based upon the statutory qualifications of the applicant, shall constitute prima facie evidence that the licensing requirements of such state are more stringent than the Louisiana licensing requirements.

Added by Acts 1980, No. 715, §1.

§2227. Exclusion of certain contractors from bidding

A. Each public entity advertising and letting for bid a public works contract shall require the lowest bidder, in addition to the provisions of R.S. 38:2212(A)(3)(c)(ii), after the opening of bids, if a sole proprietor, to attest that he has not been convicted of, or has not entered a plea of guilty or nolo contendere to any of the crimes or equivalent federal crimes listed in Subsection B of this Section. The lowest bidding entity shall submit an attestation that no individual partner, incorporator, director, manager, officer, organizer, or member, who has a minimum of a ten percent ownership in the bidding entity, has been convicted of, or has entered a plea of guilty or nolo contendere to any of the crimes or equivalent federal crimes listed in Subsection B of this Section.

B.(1) A conviction of or plea of guilty or nolo contendere to the following state crimes or equivalent federal crimes shall permanently bar any person or the bidding entity from bidding on public projects:

- (a) Public bribery (R.S. 14:118).
- (b) Corrupt influencing (R.S. 14:120).
- (c) Extortion (R.S. 14:66).
- (d) Money laundering (R.S. 14:230).

(2) A conviction of or plea of guilty or nolo contendere to the following state crimes or equivalent federal crimes shall bar any person or the bidding entity from bidding on public projects for a period of five years from the date of conviction or from the date of the entrance of the plea of guilty or nolo contendere:

- (a) Theft (R.S. 14:67).
- (b) Identity Theft (R.S. 14:67.16).
- (c) Theft of a business record (R.S. 14:67.20).
- (d) False accounting (R.S. 14:70).
- (e) Issuing worthless checks (R.S. 14:71).

- (f) Bank fraud (R.S. 14:71.1).
- (g) Forgery (R.S. 14:72).
- (h) Contractors; misapplication of payments (R.S. 14:202).
- (i) Malfeasance in office (R.S. 14:134).

C. The five-year prohibition provided for in Paragraph (B)(2) of this Section shall apply only if the crime was committed during the solicitation or execution of a contract or bid awarded pursuant to the provisions of Chapter 10 of this Title.

D.(1) The provisions of this Section shall not impose a duty, responsibility, or requirement on a public entity to perform criminal background checks on contractors, vendors, or subcontractors. It shall be the responsibility of any person, company, or entity making an allegation of false attestation to present prima facie proof to the public entity supporting their claim.

(2) If evidence is submitted substantiating that a false attestation has been made and the project must be readvertised or the contract cancelled, the awarded entity making the false attestation shall be responsible to the public entity for the costs of rebidding, additional costs due to increased costs of bids and any and all delay costs due to the rebid or cancellation of the contract.

(3) The requirements of this Section and any attestations made shall apply to convictions and pleas entered prior to the awarding of contracts.

Acts 2010, No. 945, §1, eff. July 2, 2010; Acts 2012, No. 598, §1.

§§2228 to 2232. *Repealed by Acts 1979, No. 715, §3, eff. July 1, 1980.*

PART II-A. SMALL BUSINESS PROCUREMENT ACT

§2233. Authority of parishes, municipalities, and school boards for procurement from small businesses; set aside; preference to disadvantaged; preference to women

A. Every parish, municipality, or school board in the state, through its respective fiscal officer or director of finance, is hereby authorized and empowered for each fiscal year designated and to set aside for awarding to small businesses, minority-owned businesses, or women-owned businesses, as defined in R.S. 39:1732 and R.S. 39:1952, an amount up to ten percent of the value of anticipated local procurement of goods and services.

B.(1) Such parishes, municipalities, and school boards may for each fiscal year designate and set aside for awarding to small businesses, minority-owned businesses, and women-owned businesses an amount up to ten percent of the value of anticipated total procurement of goods and services by said entity. The procurements so designated shall be divided into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses, minority-owned businesses, and women-owned businesses. In making the annual designation of set-aside procurements, an attempt shall be made to vary the included procurements so that a variety of goods and services produced by different small businesses, minority-owned businesses, or women-owned businesses, may be set aside each year. The failure to set aside particular procurements shall not be considered to prohibit or discourage smaller businesses, minority-owned businesses, or women-owned businesses from seeking the procurement award through the normal solicitation and bidding processes.

(2) To implement the foregoing there shall be established a contract procedure in accordance with law for the awarding of a procurement contract under the set aside program established hereby.

(3) Before making a set aside award, an evaluation shall be made to determine 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.

(4) 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 balance of the set aside contracts shall be awarded to other small businesses.

(5) At least ten percent of the value of the procurement contracts designated for set aside awards shall be awarded, if possible, to businesses owned and operated by women. In the event small businesses owned and operated by women are unable to perform at least ten percent of the set aside award contracts, then the balance of the set aside contracts shall be awarded to other small businesses.

(6) In the event that the provisions of this Section do not operate to extend a contract award to small business, the award shall be placed pursuant to the existing solicitation and award provisions established by law, whereupon additional procurements corresponding in approximate value to the contract unable to be awarded pursuant to the provisions of this Section shall be designated and set aside for small businesses.

(7) 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 Section shall govern.

C. In order to implement the provisions hereof, the governing body of such parish or municipality or the school board shall adopt, by resolution or ordinance, rules, standards, and procedures for certifying that small businesses, small businesses owned and operated by socially economically disadvantaged persons, and small businesses owned and operated by women are eligible to participate under the requirements of this Section. The procedure for determination of eligibility may include self-certification by a business, provided that the governing body retains the ability to verify a self-certification. Other rules as may be necessary to carry out the duties set aside in this Section may also be adopted.

Added by Acts 1979, No. 214, §1, eff. July 8, 1979. Amended by Acts 1979, No. 570, §1, eff. July 18, 1979; Acts 1981, No. 691, §1; Acts 1984, No. 636, §1; Acts 1984, No. 865, §1; Acts 1986, No. 868, §1; Acts 1988, No. 990, §1.

§2233.1. School boards in Orleans Parish, authority for procurement from small businesses; set aside; preference to disadvantaged; preference to women

A. Notwithstanding any other provision of law, the Orleans Parish School Board, through its respective fiscal officer or director of finance, is hereby authorized and empowered for each fiscal year to designate and set aside for awarding to small businesses, as defined in R.S. 39:1732, an amount at least ten percent of the value of anticipated local procurement of goods and services, including all public work for labor and materials involving the construction or doing of any public work, including alteration or repair.

B.(1) The school boards may for each fiscal year designate and set aside for awarding to small businesses an amount up to ten percent of the value of anticipated total procurement of goods and services including labor and materials for the construction or doing of any public work, including alteration or repair by said entity. However, should the school board choose to set aside a greater amount, then nothing herein shall be construed to prohibit such set aside levels above ten percent. The procurements so designated shall be divided into contract award units of economically feasible production runs in order to facilitate offers or bids from small businesses. In making the annual

designation of set aside procurements, an attempt shall be made to vary the included procurements so that a variety of goods and services produced and public works constructed by different small businesses may be set aside each year. The failure to set aside particular procurements shall not be deemed to prohibit or discourage smaller businesses from seeking the procurement award through the normal solicitation and bidding process.

(2) To implement the foregoing there shall be established a contract procedure in accordance with law for the awarding of a procurement contract under the set aside program established hereby.

(3) Before making a set aside award, an evaluation shall be made to determine 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.

(4) 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 balance of the set aside contracts shall be awarded to other small businesses.

(5) At least ten percent of the value of the procurement contracts designated for set aside awards shall be awarded, if possible, to businesses owned and operated by women. In the event small businesses owned and operated by women are unable to perform at least ten percent of the set aside award contracts, then the balance of the set aside contracts shall be awarded to other small businesses.

(6) In the event that the provisions of this Section do not operate to extend a contract award to small business, the award shall be placed pursuant to the existing solicitation and award provisions established by law, whereupon additional procurements corresponding in approximate value to the contract unable to be awarded pursuant to the provisions of this Section shall be designated and set aside for small businesses.

(7) 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 Section shall govern.

C. In order to implement the provisions hereof, such school board shall adopt rules, standards, and procedures for certifying that small businesses, small businesses owned and operated by socially or economically disadvantaged persons, and small businesses owned and operated by women are eligible to participate under the requirements of this Section. The procedure for determination of eligibility may include self certification by a business, provided that the board retains the ability to verify a self certification. Other rules as may be necessary to carry out the duties set aside in this Section may also be adopted.

Added by Acts 1982, No. 302, §1. Acts 1984, No. 636, §1; Acts 1986, No. 653, §1; Acts 1991, No. 289, §11; Acts 2011, 1st Ex. Sess., No. 5, §1.

§2233.2. Political subdivisions; authority for procurement from minority businesses; set-aside; preference to disadvantaged; preference to women

A. Every political subdivision in the state, as defined in this Section, through its respective fiscal officer or director of finance, is hereby authorized and empowered for each fiscal year to designate and set aside for awarding to minority businesses, as defined in this Section, an amount up to ten percent of the value of anticipated local procurement of goods and services including construction. However, should the governing authority of said political subdivision choose to set aside a greater amount, then nothing herein shall be construed to prohibit such set-aside levels above ten percent.

B.(1) Such parishes and municipalities may for each fiscal year designate and set aside for awarding to minority businesses an amount up to ten percent of the value of anticipated total procurement of goods and services including construction by said entity. The procurements so designated shall be divided into contract award units of economically feasible production runs in order to facilitate offers or bids from minority businesses. In making the annual designation of set-aside procurements, an attempt shall be made to vary the included procurements so that a variety of goods and services produced by different minority businesses may be set aside each year. The failure to set aside particular procurements shall not be considered to prohibit or discourage minority businesses from seeking the procurement award through the normal solicitation and bidding processes.

(2) To implement the foregoing, there shall be established a contract procedure in accordance with law for the awarding of a contract under the set-aside program established hereby.

(3) Before making a set-aside award, an evaluation shall be made to determine whether the minority 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.

(4) At least ten percent of the value of the contracts designated for set-aside awards shall be awarded, if possible, to businesses owned and operated by socially or economically disadvantaged persons. In the event minority 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 balance of the set-aside contracts shall be awarded to other minority businesses.

(5) At least ten percent of the value of the contracts designated for set-aside awards shall be awarded, if possible, to businesses owned and operated by women. In the event minority businesses owned and operated by women are unable to perform at least ten percent of the set-aside award contracts, then the balance of the set-aside contracts shall be awarded to other minority businesses.

(6) In the event that the provisions of this Section do not operate to extend a contract award to minority business, the award shall be placed pursuant to the existing solicitation and award provisions established by law, whereupon additional contracts corresponding in approximate value to the contract unable to be awarded pursuant to the provisions of this Section shall be designated and set aside for minority businesses.

(7) All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other contract matters shall apply as consistent to procurements set aside for minority businesses. In the event of conflict with other rules, the provisions of this Section shall govern.

C. In order to implement the provisions hereof, the governing body of such political subdivision shall adopt rules, standards, and procedures for certifying that minority businesses, minority businesses owned and operated by socially economically disadvantaged persons, and minority businesses owned and operated by women are small businesses owned and operated under the requirements of this Section. The procedure for determination of eligibility may include self-certification by a business, provided that the governing body retains the ability to verify a self-certification. Other rules as may be necessary to carry out the duties of this Section may also be adopted.

D. The governing authority may also adopt a requirement that the prime contractor award a certain percentage of the total dollar bid to minority subcontractors. This requirement may be waived if the prime contractor, after a good faith effort, is unable to comply with the requirement.

E.(1) "Minority" means a person who is a citizen or lawful permanent resident of the United States and who is:

(a) American Indian or Alaskan Native: having origins in any of the original peoples of North America.

(b) Asian American: having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands.

(c) Black: having origins in any of the black racial groups of Africa.

(d) Female.

(e) Hispanic: of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin regardless of race.

(2) "Minority business enterprise" or "minority-owned business" means a small business organized for profit performing a commercially useful function which is owned and controlled by one or more minority individuals or minority business enterprises. "Owned and controlled" means a business in which one or more minorities or minority business enterprises own at least fifty-one percent or in the case of a corporation at least fifty-one percent of the voting stock and control at least fifty-one percent of the management and daily business operations of the business.

(3) "Political subdivision" means any political subdivision situated wholly or partially within the geographic boundaries of Calcasieu Parish or St. John the Baptist Parish; or the Chenault International Airport Authority; the New Orleans Exhibition Hall Authority; the Board of Commissioners of the Port of New Orleans; the city of Shreveport and any board, agency, or commission of that city; the parish of St. John the Baptist, and any board, agency, or commission thereof; the city of Monroe and any board, agency, or commission of that city; and any board, agency, or commission of or for the city of New Orleans or parish of Orleans which has been created by the constitution or laws of this state, which is not under the authority or control of the state of Louisiana for the purposes of letting and awarding contracts, and which is subject to Chapter 10 of Title 38 or Chapter 17 of Title 39, both of the Louisiana Revised Statutes of 1950, or any other state law relative to competitive bidding.

