

SENATE BILL NO. 300

BY SENATOR MIZELL

1 AN ACT

2 To amend and reenact R.S. 39:197(13) and (19) through (21), 198(E)(2), (H)(1)(c), the
3 introductory paragraph of (J), (J)(1)(d), 199(D)(4), 200(K), 1556(31) and (62),
4 1594(C)(3), 1597, 1600.2(C)(4), 1602.1(C)(2), the introductory paragraph of
5 1606(B), 1619(A)(1)(i), 1630, and 1691(A), to enact R.S. 39:1600.2(G),
6 1619(A)(2)(k), (3)(h), (4)(f), and (5)(d), 1685(F), and 1692(D) through (G), and to
7 repeal R.S. 39:197(22), relative to the Louisiana Procurement Code; to provide for
8 definitions; to provide for requirements of information technology contractual review
9 procedures; to provide for applicability; to provide for negotiation and award of
10 contracts; to provide for bidding on contracts; to provide for advertisement and
11 notice requirements for procurement; to provide for certain prohibitions; to provide
12 for contract types; to provide for legal and contractual remedies; to provide relative
13 to administrative appeals; to provide relative to commencement of actions relative
14 to procurement; to provide for an effective date; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 39:197(13) and (19) through (21), 198(E)(2), (H)(1)(c), the
17 introductory paragraph of (J), (J)(1)(d), 199(D)(4), 200(K), 1556(31) and (62), 1594(C)(3),
18 1597, 1600.2(C)(4), 1602.1(C)(2), the introductory paragraph of 1606(B), 1619(A)(1)(i),
19 1630, and 1691(A) are hereby amended and reenacted and R.S. 39:1600.2(G),
20 1619(A)(2)(k), (3)(h), (4)(f), and (5)(d), 1685(F), and 1692(D) through (G) are hereby
21 enacted to read as follows:

1 §197. Definitions

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

4 * * *

5 (13) "Invitation to negotiate" means a written or electronically posted
6 solicitation for competitive sealed replies to select one or more vendors with which
7 to commence negotiations for the procurement of information technology systems,
8 information technology services, software, professional services, ~~or~~ consulting
9 services, or fiscal intermediary services.

10 * * *

11 ~~(19) "Related services" means and is limited to service activities affecting the~~
12 ~~maintenance of information technology equipment or software and the providing of~~
13 ~~fiscal intermediary services and shall also include those consulting services ancillary~~
14 ~~to the procurement of information technology hardware or software that would~~
15 ~~otherwise be governed by the provisions of professional, personal, consulting, and~~
16 ~~social services procurement in Chapter 17 of Subtitle III of this Title. Except for~~
17 ~~consulting services ancillary to the procurement of fiscal intermediary services by~~
18 ~~cooperative purchasing, such consulting services contracts shall be limited to the~~
19 ~~lesser of twenty percent of the procurement amount or two hundred fifty thousand~~
20 ~~dollars.~~

21 (20) "Rental contract" means and includes contracts between a supplier of
22 information technology equipment and the state, or a state agency, through which
23 information technology equipment may be leased for a term not to exceed one fiscal
24 year, such contracts to include the right of termination by the state upon notice of
25 ninety days or less, and to be renewable, upon review ~~and recommendations of the~~
26 ~~procurement support team and review~~ and approval by the office of technology
27 services, with such renewal to be limited to one additional term not to exceed twelve
28 months.

29 ~~(21)~~(20) "Software" means computer programs and documentation essential
30 to and necessary for an information technology system or information technology

1 service to perform productive operations.

2 ~~(22)~~**(21)** "Utility" means any information technology service provided by the
3 office of technology services and used in the essential operations of a state agency,
4 such as system