F. Notwithstanding any other provision of this Section to the contrary, the amount designated and set aside by the city of Shreveport or any board, agency, or commission of that city pursuant to this Section shall not exceed ten percent of the value of anticipated local procurement of goods and services including construction. The city of Shreveport and any board, agency, or commission of that city further shall limit participation in any such minority set-aside program to minority businesses having a bona fide permanent office located in Caddo Parish or Bossier Parish.

G. Notwithstanding any other provision of this Section to the contrary, the amount designated and set aside by the city of Monroe or any board, agency, or commission of that city pursuant to this Section shall not exceed ten percent of the value of anticipated local procurement of goods and services including construction. The city of Monroe and any board, agency, or commission of that city shall further limit participation in any such minority set-aside program to minority businesses having a bona fide permanent office located in Ouachita Parish.

Acts 1986, No. 530, §1, eff. July 2, 1986. Acts 1987, No. 387, §1; Acts 1987, No. 764, §1, eff. July 16, 1987; Acts 1987, No. 917, §1; Acts 1987, No. 942, §1, eff. July 20, 1987; Acts 1988, No. 207, §1; Acts 1988, No. 266, §1; Acts 1988, No. 400, §1; Acts 1988, No. 441, §1; Acts 1993, No. 1024, §1; Acts 1996, 1st Ex. Sess., No. 29, §2; Acts 1997, No. 458, §2.

§2233.3. City of Shreveport; authority for procurement from economically disadvantaged businesses; set-aside

A. Notwithstanding any provision of R.S. 38:2233.2 to the contrary, the city of Shreveport and any board, agency, or commission of that city, through its respective fiscal officer or director of finance, may for each fiscal year designate and set aside for awarding to economically disadvantaged

businesses, as defined in this Section, an amount not less than ten percent of the value of anticipated local procurement of goods and services including construction.

B.(1) The procurement set-aside as provided by Subsection A of this Section may be divided into contract award units of economically feasible production runs in order to facilitate offers or bids from economically disadvantaged businesses. In making the annual designation of set-aside procurements, an attempt may be made to vary the included procurements so that a variety of goods and services produced by different economically disadvantaged businesses may be set aside each year. The failure to set aside particular procurements shall not be considered to prohibit or discourage economically disadvantaged businesses from seeking the procurement award through the normal solicitation and bidding processes.

(2) To implement the foregoing, there may be established a contract procedure in accordance with law for the awarding of a contract under the set-aside program established hereby.

(3) In the event that the provisions of this Section do not operate to extend a contract award to economically disadvantaged business, the award shall be placed pursuant to the existing solicitation and award provisions established by law, whereupon additional contracts corresponding in approximate value to the contract unable to be awarded pursuant to the provisions of this Section shall be designated and set aside for economically disadvantaged businesses.

(4) All laws and rules pertaining to solicitations, bid evaluations, contract awards, and other contract matters shall apply as consistent to procurements set aside for economically disadvantaged businesses. In the event of conflict with other rules, the provisions of this Section shall govern.

C. In order for a business to be eligible under the provisions of this Section, it shall be certified as an economically disadvantaged business by the division of small and emerging business development in the Department of Economic Development under the provisions of R.S. 51:1755 or by the governing authority of the city of Shreveport as an economically disadvantaged business as provided by Subsection D of this Section.

D.(1) In order to be certified as an economically disadvantaged business by the governing authority of the city of Shreveport, an application promulgated by the governing authority shall be submitted to the city. The application shall be supported by but not limited to the following documents:

- (a) Business' balance sheet and income statement.
- (b) Verification of signatories on bank accounts.
- (c) Copies of income tax returns.
- (d) Resumes of owners and top managers.
- (e) Copies of business licenses and permits.
- (f) Copies of stock certificates, stock transfer ledgers, and articles of incorporation if the business is a corporation.

(2) The applicant shall have the burden of proving to the satisfaction of the governing authority that he is eligible for certification.

(3) The governing authority shall conduct an on-site investigation of the applicant's place of business prior to certification. By submitting the application, the applicant agrees that the governing authority may conduct such investigations.

(4) The governing authority shall require that all applicants submit notarized statements of changes in information on ownership, control, or operations provided during the initial certification process. Certification may be revoked at any time the governing authority determines that the

economically disadvantaged business does not meet the current criteria for eligibility for certification.

(5) The length of time for remaining certified and receiving assistance from this program shall be set by rule promulgated by the governing authority.

(6) Other rules as may be necessary to carry out the duties of this Section may also be adopted.

E. The governing authority may also adopt a requirement that the prime contractor award a certain percentage of the total dollar bid to economically disadvantaged subcontractors. This requirement may be waived if the prime contractor, after a good faith effort, is unable to comply with the requirement.

F. Unless the context requires otherwise, the following words shall have the following meanings:

(1) "Economically disadvantaged business" means a small business organized for profit and performing a commercially useful function, which is at least sixty percent owned and controlled by one or more economically disadvantaged persons and which has its principal place of business in Louisiana. A nonprofit organization is not an economically disadvantaged business for purposes of this Section.

(2) "Economically disadvantaged person" means a citizen of the United States who has resided in Louisiana for at least one year, whose ability to compete in the free enterprise system has been impaired historically due to diminished capital and credit opportunities as compared to others in the same or similar line of business, and whose diminished opportunities have historically precluded, or are likely to preclude, such individual from successfully competing in the open market.

PART II-B. TELECOMMUNICATIONS AND DATA PROCESSING PROCUREMENT BY POLITICAL SUBDIVISIONS

§2234. Short title

This Part shall be known as the "Political Subdivisions Telecommunications and Data Processing Procurement Law".

Acts 1988, No. 523, §1; Acts 1992, No. 486, §1.

§2235. Application

The provisions of this Part shall be applicable to any political subdivision of the state as defined in Article VI, Section 44 of the Constitution of Louisiana.

Acts 1988, No. 523, §1.

§2236. Definitions

A. For the purposes of this Part, relative to telecommunications, the following words and phrases shall be defined as follows:

(1) "Telecommunications equipment, systems, related services" are limited to the equipment and means to provide:

- (a) Electronic transmission facilities.
- (b) Data transmission systems.
- (c) Voice transmission systems.

- (d) Telephone systems.
- (e) Facsimile systems.
- (f) Radio paging services.
- (g) Mobile telephone services.
- (h) Intercom and electro-mechanical paging systems.

(i) Any and all systems based on emerging and future telecommunication technologies relative to (a) through (h) above.

(2) "Procurement" or "procure" means the selling, buying, purchasing, renting, leasing, or otherwise obtaining telecommunications equipment, systems, or related services, as well as all activities engaged in, resulting in, or expected to result in the selling, buying, purchasing, renting, leasing, or otherwise obtaining telecommunications equipment, systems, or related services by a political subdivision.

(3) "Electronic transmission facility" means any transmission medium, switch, instrument, wiring system, or other facility which is used, in whole or in part, to provide any transmission including two-way radio, terminal equipment, modems, front end processors, acoustic couplers, and remote job entry equipment.

(4) "Wiring system" means any wiring which directly or indirectly interconnects any terminal equipment with any other terminal equipment or with any regulated facility or common carrier service.

B. For the purposes of this Part, relative to data processing, the following words and phrases shall be defined as follows:

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

(2) "Procurement" means and includes the selling, buying, purchasing, renting, leasing, or otherwise obtaining of data processing equipment, related services, or software, as well as all activities engaged in, resulting in, or expected to result in the selling, buying, purchasing, renting, leasing, or otherwise obtaining of data processing equipment, related services, or software by political subdivisions.

(3) "Related services" means and is limited to service activities affecting the maintenance of data processing equipment or software.

(4) "Software" means computer programs and documentation essential to and necessary for a computer to perform productive operations.

Acts 1988, No. 523, §1; Acts 1992, No. 486, §1.

§2237. Methods of procurement

A. A political subdivision may lease, rent, or purchase telecommunications or data processing systems, including equipment, and related services, through a request for proposals which shall conform to the following requirements:

(1) Specifications for the telecommunications or data processing systems equipment and related services shall be prepared in advance and shall designate the specific class or classes of equipment desired and may include all features associated with such class or classes of equipment. The specifications may also include requirements for the maintenance of the equipment if desired.

(2) If a lease-purchase contract for a telecommunications or data processing system is contemplated, the specifications shall require that the proposal contain the following:

(a) The principal amount of any proposed lease.

(b) The interest rate factor to be computed in the lease payments.

(c) The right of the lessee to purchase the equipment at the termination of payments for such equipment as set forth in the lease-purchase contract for a sum not to exceed one dollar.

(3) Any equipment lease-purchase contract entered into pursuant to this Part shall contain an annual appropriation dependence requirement to the effect that the renewal and continuation of such contract is contingent on the appropriation of funds to fulfill the requirements of the contract. If the political subdivision, after a diligent and good-faith effort, fails to appropriate sufficient monies to provide for payments under the contract, the obligation to make payments under the contract shall terminate in accordance with the terms of the contract on the last day of the last fiscal year for which funds were appropriated, provided the equipment is returned to the lessor or his agent as provided in the equipment lease-purchase contract, and such contract shall not be a long-term debt of the local political subdivision. In addition, in the equipment lease-purchase contract, the lessor shall covenant and agree to indemnify and hold the lessee harmless against any loss, damage, liability, cost, penalty or expense, including attorneys' fees, which is not otherwise agreed to by lessee in the equipment lease-purchase contract and which is incurred and arises upon a failure of the political subdivision to appropriate funds in the manner described herein for a continuation of the contract or exercise of the option to purchase the equipment.

(4) Any telecommunications or data processing equipment lease-purchase contract entered into pursuant to this Part shall be treated as a lease for all legal purposes without regard to the rights and obligations of the lessee at lease termination or to any interest factor payment, and without necessity of filing a chattel mortgage. The lessor shall be deemed owner of the equipment during the term of the lease. In addition, the equipment shall be deemed to be movable property for all purposes and shall not become a component part of any immovable property, notwithstanding any provisions of law to the contrary, including but not limited to Civil Code Articles 465, 466, 467, 493.1, or 495.

(5) All lease-purchase contracts entered into pursuant to this Part shall provide that whatever interests, claims and rights, including warranties of the equipment, which the lessor may have against the selected vendor of the equipment which is the subject of such lease-purchase contract, shall be assigned to the lessee, and the lessee shall have full right to pursue any and all remedies available to the lessor for breach of any warranty against the vendor. In addition, the lease-purchase contract shall provide that the lessor shall join the lessee as a party plaintiff in any cause, if required under state law, for successful pursuit of such action. Upon termination of the lease-purchase contract, unless the option to purchase is exercised, all such interests, claims, and rights assigned to the lessee under this Section shall revert to the lessor. In addition, the lease-purchase contract shall provide that lessee has no right to alienate or encumber the equipment during the term of the lease.

(6) Public notice of the request for proposals shall be given at least thirty days prior to the date scheduled for opening the request for proposals. In addition, written notice of the request for proposals shall be mailed to persons, firms, or corporations who are known to be in a position to furnish such equipment, systems, and related services. This public notice may also be given by electronic media available to the general public.

(7) The request for proposals will indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the contract, the functional specifications, the criteria to be used in evaluating the proposals and the time frames within which the work must be completed.

(8) An award shall be made to the responsible offerer whose proposal is determined in writing by the governing authority of the political subdivision to be the most advantageous, taking into consideration price and other evaluation factors set forth in the request for proposals. No other basis of evaluation shall be used except those set out in the request for proposals.

(9) The governing authority of the political subdivision may reject all proposals when it is deemed that such action is in the best interest of such political subdivision.

(10) Where written proposals are submitted by vendors, the proposals of the successful vendor shall be incorporated into the final contract consummated with that vendor.

B. Political subdivisions may, at their option, procure telecommunications and data processing equipment, systems, or related services in accordance with the provisions of any other applicable law which governs such acquisitions or purchases by political subdivisions of the state, including but not limited to R.S. 38:2211 et seq., with respect to awarding of public contracts. However, in the event an invitation for bids is used in lieu of a request for proposals, written notice of that fact shall be given to all bidders and such notice shall also state that the request for proposals procedure will not be applicable.

Acts 1988, No. 523, §1; Acts 1992, No. 486, §1; Acts 2002, 1st Ex. Sess., No. 120, §1.

PART II-C. USED FIRE AND EMERGENCY RESPONSE VEHICLE PROCUREMENT BY POLITICAL SUBDIVISIONS

§2238. Short title and application

A. This Part shall be known as the "Political Subdivisions Used Fire and Emergency Response Vehicle Procurement Law".

B. The provisions of this Part shall be applicable to any political subdivision of the state, as defined in Article VI, Section 44 of the Constitution of Louisiana, for the procurement of used fire and emergency response vehicles, including associated equipment, with a per-unit purchase cost of less than one hundred thousand dollars and only as such vehicles and associated equipment are defined in this Part.

Acts 1999, No. 296, §1, eff. June 11, 1999.

§2238.1. Definitions

For the purposes of this Part, the following words and phrases shall be defined as follows:

(1)(a) "Fire and emergency response vehicles" shall mean and shall be strictly limited to the following:

(i) Fire trucks, pumper units, hook and ladder trucks, and any other motorized vehicles or wheeled units used by a fire department in transporting firefighters or equipment to fires and emergency calls and supporting extinguishing operations such as water, pumps, ladders, special service apparatus, hoses, foam, air, lights, rescue equipment, and utility equipment.

(ii) Ambulances, crash or rescue trucks, or any other specialty vehicles used to support the activities of police, fire, and emergency medical personnel in responding to emergencies.

(iii) Associated equipment shall be any equipment included on the vehicle which is not a component part of the vehicle, but is used in firefighting operations, emergency medical activities, and rescue operations. Associated equipment shall include but not be limited to hoses, nozzles, helmets, axes, air packs, protective clothing, emergency medical supplies, medical devices, chain saws, or fibrillators.

(b) "Fire and emergency response vehicles" shall expressly not include sedans, pickup trucks, mobile crime labs, tow trucks, or buses used by law enforcement, medical personnel, emergency response, or fire fighting personnel, or any other vehicle not explicitly described in Subparagraph (a) of this Paragraph.

(2) "Procurement" or "procure" means the acquisition by purchasing, buying, or otherwise obtaining fire or emergency response vehicles, as well as all processes or procedures engaged in with the objective of purchasing, buying, or otherwise obtaining such vehicles by a political subdivision.

(3) "Used motor vehicle" shall mean a motor vehicle the legal title of which has been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

(4) "Vehicle" shall mean a motorized car, truck, or van which is required to be registered and which is used, or designed to be used, for the transporting of passengers or goods for public, private, commercial, or for-hire purposes. For the purposes of this Part, "vehicle" may also include a non-motorized wheeled unit.

Acts 1999, No. 296, §1, eff. June 11, 1999.

§2238.2. Methods of procurement

A. A political subdivision may procure used fire or emergency response vehicles through a request for proposals which shall conform to the following requirements:

(1) Specifications for the used fire or emergency response vehicles and associated equipment shall be prepared in advance, shall designate the specific class or classes of vehicles desired, and may include all features associated with such class or classes of vehicles. The specifications may also include requirements for the maintenance of the vehicles if desired.

(2)(a) Public notice of the request for proposals shall be given at least ten days prior to the date scheduled for opening the request for proposals. The public notice under this Part shall require the publication of at least one advertisement in a newspaper in the locality, and the publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. In addition to the newspaper advertisement, this public notice may also be given by electronic media available to the general public.

(b) Within twenty-four hours of the public notice, written notice of the request for proposals shall be mailed to persons, firms, or corporations who are known to be in a position to furnish such vehicles and associated equipment. This public notice may also be given by electronic media available to the general public. In addition, copies of the request for proposals shall be available upon request within twenty-four hours of the public notice.

(3) The request for proposals shall:

- (a) Indicate the relative importance of price, warranties, and other evaluation factors.
- (b) Clearly define the tasks to be performed under the contract.
- (c) Delineate the functional specifications.
- (d) Indicate criteria to be used in evaluating the proposals.
- (e) Specify the time frame for delivery.

(4) An award shall be made to the responsible offerer whose proposal is determined in writing by the governing authority of the political subdivision to be the most advantageous, taking into consideration price, warranties, and other evaluation factors set forth in the request for proposals. No other basis of evaluation shall be used except those set out in the request for proposals.

(5) The governing authority of the political subdivision may reject all proposals when it is deemed that such action is in the best interest of such political subdivision.

(6) When written proposals are submitted by vendors, the proposals of the successful vendor shall be incorporated into the final contract consummated with that vendor.

(7) The governing authority shall have the right to reject the vehicle before accepting final delivery upon the inspection of the vehicle.

B. Political subdivisions may, at their option, procure such used fire or emergency response vehicles in accordance with the provisions of any other applicable law which governs such acquisitions or purchases by political subdivisions of the state, including but not limited to R.S. 38:2211 et seq. However, it shall be the responsibility of the political subdivision to clearly include in its public notice which procurement provisions shall be utilized.

Acts 1999, No. 296, §1, eff. June 11, 1999; Acts 2002, 1st Ex. Sess., No. 120, §1; Acts 2004, No. 196, §1, eff. June 14, 2004.

§2238.3. Exclusion

The provisions of this Part shall not apply to the procurement of used fire and emergency response vehicles acquired by any political subdivision in the state through the use of funds obtained, either by grant or by loan, through the Louisiana Community Development Block Grant Program authorized for administration by the state in 1982 under the provisions of Title I of the Housing and Community Development Act of 1974. Any use of such monies for these purposes is expressly prohibited by law, and the acquisition of such used vehicles under these provisions shall be null, void, and of no effect.

Acts 1999, No. 296, §1, eff. June 11, 1999.

PART III. CLAIMS OF SUBCONTRACTORS, MATERIALMEN, AND LABORERS ON PUBLIC WORKS

§2241. Written contract and bond

A.(1) Whenever a public entity enters into a contract in excess of five thousand dollars for the construction, alteration, or repair of any public works, the official representative of the public entity shall reduce the contract to writing and have it signed by the parties. When an emergency as provided in R.S. 38:2212(D) is deemed to exist for the construction, alteration, or repair of any public works and the contract for such emergency work is less than fifty thousand dollars, there shall be no requirement to reduce the contract to writing.

(2) For each contract in excess of twenty-five thousand dollars per project, the public entity shall require of the contractor a bond with good, solvent, and sufficient surety in a sum of not less than fifty percent of the contract price for the payment by the contractor or subcontractor to claimants as defined in R.S. 38:2242. The bond furnished shall be a statutory bond and no modification, omissions, additions in or to the terms of the contract, in the plans or specifications, or in the manner and mode of payment shall in any manner diminish, enlarge, or otherwise modify the obligations of the bond. The bond shall be executed by the contractor with surety or sureties approved by the public entity and shall be recorded with the contract in the office of the recorder of mortgages in the parish where the work is to be done not later than thirty days after the work has begun.

B. All requirements and obligations of this Section, except the requirement to furnish a bond, shall be applicable to any contractor or subcontractor for whom bond requirements are waived under the provisions of R.S. 38:2216(C) or (D).

C. The payment provisions of all bonds furnished for public work contracts described in this Part, regardless of form or content, shall be construed as and deemed statutory bond provisions. Any such bond which fails to contain any of the requirements set forth in this Part shall be deemed to

incorporate all of the requirements set forth in this Section. Language in any such bond containing any obligations beyond the requirements set forth in this Part shall be deemed surplusage and read out of such bond. Sureties and contractors executing payment bonds for public works contracts under this Part shall be immune from liability for or payment of any claims not required by this Part.

D. A bond issued pursuant to this Section shall not create, nor shall such bond be construed to create, any cause of action in favor of the public entity, or any third party, for personal injury or property damages sustained by any third party during the effective period of the bond. Nothing contained herein shall in any way limit the liability on the bond for the performance of the work pursuant to the contract in question; however, to the extent that the public contract in question should contain any provisions for a hold harmless or indemnity agreement, or both, by the contractor, in favor of the public entity, for personal injury or property damages sustained by third parties, the hold harmless or indemnity agreement, or both, shall not be deemed or construed to be secured by the bond, conditioned upon the concurrence of the contractor and the surety.

E. Any provisions of a bond issued pursuant to this Section which are contrary to Subsection D hereof are hereby declared to be contrary to the public policy of the state of Louisiana and are null and void.

F. The provisions of this Section shall not be subject to waiver by contract.

Amended by Acts 1975, No. 344, §1; Acts 1979, No. 389, §1; Acts 1980, No. 615, §1; Acts 1985, No. 244, §1; Acts 1986, No. 248, §1; Acts 1986, No. 888, §1; Acts 1991, No. 749, §1, eff. July 18, 1991; Acts 1995, No. 540, §1; Acts 1997, No. 119, §1; Acts 1999, No. 673, §1.

§2241.1. Acceptance of governing authority

Whenever the public entity enters into a contract for the construction, alteration, or repair of any public works, in accordance with the provisions of R.S. 38:2241, the official representative of the public entity shall have recorded in the office of the recorder of mortgages, in the parish where the work has been done, an acceptance of said work or of any specified area thereof upon substantial completion of the work. Those public entities which do not file said recordation, shall require the contractor to have recorded in the office of the recorder of mortgages, in the parish where the work has been done, an acceptance of said work or of any specified area thereof upon substantial completion of the work. This acceptance shall not be executed except upon the recommendation of the architect or engineer of the public entity whose recommendation may be made upon completion or substantial completion of said public works within thirty days of completion of the project. "Substantial completion" is defined for the purpose of this Chapter, as the finishing of construction, in accordance with the contract documents as modified by any change orders agreed to by the parties, to the extent that the public entity can use or occupy the public works or use or occupy the specified area of the public works for the use for which it was intended. The recordation of an acceptance in accordance with the provisions of this Section upon substantial completion shall be effective as an acceptance for all purposes under this Chapter.

Acts 1991, No. 947, §1, eff. July 24, 1991.

§2241.2. Repealed by Acts 2003, No. 390, §1.

§2242. Claimant defined; filing of sworn statements of amounts due; payment by contracting authority

A. "Claimant", as used in this Chapter, means any person to whom money is due pursuant to a contract with the owner or a contractor or subcontractor for doing work, performing labor, or furnishing materials or supplies for the construction, alteration, or repair of any public works, or for transporting and delivering such materials or supplies to the site of the job by a for-hire carrier, or for furnishing oil, gas, electricity, or other materials or supplies for use in machines used in the

construction, alteration, or repair of any public works, including persons to whom money is due for the lease or rental of movable property used at the site of the immovable and leased to the owner, contractor, or subcontractor by written contract, and including registered or certified surveyors or engineers or consulting engineers, or licensed architects, or their professional subconsultants employed by the owner or by the contractor or subcontractor in connection with the building of any public work.

B. Any claimant may after the maturity of his claim and within forty-five days after the recordation of acceptance of the work by the governing authority or of notice of default of the contractor or subcontractor, file a sworn statement of the amount due him with the governing authority having the work done and record it in the office of the recorder of mortgages for the parish in which the work is done.

C.(1) To be entitled to assert the claim given by Subsection B of this Section the lessor of the movables shall deliver a copy of the lease to the owner not more than ten days after the movables are first placed at the site of the immovable for use in the work.

(2) The claim or privilege granted the lessor of the movables by Subsection B of this Section is limited to and secures only the part of the rentals accruing during the time the movable is located at the site of the immovable for use in a work. A movable shall be deemed not located at the site of the immovable for use in a work after:

(a) The work is substantially completed or abandoned; or

(b) The notice of termination of the work is filed; or

(c) The lessee has abandoned the movable, or use of the movable in a work is completed or no longer necessary, and the owner or contractor gives written notice to the lessor of abandonment or completion of use.

D. When an awarding authority makes final payment to the contractor without deducting the total amount of all outstanding claims so served on it or without obtaining a bond from the contractor to cover the total amount of all outstanding claims, the awarding authority shall become liable for the amount of these claims.

E. If an architect or engineer has not been employed by the contractor or subcontractor, he shall have no claim to or privilege on the funds due the contractor or subcontractor, nor shall such architect or engineer be within the coverage of the payment and performance bond required of the contractor by R.S. 38:2241.

F. In addition to the other provisions of this Section, if the materialman has not been paid by the subcontractor and has not sent notice of nonpayment to the general contractor and the owner, then the materialman shall lose his right to file a privilege or lien on the immovable property. The return receipt indicating that certified mail was properly addressed to the last known address of the general contractor and the owner and deposited in the U.S. mail on or before seventy-five days from the last day of the month in which the material was delivered, regardless of whether the certified mail was actually delivered, refused, or unclaimed satisfies the notice provision hereof or no later than the statutory lien period, whichever comes first. The provisions of this Subsection shall apply only to disputes arising out of recorded contracts.

Amended by Acts 1960, No. 59, §1; Acts 1966, No. 537, §1; Acts 1977, No. 253, §1; Acts 1979, No. 406, §2; Acts 1984, No. 703, §1; Acts 1985, No. 244, §1; Acts 1986, No. 158, §1; Acts 1986, No. 195, §1, eff. June 28, 1986; Acts 1989, No. 305, §§1, 2; Acts 1990, No. 913, §1; Acts 1990, No. 984, §1; Acts 1999, No. 1134, §2; Acts 2004, No. 440, §1.

§2242.1. Authorization to cancel the inscription of claims and privileges; cancellation; lis pendens

A. If a statement of claim or privilege is improperly filed or if the claim or privilege preserved by the filing of a statement of claim or privilege is extinguished, the public entity, contractor, or subcontractor, or other interested person may require the person who has filed a statement of claim or privilege to give a written authorization directing the recorder of mortgages to cancel the statement of claim or privilege from his records. The authorization shall be given within ten days after a written request for authorization has been received by the person filing the statement of claim or privilege from a person entitled to demand it.

B. One who, without reasonable cause, fails to deliver written authorization to cancel a statement of claim or privilege as required by Subsection A of this Section shall be liable for damages suffered by the public entity, contractor, subcontractor, or other interested person requesting the authorization as a consequence of the failure and for reasonable attorney's fees incurred in causing the statement to be cancelled.

C. A person who has properly requested written authorization for cancellation shall have an action against the person required to deliver the authorization to obtain a judgment declaring the claim or privilege extinguished and directing the recorder of mortgages to cancel the statement of claim or privilege if the person required to give the authorization fails or refuses to do so within the time required by Subsection A of this Section. The plaintiff may also seek recovery of damages and attorney's fees to which he may be entitled under this Section.

D. The action authorized by this Section may be by summary proceeding and may be brought in the parish where the statement of claim or privilege is recorded.

E. The recorder of mortgages shall cancel a statement of claim or privilege from his records by making an appropriate notation in the margin of the recorded statement upon the filing with him, by any person, of:

(1) A written request for cancellation, to which is attached a written authorization for cancellation given by the person who filed it; or

(2) A certified copy of an executory judgment declaring the claim or privilege extinguished and directing the cancellation.

F. The effect of filing for recordation of a statement of claim or privilege and the privilege preserved by it shall cease as to third persons unless a notice of lis pendens identifying the suit is filed within one year after the date of filing the claim or privilege. In addition to the requirements of Article 3752 of the Code of Civil Procedure, the notice of lis pendens shall contain a reference to the notice of contract, if one is filed, or a reference to the recorded statement of claim or privilege if a notice of contract is not filed.

Acts 1986, No. 195, §1, eff. June 28, 1986; Acts 1991, No. 543, §1.

§2242.2. Filing of bond or other security; cancellation of statement of claim or privilege

A. If a statement of claim or privilege is filed, any interested party may deposit with the recorder of mortgages either a bond of a lawful surety company authorized to do business in the state or cash, certified funds, or a federally insured certificate of deposit to guarantee payment of the obligation secured by the privilege or that portion as may be lawfully due together with interest, costs, and attorney's fees to which the claimant may be entitled up to a total amount of one hundred twenty-five percent of the principal amount of the claim as asserted in the statement of claim or privilege. A surety shall not have the benefit of division or discussion.

B. If the recorder of mortgages finds the amount of the cash, certified funds, or certificate of deposit or the terms and amount of a bond deposited with him to be in conformity with this Section, he shall note his approval on the bond and make note of either the bond or of the cash, certified funds, or certificate of deposit in the margin of the statement of claim or privilege as it is recorded in the mortgage records and cancel the statement of claim or privilege from his records by making an appropriate notation in the margin of the recorded statement. The bond shall not be recorded but shall be retained by the recorder of mortgages as a part of his records.

C. Any party who files a bond or other security to guarantee payment of an obligation secured by a privilege in accordance with the provisions of Subsection A of this Section shall give notice to the public entity, the claimant, and the contractor by certified mail.

Acts 1989, No. 418, §1; Acts 1991, No. 543, §1.

§2243. Petitions by authorities against claimants, contractors, and surety; preferential payment of claimants

A. If at the expiration of the forty-five days any filed and recorded claims are unpaid, the public entity shall file a petition in the proper court of the parish where the work was done, citing all claimants and the contractor, subcontractor, and surety on the bond and asserting whatever claims it has against any of them, and shall require the claimants to assert their claims. If the governing authority fails to file the proceeding any claimant may do so.

B. All the claims shall be tried in concursus and the claims of the claimants shall be paid in preference to the claims of the public entity.

Acts 1991, No. 543, §1.

§2244. Liability on bond; summary trial of objections to solvency and sufficiency of bond

A. If no objections are made by any claimant to the solvency or sufficiency of the bond required of the contractor by this Part, the public entity shall, ten days after the service of judicial notice of the concursus proceeding on each claimant having recorded claims, obtain a certificate to that effect from the clerk of court. The certificate shall relieve the public entity of any personal liability and the recorder of mortgages shall cancel all of the recorded claims.

B. If any objections are made by the claimants they shall be tried summarily. Whenever it is found that the surety is not solvent or sufficient to cover the amount of the bond or that the public entity has failed to exact the bond or record the bond within the time allowed, the public entity shall be in default and shall be liable to the same extent as the surety would have been. The surety on the bond shall be limited to the defenses which the principal has on the bond.

Acts 1991, No. 543, §1.

§2245. Proceedings tried summarily

All proceedings brought under this Part shall be tried summarily and referred to a commissioner, as provided by law, who shall report his findings to the court at the earliest date possible.

§2246. Attorney's fees

A. After amicable demand for payment has been made on the principal and surety and thirty days have elapsed without payment being made, any claimant recovering the full amount of his timely and properly recorded or sworn claim, whether by concursus proceeding or separate suit, shall be allowed ten percent attorney's fees which shall be taxed in the judgment on the amount recovered.

B. If the trial court finds that such an action was brought by any claimant without just cause or in bad faith, the trial judge shall award the principal or surety a reasonable amount as attorney's fees for defending such action.

Acts 1991, No. 543, §1.

§2247. Construction of Part

Nothing in this Part shall be construed to deprive any claimant, as defined in this Part and who has complied with the notice and recordation requirements of R.S. 38:2242(B), of his right of action on the bond furnished pursuant to this Part, provided that said action must be brought against the surety or the contractor or both within one year from the registry of acceptance of the work or of notice of default of the contractor; except that before any claimant having a direct contractual relationship with a subcontractor but no contractual relationship with the contractor shall have a right of action against the contractor or the surety on the bond furnished by the contractor, he shall in addition to the notice and recordation required in R.S. 38:2242(B) give written notice to said contractor within forty-five days from the recordation of the notice of acceptance by the owner of the work or notice by the owner of default, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor or service was done or performed. Such notice shall be served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office in the state of Louisiana.

Amended by Acts 1960, No. 117, §1; Acts 1962, No. 16, §1; Acts 1985, No. 244, §1.

§2248. Provisions for withholding payment; effect on liability of contractor or agency; punch list

A. No contracts for the construction, alteration, or repair of any public works executed in conformity with this Part shall provide that the state or any of its agencies, boards, or subdivisions or any other public entity letting such a contract may withhold payment of more than ten percent of the contract price on projects of less than five hundred thousand dollars, and five percent of the contract price on projects of five hundred thousand dollars or more until the expiration of forty-five days after the recordation of formal acceptance of such work, or notice of default by the contractor or subcontractor. Such provision for withholding of payment shall in no way change or affect the liability of the letting agency or of the contractor, subcontractor, or their sureties.

B. All public works contracts shall contain a clause stating that any punch list generated during a construction project shall include the cost estimates for the particular items of work the design professional has developed based on the mobilization, labor, material, and equipment costs of correcting each punch list item. The design professional shall retain his working papers used to determine the punch list items cost estimates should the matter be disputed later. The contracting agency shall not withhold from payment more than the value of the punch list. Punch list items completed shall be paid upon the expiration of the forty-five day lien period. The provisions of this Section shall not be subject to waiver, nor shall these provisions apply to the Department of Transportation and Development.

Added by Acts 1954, No. 583, §1. Amended by Acts 1978, No. 470, §1; Acts 1979, No. 751, §1; Acts 1986, No. 194, §1, eff. June 28, 1986; Acts 2001, No. 1216, §1, eff. July 2, 2001.

§2249. Security in lieu of the amount withheld

A. Under any contract awarded under the provisions of this Chapter, the contractor may, with written consent of his surety company, from time to time, withdraw the entire amount retained from payments due the contractor pursuant to the terms of the contract, or any portion thereof, by depositing with the state treasurer for state contracts, or the treasurer or secretary of a public entity for other than state contracts, the following security, or a combination thereof, in an amount equal to the amount of funds being withdrawn:

(1) Certificates of deposit issued by commercial banks located in the state of Louisiana. The certificates shall not exceed the maximum dollar amount secured by the Federal Deposit Insurance

Corporation. The certificates shall be negotiable, with payment of accrued interest, or shall be accompanied by an irrevocable power of attorney executed by the owner of the certificate in favor of the treasurer of the state or other public entity.

(2) Certificates of deposit issued by savings and loan associations located in the state of Louisiana. The certificates shall not exceed the maximum dollar amount secured by the Federal Deposit Insurance Corporation. The certificates shall be negotiable, with payment of accrued interest, or shall be accompanied by an irrevocable power of attorney executed by the owner of the certificate in favor of the treasurer of the state or other public entity.

B. The treasurer of the state or other public entity shall, after the date of substantial completion of the work, as defined in R.S. 38:2241.1, collect all interest or income on the security deposited and shall, by and with written consent of the contractor's surety, pay such interest or income to the contractor. Prior to the date of substantial completion, all interest or income on the security deposited shall accrue to the state or other public entity.

C. In the event that the contractor shall default in performance of the contract or any portion thereof, the securities deposited by him in lieu of the amount withheld, and all interest or income accruing on said securities may be negotiated or sold by the state or other public entity and the proceeds of said negotiation or sale used as if the proceeds represented the payments withheld under the terms of the contract.

D. The provisions of this Section shall have no effect on the prohibition against the Louisiana Department of Transportation and Development's withholding of payments.

E. The provisions of this Section shall not apply to the office of facility planning and control of the division of administration.

Acts 1991, No. 577, §1, eff. July 16, 1991.

PART IV. PURCHASE OF MATERIALS, SUPPLIES AND PROVISIONS

§2251. Preference for products produced or manufactured in Louisiana; exceptions

A. As used in this Section, the following terms shall have the following meanings ascribed to them:

(1) "Assembled" means the process of putting together all component parts of an item of equipment by the manufacturer when the assembly plant is located within the territorial borders of the state of Louisiana. "Assembled" also means the assembly of computers and related equipment when such assembly takes place in Louisiana. "Assembled" shall not mean the process of reassembling parts packed for shipping purposes.

(2) "Louisiana products" means products which are manufactured, processed, produced, or assembled in Louisiana.

(3) "Manufactured" means the process of making a product suitable for use from raw materials by hand or by machinery. "Manufactured" shall not mean the process of assembling component parts.

(4) "Meat" and "meat product" means beef, veal, pork, mutton, poultry, and other meats, and products made from those meats.

(5) "Other products" includes "other meat", "other meat products", "other seafood", and "other seafood products" and means products which are produced, manufactured, grown, processed, and harvested outside the state.

(6) "Processed" means the alteration of any raw product altered from its original state to enhance its value or render it suitable for further refinement or marketing.

(7) "Produced" means the process of manufacturing, planting, cultivating, growing, or harvesting.

(8) "Seafood" means crawfish, catfish, other fish, shrimp, oysters, crabs, underutilized species, and other seafood and freshwater food.

B. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases agricultural or forestry products, including meat, seafood, produce, eggs, paper and paper products under the provisions of this Chapter shall procure or purchase Louisiana products provided all of the following conditions are met:

(1) The bidder certifies in the bid submitted that the product meets the criteria of a Louisiana product.

(2) The product is equal or better than equal in quality to other products.

(3) The cost of the Louisiana product shall not exceed the cost of other products by more than ten percent except as otherwise provided in this Chapter as a specific exception.

C. In addition to the requirements listed in Subsection B of this Section, the following products shall meet the following specific requirements:

(1) Produce shall be produced in Louisiana and produce products shall be produced and processed in Louisiana.

(2) Eggs shall be laid in Louisiana and egg products shall be processed from eggs laid in Louisiana.

(3) Meat and meat products shall be processed in Louisiana from animals which are alive at the time they enter the processing plant.

(4)(a) Seafood shall be:

(i) Harvested in Louisiana seas or other Louisiana waters; or

(ii) Harvested by a person who holds a valid appropriate commercial fishing license issued under R.S. 56:1 et seq.

(b) Products produced from such seafood shall be processed in Louisiana.

(5) Domesticated catfish shall be processed in Louisiana from animals which were grown in Louisiana.

(6) Paper and paper products shall be manufactured or converted in Louisiana. For the purposes of this Paragraph, "manufactured" shall mean the process of making a product suitable for use from raw materials by hand or by machinery, and "converted" shall mean the process of converting roll stock into a sheeted and fully packaged product in a full-time converting operation. For paper supplied in wrapped reams, each carton and each individual ream shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper is manufactured or converted. For paper and paper products supplied in bulk or in other forms, the smallest unit of packaging shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper or paper product is manufactured or converted.

(7) All other agricultural or forestry products shall be produced, manufactured, or processed in Louisiana.

D. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase meat and meat products which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry and which are equal in quality to other meat and meat products, provided the cost of the further processed meat and meat products does not exceed the cost of other meat or meat products by more than seven percent.

E. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase domesticated or wild catfish which are processed in Louisiana but grown outside of Louisiana and which are equal in quality to domesticated or wild catfish which are processed outside of Louisiana provided the cost of the domesticated or wild catfish which are processed in Louisiana does not exceed the cost of the domesticated or wild catfish which are processed outside of Louisiana by more than seven percent.

F. The provisions of this Section shall not apply to a drainage district or sewerage and water board located in the city of New Orleans wherein the cost of products produced or manufactured in the state of Louisiana does not exceed by more than five percent the cost of products which are equal in quality to products produced or manufactured outside of the state in purchases of one million dollars or more, as provided by Acts 880 and 693 of the 1985 Regular Session of the Louisiana Legislature.

G. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase produce processed in Louisiana but grown outside of Louisiana and which is equal in quality to produce processed and grown outside of Louisiana provided the cost of the produce processed in Louisiana does not exceed the cost of the produce processed outside of Louisiana by more than seven percent.

H. Except as otherwise provided in this Section, each procurement officer, purchasing agent, or similar official who procures or purchases materials, supplies, or equipment under the provisions of this Chapter may purchase materials, supplies, or equipment which are Louisiana products, as defined in Paragraph (A)(2) of this Section, and which are equal in quality to other materials, supplies, or equipment, provided that all of the following conditions are met:

NOTE: *Paragraph (1) as amended by Acts 2000, 1st Ex. Sess., No. 123, effective until held invalid.*

(1) The cost of the Louisiana products does not exceed the cost of other materials, supplies, or equipment which are manufactured, processed, produced, or assembled outside the state by more than ten percent.

NOTE: *Paragraph (1) effective if Acts 2000, 1st Ex. Sess., No. 123, is held invalid.*

(1) The cost of the Louisiana products does not exceed the cost of other materials, supplies, or equipment which are manufactured, processed, produced, or assembled outside the state by more than seven percent.

(2) The vendor of Louisiana products agrees to sell the products at the same price as the lowest bid offered on such products.

NOTE: *Paragraph (3) as amended by Acts 2000, 1st Ex. Sess., No. 123, effective until held invalid.*

(3) In cases where more than one bidder offers Louisiana products which are within ten percent of the lowest bid, the bidder offering the lowest bid on Louisiana products is entitled to accept the price of the lowest bid made on such products.

NOTE: *Paragraph (3) effective if Acts 2000, 1st Ex. Sess., No. 123, is held invalid.*

(3) In cases where more than one bidder offers Louisiana products which are within seven percent of the lowest bid, the bidder offering the lowest bid on Louisiana products is entitled to accept the price of the lowest bid made on such products.

I. The provisions of this Section shall not apply to the procurement or purchase of fire fighting or rescue equipment.

J. Notwithstanding any other provision of this Section to the contrary, such preferences shall only apply to bidders whose Louisiana business workforce is comprised of a minimum of fifty percent Louisiana residents.

K. Notwithstanding any other provision of this Section to the contrary, such preference shall not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed, or refined in Louisiana for sale as an expanded clay aggregate form different than its original state. No provision of this Subsection shall affect the preferences applicable to brick manufacturers.

L. The provisions of this Section shall not apply to treated wood poles and piling.

Acts 1987, No. 778, §1; Acts 1990, No. 449, §1, eff. July 18, 1990; Acts 1993, No. 577, §1, eff. June 15, 1993; Acts 1993, No. 1032, §1, eff. July 1, 1993; Acts 1995, No. 1255, §1; Acts 1999, No. 854, §1, eff. July 2, 1999; Acts 2000, 1st Ex. Sess., No. 123, §§1, 3, eff. July 1, 2000; Acts 2001, No. 644, §1; Acts 2001, No. 693, §1, eff. July 1, 2001; Acts 2003, No. 744, §1, eff. June 27, 2003; Acts 2003, No. 1175, §1, eff. July 3, 2003; Acts 2011, 1st Ex. Sess., No. 5, §1.

§2251.1. Preference for milk and dairy products produced or processed in this state

Every person acting as a purchasing agent for any agency, board, commission, department, or other instrumentality of the state or of a parish, municipality, or other unit of local government, including a levee board, drainage district, school board, or special district, shall purchase milk and dairy products produced or processed in this state which are equal in quality to milk and dairy products produced or processed outside the state, provided the cost of the milk or dairy products produced or processed in this state does not exceed by more than ten percent the cost of milk or dairy products of equal quality which are produced or processed outside the state.

Acts 1985, No. 174, §1.

§2251.2. Preference for steel rolled in Louisiana

A. When purchasing steel, every person acting as purchasing agent for any agency, board, commission, department, or other instrumentality of the state or of a parish, municipality, or other unit of local government, including a levee board, drainage district, school board, or special district, shall purchase steel rolled in this state which is equal in quality to steel rolled outside the state, provided the cost of steel rolled in this state does not exceed by more than ten percent the cost of steel which is rolled outside the state.

B. The provisions of this Section shall not apply when sufficient quantities of steel rolled in Louisiana are not available.

Acts 1985, No. 763, §1.

§2252. Requests for bids and proposals to contain reference to preference

All requests for bids and proposals for any purchase shall contain the words: "Preference is hereby given to materials, supplies and provisions, produced, manufactured or grown in Louisiana, quality being equal to articles offered by competitors outside of the state".

Added by Acts 1958, No. 318, §2.

§2253. Preference to firms doing business in state

In making any purchase it shall be the duty of the officer, purchasing agent, board, district or commission, all things being equal, to give preference to firms doing business in the State of Louisiana. However, this preference shall be inferior to and superseded in instances of conflict with that preference granted by R.S. 38:2251.

Added by Acts 1958, No. 318, §3. Amended by Acts 1974, No. 539, §1.

§2254. Delivery tickets and itemized invoices

All persons or companies selling to the state or any of its agencies, boards, districts or commissions shall comply with the following provisions:

- (1) A delivery ticket must accompany the things sold when delivered and
- (2) A complete itemized invoice must be sent to the proper place immediately.

Added by Acts 1958, No. 318, §4.

§2255. Printing contracts; bids

To better facilitate the collection of sales taxes and other taxes in the purchase of printing, lithographing, embossing, engraving, binding, record books, printed supplies, stationery and office supplies and equipment, every board, district, commission, department, institution, or the purchasing agent thereof, and all officers and officials of the state and all parishes, municipalities and political subdivisions thereof, shall purchase the same from Louisiana firms and all printing, lithographing, embossing, engraving, and binding in connection therewith shall be done in the State of Louisiana by Louisiana firms and by Louisiana labor, and all bonds, if required, given by contractors for such printing, lithographing, embossing, binding, record books, printed supplies, stationery and office supplies and equipment shall so state; provided, however, that where the purchase is of certain specialized forms and printing, such as continuous forms, margin punched forms, football tickets, 24 sheet poster, music printing, steel dye and lithographed bonds, decalcomanias, revenue stamps, lithographing and bronzing on acetate, college annuals, fine edition binding, and books, this statute shall not apply.

Except as to specialized forms hereinabove provided, such contracts shall be let to the lowest responsible bidder who is a Louisiana firm, who will comply with the terms of this statute, unless the bid submitted by any firm outside the State of Louisiana is at least three per cent lower than the lowest bid submitted by a Louisiana firm. If, for any reason, the purchaser shall be of the opinion that the public interest will be promoted thereby, it may, at any proposed letting of any of said contracts, reject any and all bids and invite new proposals.

Added by Acts 1958, No. 318, §5. Amended by Acts 1960, No. 502, §1.

§2256. Supplies not ordinarily obtainable from Louisiana firms

In the purchase of said supplies not ordinarily obtainable from Louisiana firms, it shall be permissible to purchase from non-resident firms which are authorized to do business in the state of Louisiana, which maintain an office in the state where payment for supplies may be made, and are otherwise qualified to do business in the state; provided, however, that in the awarding of such

contracts Louisiana firms shall first be given an opportunity to furnish said supplies and shall be given preference.

Acts 1958, No. 318, §6.

§2257. "Louisiana firm" defined

The term "Louisiana firm" shall be construed to mean any person or persons, partnership, company, association or corporation authorized to do and doing business under the laws of the State of Louisiana, paying all taxes duly assessed, having a bona fide residence in this state, owning or leasing a printing plant equipped with machinery and equipment capable of producing the work, office supply or stationery store maintaining an inventory therein with storage facilities and actually engaged in the printing, or office supply or stationery business in Louisiana.

Added by Acts 1958, No. 318, §7. Amended by Acts 1960, No. 502, §1.

§2258. Statement of non-resident firms as to payment of taxes

Before any bill for said supplies shall be paid to any non-resident firm, a statement in writing shall be submitted by the seller to the effect that the said firm furnishing said supplies has paid all taxes duly assessed by the state of Louisiana and its political subdivisions, including franchise taxes, privilege taxes, sales taxes, and all other taxes for which it is liable, to the state and its political subdivisions.

Added by Acts 1958, No. 318, §8.

§2259. Contracts in violation of Act null and void

Any contract awarded or executed, or purchase made in violation of this Part shall be null and void and shall not be enforced in the courts of this state.

Added by Acts 1958, No. 318, §9. Amended by Acts 1960, No. 502, §1.

§2260. Penalties

A. Except as provided for in Subsection B of this Section, violation of any of the provisions of this Part shall be deemed a misdemeanor, and upon conviction thereof shall be punishable by a fine of not less than one hundred dollars or more than five hundred dollars.

B. Whoever, directly or indirectly, by agent or otherwise, intentionally and falsely claims any preference to which he is not entitled under the provisions of this Part shall be subject to penalties of double the dollar amount of the percentage granted through the preference or five hundred dollars, whichever is greater.

Added by Acts 1958, No. 318, §10. Amended by Acts 1960, No. 502, §1; Acts 1999, No. 742, §1.

§2261. Preference for goods manufactured, or services performed, by sheltered workshops; non-applicability of competitive bidding requirements; coordinating council

A. Every agency, board, commission, department, or other instrumentality of the state shall give a preference in its purchasing practices to goods manufactured and services performed by severely handicapped individuals in state-operated and state-supported sheltered workshops.

B. The requirements for competitive bidding contained in Part II of this Chapter shall be inapplicable to cases in which an agency, board, commission, department, or other instrumentality of the state can utilize goods manufactured, or services performed, by severely handicapped individuals in state-operated and state-supported sheltered workshops.

C. The provisions of this Section shall not be construed to limit or otherwise affect the provisions of R.S. 23:3024 and 23:3025 regarding the sheltered industries program for individuals who are blind.

D. There is created within the Department of Health and Hospitals a council whose function shall be to coordinate and facilitate the carrying out of the provisions of this Section. The membership of this council shall be determined by the secretary of the Department of Health and Hospitals.

E. For the purposes of this Section, the following terms are defined as follows:

(1) "Direct labor" means all labor involved in the manufacture of goods or the performance of services except for supervision, instruction, administration, and shipping.

(2) "Goods manufactured and services performed by severely handicapped individuals" means goods and services for which not less than seventy-five percent of the man-hours of direct labor required for manufacture or performance is provided by severely handicapped individuals.

(3) "Qualified nonprofit agency for the severely handicapped" means an agency that:

(a) Is incorporated under the Louisiana Nonprofit Corporation Law and operated in the interests of severely handicapped individuals, and the income of which does not inure in whole or in part to the benefit of any shareholder or other private individual, and

(b) Complies with any applicable occupational health and safety standards provided by the statutes or regulations of this state or of the United States.

(4) "Severely handicapped individuals" means individuals with a physical, mental, or substance abuse disability which constitutes a substantial obstacle to their employment and is of such a nature as to prevent an individual from engaging in normal competitive employment.

(5) "Sheltered workshop" means a facility designed to provide gainful employment for severely handicapped individuals who cannot be absorbed into the competitive labor market or to provide interim employment for such individuals when employment opportunities for them in the competitive labor market do not exist.

(6) "State-operated sheltered workshop" means a sheltered workshop staffed by state agency personnel.

(7) "State-supported sheltered workshop" means a sheltered workshop funded in whole or in part by the state and staffed by personnel from a qualified nonprofit agency for the severely handicapped.

Added by Acts 1983, No. 363, §1; Acts 2010, No. 939, §5, eff. July 1, 2010 (Subsection C), and Jan. 1, 2011 (Subsection D).

PART IV-A. PURCHASE OF MATERIALS, SUPPLIES, OR EQUIPMENT BY CERTAIN POLITICAL SUBDIVISIONS USING CERTAIN AUCTION METHODS

§2271. Purchase of materials, supplies, or equipment by certain political subdivisions using certain auction methods

A.(1) The bidding provisions of this Chapter shall not apply when a political subdivision purchases materials, supplies, or equipment using a reverse auction as authorized by, and in the manner provided in, this Part. A political subdivision may use reverse auction only with the determination by its procurement officer that the best interests of the political subdivision would be

served and that electronic online bidding is more advantageous than other procurement methods provided in this Chapter.

(2) For the purposes of this Part:

(a) "Political subdivision" means any political subdivision of the state, including but not limited to any political subdivision as defined in Article VI, Section 44 of the Constitution of Louisiana.

(b) "Reverse auction" means 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.

B. Prior to the use of reverse auction authorized by this Part, the political subdivision shall develop policies and procedures that may require that:

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

(2) Vendors be prequalified prior to placing bids and allow only bidders who are prequalified to submit bids.

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

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

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

(6) All bids shall be posted electronically and updated on a real-time basis.

(7) The using political subdivision shall retain the right to cancel the solicitation if it determines that it is in the political subdivision's best interest.

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

C. Adequate public notice for the purchases of materials, supplies, or equipment by a political subdivision using a reverse auction shall be given as follows:

(1) The advertisement or notice shall be published two times in a newspaper in the locality, the first advertisement to appear at least fifteen days before the opening date of the reverse auction. In addition to the newspaper advertisement, a political subdivision may also publish an advertisement by electronic media available to the general public.

(2) The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday.

Acts 2011, No. 210, §1, eff. July 1, 2011.

PART V. REGULATIONS OF CLOSED SPECIFICATIONS AND EXCLUSIVE DISTRIBUTION OF MATERIALS

§2290. Closed specification prohibited; exception

A. No architect or engineer, either directly or indirectly, shall submit a closed specification of a product to be used in the construction of a public building or project, unless all products other than

the one specified would detract from the utility of the building or except in those cases where a particular material is required to preserve the historical integrity of the building or the uniform appearance of an existing structure.

B. A closed specification shall not be submitted or authorized when any person or group of persons possess the right to exclusive distribution of the specified product, unless the product is required to expand or extend an existing system presently operating at the facility or site. However, no such closed specifications shall be allowed until rules have been promulgated by the division of administration after oversight by the Senate and House Committees on Transportation, Highways and Public Works and other appropriate legislative committees.

Added by Acts 1965, No. 40, §1. Amended by Acts 1982, No. 596, §1, eff. July 22, 1982; Acts 1997, No. 678, §1.

§2291. Written notice to approving authority of inclusion of closed specification

Whenever an architect or engineer, either directly or indirectly, has included a closed specification in the specifications for a public building or project, he shall submit a written report to the building authority, ten days prior to the final submission of specifications, which report shall include the following:

- (1) Identification of each closed specification;
- (2) A concise statement of the reasons for including a closed specification;
- (3) Identification of other products which are apparently equal and a concise statement as to why they may be excluded under the provisions of R.S. 38:2290.

Added by Acts 1965, No. 40, §1.

§2292. Acceptance or rejection of closed specification

The approving authority may accept a closed specification only after it determines that all products brought to its attention are excludable under the provisions of R.S. 38:2290, however, the approving authority must reject the closed specification, should another product of equal utility and appearance be submitted to them prior to letting of the bid, in which event the specifications must be amended so as to allow substitution of an equal.

Added by Acts 1965, No. 40, §1.

§2293. Effect of violation; proceedings to annul contracts violating provisions of this Part

- A. Any contract entered into in violation of any provision of this Part shall be null and void.
- B. The district attorney in whose district a violation of this Part occurs, the attorney general, or any interested party has a right of action to bring suit for appropriate injunctive relief in the district court to nullify a contract entered into in violation of this Part.
- C. If a judgment of nullity is rendered in an action brought by a district attorney or by the attorney general pursuant to Subsection B hereof, the district court may award a civil penalty not in excess of ten thousand dollars against each offending party.

Added by Acts 1965, No. 40, §1. Amended by Acts 1980, No. 803, §1.

§2294. Separate bids

- A. Each closed specification authorized by the approving authority shall be offered for bid as a separate item.

B. No contractor or sub-contractor shall accept a bid on a closed specification unless the item is priced separately in the bid.

Added by Acts 1965, No. 40, §1.

§2295. Plans and specifications; required provisions

A. All plans and specifications for public works submitted by an architect or engineer shall include the following provisions relating to equal brand products other than those specified:

(1) The name of a certain brand, make, manufacturer, or definite specifications is to denote the quality standard of the article desired, but does not restrict bidders to the specific brand, make, manufacturer, or specification named. It is to set forth and convey to prospective bidders the general style, type, character, and quality of article desired.

(2) When in specifications or contract documents a particular brand, make of material, device, or equipment is shown or specified, such brand, make of material, device, or equipment shall be regarded merely as a standard.

B. When in specifications or contract documents an architect or engineer specifies a particular brand, make of material, device, or equipment, or equal thereto, he shall adequately identify said product by including, minimally, the model or catalog number of the product.

C.(1) If a potential supplier wishes to submit for prior approval a particular product other than a product specified in the contract documents, he shall do so no later than seven working days prior to the opening of bids. Within three days, exclusive of holidays and weekends, after such submission, the prime design professional shall furnish to both the public entity and the potential supplier written approval or denial of the product submitted.

(2) Notwithstanding Paragraph (1) of this Subsection, for public works of the New Orleans Sewerage and Water Board, if a potential supplier wishes to submit for prior approval a particular product other than a product specified in the contract documents, he shall do so no later than fourteen working days prior to the opening of bids. Within three days, exclusive of holidays and weekends, after such submission, the prime design professional shall furnish to both the public entity and the potential supplier written approval or denial of the product submitted.

Added by Acts 1965, No. 40, §1; Amended by Acts 1980, No. 803, §1; Acts 1984, No. 182, §1; Acts 1985, No. 832, §1; Acts 1995, No. 484, §1; Acts 2011, No. 51, §1, eff. June 20, 2011.

§2296. Definitions

A. A "closed specification" shall be a product specified to the exclusion of all other products of apparent equal quality and utility.

B. "Exclusive distribution" shall be the right to control, either by contract or practice, directly or indirectly, the distribution of a product in a particularly defined area to the exclusion of any other distributor.

Added by Acts 1965, No. 40, §1. Amended by Acts 1980, No. 803, §1.

PART VI. PAYMENT OF PREVAILING WAGES

§2301. *Repealed by Acts 1988, No. 18, §1; Acts 1988, No. 90, §1, eff. June 27, 1988.*

PART VII. SELECTION OF PROFESSIONAL SERVICES FOR PUBLIC CONTRACTS

§2310. Definitions

As used in this Part, the following words and phrases shall have the meanings hereinafter set forth unless the context clearly requires otherwise:

(1) "Agency" means the state of Louisiana or any board, commission, department, corporation, institution, or other agency of the state which may require capital outlay projects for the construction of or additions, renovations, and restorations, or any of them, to buildings, plants, and related facilities.

(2) "Architect" means any architect holding a certificate of registration and a license under the laws of the state of Louisiana.

(3) "Boards" means the professional services selection boards created under the provisions of this Part.

(4) "Engineer" means any engineer registered under the laws of the state of Louisiana.

(5) "Landscape architect" means any landscape architect registered under the laws of the state of Louisiana.

(6) "Person" means any architect, engineer, or landscape architect.

(7) "Professional services" means those services performed by an architect, engineer, or landscape architect.

(8) "User agency" means the state agency, department, or institution undertaking a specific project.

(9) "Prime professional" means the architect, landscape architect or engineer with whom the state may sign a contract for professional design services, who shall have the primary responsibility under the contract for the total professional services to be performed in connection with a capital outlay project.

(10) "Supplemental professional services" means any service in addition to the prime professional service in connection with the capital outlay project which the prime professional may be required to provide.

Added by Acts 1975, No. 721, §1. Amended by Acts 1976, No. 525, §1.

§2311. Boards; creation, organization, powers, duties

A.(1) There are hereby created the following professional services selection boards:

(a) The Louisiana Architects Selection Board. The board shall be composed of eight members. Five shall be regular members, one elected from each of five districts set forth in Items (i) through (v) of this Subparagraph. Each member shall be elected in an election conducted by the Louisiana State Board of Architectural Examiners, under such rules and regulations to be promulgated by the Louisiana State Board of Architectural Examiners, in which election all properly licensed architects residing in Louisiana are eligible to vote for the same number of candidates as there are positions to be filled. The five elected architects shall be residents in the state of Louisiana and of the district from which they seek election, and no two architects shall be elected from the same architectural firm, agency, or partnership. In addition to the five regular members, whenever a particular project is under consideration, the head of the particular user agency or his representative shall participate as a sixth member; the participation of such member shall be restricted to matters directly affecting the project of his agency and he shall be entitled to vote on all matters affecting the project of his

agency. In addition to the elected members and user agency representative, the assistant director of facility planning and control shall participate as the seventh member of the board. The districts shall be composed as follows:

(i) District 1: Orleans, Plaquemines, and St. Bernard.

(ii) District 2: Assumption, Jefferson, Lafourche, St. Charles, St. James, St. John the Baptist, St. Tammany, Terrebonne, and Washington.

(iii) District 3: Ascension, East Baton Rouge, East Feliciana, Iberville, Livingston, St. Helena, St. Martin, Tangipahoa, West Baton Rouge, and West Feliciana.

(iv) District 4: Acadia, Allen, Avoyelles, Beauregard, Calcasieu, Cameron, Evangeline, Grant, Iberia, Jefferson Davis, Lafayette, Natchitoches, Pointe Coupee, Rapides, Sabine, St. Landry, St. Mary, Vermilion, and Vernon.

(v) District 5: Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, East Carroll, Franklin, Jackson, LaSalle, Lincoln, Madison, Morehouse, Ouachita, Red River, Richland, Tensas, Union, Webster, West Carroll, and Winn.

(b) The Louisiana Engineers Selection Board. It shall be composed of six members. Two members shall be named in an election conducted by the Consulting Engineers Council of Louisiana, Inc., at which all properly licensed engineers, who are principals of firms with offices in Louisiana, may vote for the same number of candidates as there are positions to be filled, two members shall be named in an election conducted by the Louisiana Engineering Society at which all properly licensed engineers residing in the state of Louisiana may vote for the same number of candidates as there are positions to be filled. In addition to the four regular members, whenever a particular project is under consideration, the head of the particular user agency or his representative shall participate as a fifth member; the participation of such member shall be restricted to matters directly affecting the project of his agency and he shall be entitled to vote on all matters affecting the project of his agency. All members shall reside in the state of Louisiana and no two engineers shall be appointed or elected from the same engineering firm, agency, or partnership.

(c) The Louisiana Landscape Architects Selection Board. It shall be composed of six members. Four members shall be named in an election conducted under the auspices of the Louisiana Society of Landscape Architects at which all properly licensed landscape architects residing in Louisiana may vote. In addition to the four regular members, whenever a particular project is under consideration, the head of the particular user agency or his representative shall participate as a fifth member; the participation of such member shall be restricted to matters directly affecting the project of his agency and he shall be entitled to vote on all matters affecting the project of his agency.

(2) The director of Facility Planning and Control, or his designee, shall be the eighth member of the board established by Subparagraph (a) of Paragraph (1) and the sixth member of the boards established in Subparagraphs (b) and (c) of Paragraph (1) and shall have the same voting rights and powers as the other members of the respective boards. All elected members of the boards shall be elected for a term of one year.

(3) No person involved in the sale or promotion of materials, equipment, or supplies related to construction, landscaping, or horticulture activities, shall be eligible to serve on any of the aforementioned selection boards.

B. Members of the boards may be removed for just and reasonable cause during their terms at the discretion of the respective appointing authority, in which event the appointing authority shall appoint a new member to fill the unexpired term of the removed member. All other vacancies shall be filled by the appointing authority for the unexpired term. No person may serve more than two

consecutive one-year terms, or any part thereof. After a member's term has expired, that member shall not be eligible to serve on the board for a period of at least two years.

C. No member or firm of which a member is an associate, employee, stockholder, or partner shall be eligible to receive agency contracts during the term of his service on such board and for a period of six months thereafter. No member shall perform services as a consultant to any firm which has received a state agency contract from the board on which that member serves during the year of the board member's service and for one year thereafter.

D. A majority of the members on each of the boards shall constitute a quorum, and a majority vote shall be required in all votes for the selection of persons for professional services. The director of facility planning and control of the division of administration shall not hold the position of, or act as, a chairman of the boards.

E. The board shall have the power and authority, after public notice and a hearing thereon, to adopt and amend such rules and regulations as may be necessary for the performance of their duties as enumerated in this Part. Copies of the rules and regulations shall be furnished to any person by the boards upon written request, for which a nominal fee to defray printing costs may be charged.

F. The domicile of each of the boards shall be Baton Rouge, Louisiana.

G. The Division of Administration shall provide each of the boards with the facilities, office space, staff, and funding necessary to the performance of its duties.

H. Board members shall serve without compensation, except that they shall be reimbursed according to the state schedule for per mile travel reimbursement to and from meetings of the board.

I. Each board shall establish, and make its selection based upon, a formal, written qualifications-based selection procedure.

Added by Acts 1975, No. 721, §1. Amended by Acts 1976, No. 525, §1; Acts 1979, No. 164, §1; Acts 1982, No. 696, §1, eff. Aug. 2, 1982; Acts 1988, No. 966, §1, eff. July 27, 1988; Acts 1999, No. 921, §1, eff. July 7, 1999.

§2312. Notice and application

A. Each agency intending to contract for professional services shall notify the Division of Administration of such intention and shall provide the Division of Administration with all necessary information concerning the proposed project. The Division of Administration shall then evaluate the proposed project for purposes of determining the professional service to be required in order to refer the project to the proper board. The Division of Administration shall then advise the chairmen of the boards as to which selection board the proposed project has been referred.

If the chairman of any of the three professional selection boards objects to a referral made by the Division of Administration, said objection shall be submitted to the Division of Administration, whereupon the Division of Administration shall submit the information concerning the proposed project to a committee composed of the chairman of the Louisiana Architects Selection Board, the chairman of the Louisiana Engineers Selection Board, the chairman of the Louisiana Landscape Architects Selection Board, the head, or representative named by the head, of the user agency whose project is under consideration, and the head of the Division of Administration or his appointed representative. The members of the committee, by majority vote, shall designate which selection board shall have the authority and responsibility for selecting the prime professional for the project. The committee shall notify the Division of Administration of its decision. The Division of Administration shall notify the board which has been designated the responsibility of selecting the prime professional for the project.

The designated board shall then advertise one time in the official state journal the following information: (a) the professional service required; (b) the name, location, and user agency for which

the professional service is required; (c) time and instructions for applicants to submit applications for employment to the appropriate board; (d) general description of the project, and the availability of details upon request; (e) time frame in which the professional services must be completed; (f) the project budget; and (g) the fee, which shall be determined by the Division of Administration.

B. Any person who desires to be considered for a project may submit data to the appropriate selection board concerning his experience, previous projects undertaken, present state projects now being performed by him or his firm for an agency, scope and amount of work on hand, the names of key personnel who will be assigned to the project, and any other information that may be appropriate in selecting the person for the particular project under consideration. The boards may develop standard forms to be used for submitting such data.

Added by Acts 1975, No. 721, §1. Amended by Acts 1976, No. 525, §1.

§2313. Selection of persons for professional services; participation in mentor-protégé program

A. Each person who is to be retained or employed to perform professional services by an agency shall be selected by the boards from properly licensed architects, engineers, and landscape architects. Each of the boards shall consider those persons who make application for employment on any particular project.

B. The following guides, among other factors that the boards may deem appropriate, shall be used by the boards in selecting persons for professional services:

(1) Professional training and experience, both generally and in relation to the type and magnitude of work required for the particular project;

(2) Capacity for timely completion of the work, taking into consideration the person's or firm's current and projected workload and professional and support manpower;

(3) Past and current professional accomplishments, for which opinions of clients or former clients and information gathered by inspection of current or recent projects may be considered;

(4) The nature, quantity, and value of agency work previously performed and presently being performed by the person after the effective date of this Part, it being generally desirable to allocate such work among persons who are desirous and qualified to perform such work.

(5) Past performance on public projects, including any problems with time delays, cost overruns, and design inadequacies for which the designer was held to be at fault, involved in prior projects as evidenced by documentation provided by the Facility Planning and Control Department of the office of the governor;

(6) An analysis provided by the Facility Planning and Control Department of the office of the governor of whether problems as indicated in Paragraph (5) herein resulted in litigation between the public entity and the person performing professional services, particularly if the designer is currently involved in unsettled litigation with a public entity or has been involved in litigation with a public entity where the public entity prevailed.

C. The boards may, for each individual job or project, establish those qualifications and guidelines they deem necessary to select the person to be retained or employed for such job or project.

D. The boards shall make their selections of persons for a project within sixty days after notification by the Division of Administration as required herein.

E. Nothing in this Section shall be interpreted as denying the right of the prime professional to select, with the approval of the head of the facility planning and control department, the person or persons to perform supplemental professional services for a capital outlay project.

F. The boards may, for any contract governed by the provisions of this Part, include participation in a mentor-protégé program as provided by R.S. 51:1753.1 and 1753.2 as one of the guides used for selection of persons for a project in accordance with Subsection B of this Section.

Added by Acts 1975, No. 721, §1. Amended by Acts 1976, No. 525, §2; Acts 1982, No. 697, §1; Acts 1999, No. 1284, §1.

§2314. Prohibitions, penalties

A. Each contract entered into by an agency for professional services shall contain a prohibition against contingent fees as follows: "The person performing the professional services warrants that he has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure this agreement, and that he has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this agreement. For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration."

B. No contract for professional services shall be granted to any person, corporation, firm, association, or other organization refusing to execute the affidavit required by R.S. 38:2224.

C. Any individual, corporation, partnership, firm, or company, other than a bona fide employee of the person performing the professional service, acting on behalf of his employer, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or the making of a contract for professional services, shall be fined not more than ten thousand dollars, or imprisoned for not more than one year, or both, and any such person or any group, association, company, corporation, firm, or partnership thereof, who shall offer to pay, or pay, any fee, commission, percentage, gift, or any other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services, shall be fined not more than ten thousand dollars, or imprisoned for not more than one year, or both.

D. Any agency official or board member or employee of either who offers to solicit or secure, or solicits or secures, a contract for professional services and is to be paid, or is paid, any fee, commission, percentage, gift, or any other consideration, contingent upon the award or making of such a contract for professional services between an agency and any individual person, company, firm, partnership, or corporation shall be guilty of public bribery as provided by R.S. 14:118.

E. In addition to the penalties provided herein, any person who is in violation of any of the prohibitions listed in this section and who is licensed by any regulatory or professional board in order for him to practice his trade, profession or vocation in this state, shall have his license suspended for not less than one year, nor more than ten years, by the licensing authority.

Added by Acts 1975, No. 721, §1. Amended by Acts 1982, No. 845, §1.

§2314.1. Arbitration

Any contract for professional design services entered into by the state shall require that all claims, disputes, and other matters arising from that contract shall, at the option of the state, be decided by arbitration. To the extent possible, such arbitration proceedings shall be conducted in accordance with the Construction Industry Association rules of the American Arbitration Association. Any such arbitration proceeding shall, at the option of the state, be consolidated with

or joined to other arbitration proceedings between the state and other persons or entities under contract with the state for the construction, repair, or alteration of the project in question. This Section shall not be limited by R.S. 38:2316.

Added by Acts 1982, No. 599, §1.

§2315. Equal opportunity

Every person shall be guaranteed equal employment opportunities in the selection of persons for professional services and such selection of persons for professional services and such selection shall not discriminate against any person because of race, religion, national ancestry, age, sex, or physical condition. If any person or persons violates the provisions of this section, they shall be subject to the same penalties as provided in R.S. 38:2314(A).

Added by Acts 1975, No. 721, §1.

§2316. Applicability

Except as provided in R.S. 38:2311(C), the provisions of this Part shall not apply to professional service contracts in which the estimated project budget cost is five hundred thousand dollars or less.

Added by Acts 1975, No. 721, §1. Amended by Acts 1982, No. 618, §1; Acts 1999, No. 921, §1, eff. July 7, 1999; Acts 1999, No. 1013, §1, eff. July 9, 1999.

§2317. Ownership of documents

A. Any and all plans, designs, specifications, or other construction documents resulting from professional services paid for by any public entity shall remain the property of the public entity whether the project for which they were prepared was constructed or not. Except as otherwise provided herein, such documents may be used by the public entity to construct another like project without the approval of, or additional compensation to, the design professional.

B. The designer shall not be liable for injury or damage resulting from any re-use of plans, designs, specifications, or other construction documents by a public entity, if the designer is not also involved in the re-use project.

C. The designer may re-use his design documents however he so desires.

D. The right of ownership provided for in this Section shall not be transferable.

E. Prior to the re-use of construction documents for a project in which the designer is not also involved, the public entity shall remove and obliterate from the construction documents all identification of the original designer, including name, address, and professional seal or stamp.

Acts 1982, No. 693, §1; Acts 1991, No. 177, §1, eff. July 2, 1991.

§2318. Prescription

A. Any action by the state or an agency against any person or other entity concerning a professional services contract for public works construction entered into by such person or other entity with the state or an agency shall prescribe five years from the acceptance of the project to which the services performed under the contract are related.

B. Any action against the state or an agency by any person or entity concerning services he has performed pursuant to a professional services contract for public works construction he has entered into with the state or an agency shall prescribe five years from the acceptance of the project to which the services performed under the contract are related.

C. This Section shall not be limited by R.S. 38:2316.

Acts 1999, No. 743, §

PART VII-A. LOUISIANA "NO BIDDING OF DESIGN PROFESSIONAL SERVICES" POLICY

§2318.1. Louisiana "No Bidding of Design Professional Services" policy

A. It is the policy of the state of Louisiana, its political subdivisions, and agencies to select providers of design professional services on the basis of competence and qualifications for a fair and reasonable price. Neither the state nor any of its political subdivisions or agencies may select providers of design services wherein price or price-related information is a factor in the selection.

B. However, the provisions of this Section shall have no effect on and shall not supersede any contract permitted pursuant to the provisions of Chapter 1 of Title 48 of the Louisiana Revised Statutes of 1950 relating to the authority for the Department of Transportation and Development to enter into design-build contracts and the authority of the Louisiana Transportation Authority to enter into public-private partnership contracts, R.S. 38:85, 2225.2.1, or 2225.2.2 relating to the authority for certain political subdivisions to enter into design-build contracts, or R.S. 34:3523, relating to any port project that a notice of intent is advertised for in accordance with R.S. 34:3523, prior to December 31, 2015.

C. It is the policy of the state of Louisiana that all records, as defined in R.S. 44:1(A)(2)(a), involved or dealing with the selection of design professional services shall be open to the public in accord with the intent of Louisiana Constitution Article XII, Section 3, and R.S. 44:31.

Acts 2006, No. 407, §1, eff. July 1, 2006; Acts 2007, No. 373, §1, eff. July 10, 2007; Acts 2008, No. 391, §1; Acts 2012, No. 755, §2, eff. June 12, 2012.

PART VII-B. PERCENT FOR UNIVERSAL DESIGN PROGRAM

§2318.2. Percent for Universal Design Program; established

A. Recognizing the declaration of rights underlying the state's constitution, government is instituted to protect the rights of the individual and provide for the good of the whole; hence, the legislature declares it to be the public policy of the state that a portion of money spent by the state and state agencies on the construction or renovation of state buildings should be spent on implementing principles of universal design. In pursuit of this policy, the Percent for Universal Design Program is established for the purpose of providing for the implementation of such principles in or on state buildings and grounds to move beyond minimum accessibility requirements, maximize accessibility for all users regardless of their functional capabilities, and bring to the attention of architects, builders, and the public at large the vast benefits that can be realized by implementing universal design principles in the construction and renovation of all buildings, including those privately owned and personal residences.

B. The following terms as used in this Section shall have the meaning provided in this Subsection unless the context clearly indicates otherwise:

(1) "Renovation" does not include a project the principal purpose of which is the rehabilitation of plumbing, heating, ventilating, air conditioning, or electrical systems.

(2) "State building" means any building, facility, structure, or park built or renovated using state funds that will be owned by a department or agency in the executive, judicial, or legislative branch of state government, including any state-owned lands or space surrounding or integral to the building. "State building" does not include bridges, tunnels, or sewers, unless such structures are adjuncts of the principal element of the project.

(3) "State funds" or "state money" shall not include federal funds or insurance proceeds for the construction, replacement, renovation, or improvement of a state building damaged by a natural catastrophe when conditions governing the expenditure of such monies specifically preclude their use for the utilization and implementation of universal design features, nor shall it include state monies used as a match for such federal funds or insurance proceeds.

(4) "Universal design" as more fully defined in Subsection C of this Section, means certain design features that are not currently required by the Americans with Disabilities Act of 1990, although they may be used to satisfy the Americans with Disabilities Act requirements and when so utilized, the cost may be applied in satisfaction of the two percent monetary requirement of this Section.

C. Universal design is a principle of design guiding a wide range of design disciplines including environments, products, and communications including all of the following:

(1)(a) Equitable Use. The design is useful and marketable to people with diverse abilities.

(b) Guidelines. Provides the same means of use for all users: identical whenever possible; equivalent when not. Avoids segregating or stigmatizing any users. Incorporates provisions for privacy, security, and safety that should be equally available to all users. Makes the design appealing to all users.

(2)(a) Flexibility in Use. The design accommodates a wide range of individual preferences and abilities.

(b) Guidelines. Provides choice in methods of use. Accommodates right or left handed access and use. Provides adaptability to the user's pace.

(3)(a) Simple and Intuitive Use. Use of the design is easy to understand, regardless of the user's experience, knowledge, language skills, or current concentration level.

(b) Guidelines. Eliminates unnecessary complexity. Consistent with user expectations and intuition. Accommodates a wide range of literacy and language skills. Arranges information consistent with its importance. Provides effective prompting and feedback during and after task completion.

(4)(a) Perceptible Information. The design communicates necessary information effectively to the user, regardless of ambient conditions or the user's sensory abilities.

(b) Guidelines. Uses different modes (pictorial, verbal, tactile) for redundant presentation of essential information. Provides adequate contrast between essential information and its surroundings. Maximizes "legibility" of essential information. Differentiates elements in ways that can be described which includes making it easy to give instructions or directions. Provides compatibility with a variety of techniques or devices used by people with sensory limitations.

(5)(a) Tolerance for Error. The design minimizes hazards and the adverse consequences of accidental or unintended actions.

(b) Guidelines. Arranges elements to minimize hazards and errors: most used elements, most accessible; hazardous elements eliminated, isolated, or shielded. Provides warnings of hazards and errors. Provides fail-safe features. Discourages unconscious action in tasks that require vigilance.

(6)(a) Low Physical Effort. The design can be used efficiently and comfortably and with a minimum of fatigue.

(b) Guidelines. Allows user to maintain a neutral body position. Uses reasonable operating forces. Minimizes repetitive actions. Minimizes sustained physical effort.

(7)(a) Size and Space for Approach and Use. Appropriate size and space is provided for approach, reach, manipulation, and use regardless of user's body size, posture, or mobility.

(b) Guidelines. Provides a clear line of sight to important elements for any seated or standing user. Makes reach to all components comfortable for any seated or standing user. Accommodates variations in hand and grip size. Provides adequate space for the use of assistive devices or personal assistance.

D. Except as otherwise provided in this Section, whenever more than two million dollars of state funds, whether obtained from the sale of bonds or otherwise, is to be spent by a state agency for the construction or renovation of a state building, the agency that contracts for the construction or renovation shall expend two percent of the state money to utilize and incorporate universal design principles.

E. Nothing in this Part shall supercede, restrict, or limit the application of the following laws:

- (1) The Americans with Disabilities Act of 1990 (42 U.S.C. §1201 et seq.).
- (2) The Rehabilitation Act of 1973 (29 U.S.C. §701 et seq.) and ensuing regulations.
- (3) The Fair Housing Act (42 U.S.C. §3601 et seq.).
- (4) R.S. 40:1731 through 1744.
- (5) R.S. 49:148 through 148.3.

F.(1) The commissioner of administration may adopt rules not inconsistent with the stated intent of this program to implement the provisions of this Section. The commissioner may also solicit the assistance and advice of the Louisiana Chapter of the American Institute of Architects in determining whether a particular design feature complies with the intent and principles of universal design. Neither the Louisiana Chapter of the American Institute of Architects nor any member thereof shall be liable for any opinion, assistance, or advice rendered pursuant to this Section. No member of the general public shall have a cause of action for damages against the state, the commissioner of administration, nor any employee of the division of administration for the inclusion or failure to include a particular design feature.

(2) The rules provided for in this Section shall contain standards for construction and renovation and this Section shall not be implemented until such rules have been finally promulgated in accordance with the Administrative Procedure Act and shall be specifically subject to oversight and approval by the House and Senate committees on transportation, highways, and public works.

Acts 2009, No. 368, §1, eff. Jan. 1, 2010.

PART VIII. LOCAL GOVERNMENT EQUIPMENT-LEASE-PURCHASE

§2319. Short title

This Part shall be known as the Local Government Equipment-Lease-Purchase Act.

Acts 1985, No. 758, §1, eff. July 17, 1985.

§2319.1. Legislative findings and intent

The intent of the legislature in enacting this Part is to provide a cost effective means of acquiring essential equipment for the operation of local governmental entities. Commercial leases or renting agreements as well as lump sum purchases of equipment have created a burden on the finances of the various local governmental entities in the state, and it has been determined that, pursuant to this Part, essential equipment may be obtained using an equipment-lease-purchase contract in conjunction with tax-exempt financing and earnings on investments by nonprofit lessors resulting in lower net equipment costs to local government.

Acts 1985, No. 758, §1, eff. July 17, 1985.

§2319.2. Definitions

As used in this Part, 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 provision:

(1) "Annual appropriation dependency requirement" means a provision which shall be included in the contract and the documents relating to each equipment-lease-purchase contract which provides that, after a diligent and good faith effort by the local governmental entity to appropriate funds for the payment of sums due under such lease for the next ensuing fiscal year, if such funds are not appropriated for such fiscal year, such lease shall terminate in accordance with the terms of the lease at the end of the current fiscal year and the local governmental entity shall not be liable for the payment of further rental payments not already incurred on such lease past the then current fiscal year, provided the equipment is returned to the nonprofit lessor or his agent, as provided in the equipment-lease-purchase contract.

(2) "Equipment-lease-purchase contract" means the lease-purchase contract in the form approved by the State Bond Commission between the local governmental entity and a nonprofit lessor providing for an obligation to lease equipment approved by the governmental entity pursuant to this Part and the lease of selected equipment designated by a local governmental entity.

(3) "Lessee" means the local governmental entity which is designated as lessee under an equipment-lease-purchase contract.

(4) "Local governmental entity" means municipalities, parishes, school boards, clerks of court, levee districts, law enforcement districts, all special service districts, port commissions, and other political subdivisions of the state of Louisiana.

(5) "Nonprofit lessor" or "lessor" means a public corporation or public trust organized pursuant to state law having for its beneficiary the state, organized as a not-for-profit entity, no portion of the net earnings or other assets of which inure to the benefit of any private shareholder or individual, and which shall be authorized under state law to issue obligations for equipment acquisition the interest on which is exempt from calculation of gross income for federal income tax purposes.

(6) "Selected equipment" means the equipment, as determined by the local governmental entity, which shall be the subject of a lease-purchase contract under the provisions of this Part.

(7) "Selected vendor" means a supplier, manufacturer, retailer, wholesaler, dealer, or other source for selected equipment which has been selected by the local government entity pursuant to state law.

Acts 1985, No. 758, §1, eff. July 17, 1985. Acts 1987, No. 134, §1.

§2319.3. Equipment-lease-purchase contracts with nonprofit lessors authorized; term

Local governmental entities may enter into equipment-lease-purchase contracts directly with nonprofit lessors, as provided in this Part, for a term not to exceed ten years or the reasonably expected economic life of the equipment, whichever is less, notwithstanding any other law to the contrary.

Acts 1985, No. 758, §1, eff. July 17, 1985.

§2319.4. Procurement of equipment; general law applicable

A. No equipment may be leased under a lease-purchase contract under the terms of this Part unless such equipment, the estimated price, the estimated economic useful life, and the selected vendor thereof is identified by the local governmental entity pursuant to state law regarding the procurement of equipment. After such equipment and the selected vendor thereof have been identified and participation of the local governmental entity approved by the nonprofit lessor, the local governmental entity electing to participate in a lease-purchase contract with a nonprofit lessor under the terms of this Part shall notify such nonprofit lessor of the selected equipment, price, and selected vendor, whereupon such nonprofit lessor shall be responsible for the purchase of such equipment, but only with such funds as are currently available to such nonprofit lessor for such purpose, from such vendor and shall include such selected equipment under the schedule of leased equipment under the equipment-lease-purchase contract with the local governmental entity, subject to the provisions of Section 2319.5 of this Part. In the event that the nonprofit lessor is itself subject to the state law regarding the procurement of equipment, the purchase of selected equipment from selected vendors for the purposes of this Part need not be separately bid and the selection process completed by the local governmental entity shall be imputed to the nonprofit lessor.

B. The purchase of the selected equipment by the nonprofit lessor shall be subject to only those state and local sales and use taxes which the lessee would have been subject to if the selected equipment had been purchased directly by the lessee. If the lessee is subject to sales and use taxes upon a direct purchase of the selected equipment by the lessee, the nonprofit lessor shall be so subject; however, in such cases the lessee shall not be subject to a sales and use tax on the lease payments to the nonprofit lessee.

C. Notwithstanding any provision of law to the contrary, the selected equipment shall not be subject to any lien or other encumbrance asserted by, and shall be exempt from seizure, under any writ, mandate or process whatsoever by the creditors of the nonprofit lessor or by creditors of or those claiming against or through the lessee. The exemption from seizure provided in this Subsection shall not be construed to prohibit the nonprofit lessor from entering into contracts, indentures of trust, mortgages, or other security devices pursuant to which the nonprofit lessor expressly grants a security interest in and to the selected equipment nor is the exemption from seizure to be construed to invalidate or in any way restrict such contracts, indentures, mortgages, or other security agreements pursuant to which the nonprofit lessor has heretofore granted or may hereafter expressly grant a security interest in and to the selected equipment which may include the right to seize the selected equipment.

Acts 1985, No. 758, §1, eff. July 17, 1985; Acts 1986, No. 528, §1, eff. July 2, 1986.

§2319.5. Selection of nonprofit lessor; award of lease

A lease-purchase contract with a nonprofit lessor for one or more pieces of selected equipment may be executed between the local governmental entity and a nonprofit lessor through competitive negotiation, provided that a notice stating the estimated principal amount of any proposed lease, the equipment to be leased, the interest rate factor to be computed in the lease payments, and the date,

time, and place of the execution of the proposed lease shall be published in the official journal of the local governmental entity at least twice within a fifteen-day period before such execution date with the last publication at least seven days prior to the proposed execution date. Any nonprofit lessor may submit a proposal to be lessor under the lease. The nonprofit lessor submitting the proposal most advantageous to the local governmental entity shall be selected as lessor under the equipment-lease-purchase contract. Publication of the notice shall be the responsibility of the local governmental entity.

Acts 1985, No. 758, §1, eff. July 17, 1985.

§2319.6. Appropriation dependency

All equipment-lease-purchase contracts entered into pursuant to this Part shall contain an annual appropriation dependency requirement to the effect that the renewal and continuation of such contract is contingent upon the appropriation of funds to fulfill the requirements of the contract and if the local governmental entity, after a diligent and good faith effort, fails to appropriate sufficient monies to provide for payments under the contract, the obligation to make payment under the contract shall terminate in accordance with the terms of the contract on the last day of the last fiscal year for which funds were appropriated, provided the equipment is returned to the nonprofit lessor or his agent, as provided in the equipment-lease-purchase contract, and such contract shall not be a long-term debt of the local governmental entity. In addition, in such equipment-lease-purchase contracts, the nonprofit lessor shall covenant and agree to indemnify and hold the lessee harmless against any loss, damage, liability, cost, penalty, or expense, including attorney's fees, which is not otherwise agreed to by the lessee in the equipment-lease-purchase contract and which is incurred and arises upon a failure of the local governmental entity to appropriate funds in the manner described above for a continuation of the contract or the exercise of the option to purchase the selected equipment.

Acts 1985, No. 758, §1, eff. July 17, 1985.

§2319.7. Purchase option

All equipment-lease-purchase contracts shall provide that the lessee shall have the right to purchase any piece of selected equipment at the termination of payments for such piece of equipment as set forth in the lease-purchase contract for a sum not to exceed one dollar.

Acts 1985, No. 758, §1, eff. July 17, 1985.

§2319.8. Lease status

Any equipment-lease-purchase contract entered into pursuant to this Part shall be treated as a lease for all legal purposes without regard to the rights and obligations of the lessee at lease termination or to any interest payment factor, and without necessity of filing a chattel mortgage. The nonprofit lessor shall be deemed owner of the selected equipment during the term of the lease. In addition, the selected equipment shall be deemed to be movable property for all purposes and shall not become a component part of any immovable property notwithstanding any provisions of law to the contrary, including but not limited to Civil Code Articles 465, 466, 467, 493.1, or 495.

Acts 1985, No. 758, §1, eff. July 17, 1985.

§2319.9. Equipment warranty; pursuit of actions

All equipment-lease-purchase contracts shall provide that whatever interests, claims and rights including warranties of the selected equipment which the nonprofit lessor may have against the selected vendor of the selected equipment which is the subject of such equipment-lease-purchase contract, shall be assigned to the lessee, and the lessee shall have full right to pursue any and all remedies available to the nonprofit lessor for breach of any warranty against the selected vendor.

In addition, all equipment-lease-purchase contracts shall provide that the nonprofit lessor shall join the lessee as a party plaintiff in any cause if required under state law for a successful pursuit of such action. Upon termination of the lease-purchase contract, unless the option to purchase is exercised, all such interests, claims, and rights assigned to the lessee under this Section shall revert to the lessor. In addition, any lease-purchase contract shall provide that the lessee has no right to alienate or encumber the selected equipment during the term of the lease.

Acts 1985, No. 758, §1, eff. July 17, 1985.

§2319.10. Approval by State Bond Commission

No equipment-lease-purchase contract may be effected under the provisions of this Part unless the prior written approval of the form of the lease is obtained from the State Bond Commission.

Acts 1985, No. 758, §1, eff. July 17, 1985.

**PART IX. DONATION OR EXCHANGE OF SURPLUS PROPERTY
BY CERTAIN POLITICAL SUBDIVISIONS**

§2319.21. Surplus property; donation or exchange

Nothing contained in this Part or in any other provision of law shall prohibit the donation or exchange of movable surplus property between or among political subdivisions whose functions include public safety.

Acts 1999, No. 856, §1, eff. Nov. 25, 1999.

**PART X. DISPOSAL OF SURPLUS COMPUTER
EQUIPMENT BY POLITICAL SUBDIVISIONS**

§2320. Disposal of surplus computer equipment by political subdivisions

Notwithstanding the provisions of any other law to the contrary, political subdivisions in the state shall establish procedures to give first priority for the acquisition of their surplus computer equipment to public elementary and secondary schools in the state and community and technical colleges under the management and control of the Board of Supervisors of Louisiana Community and Technical Colleges.

Acts 2005, No. 152, §1, eff. June 28, 2005.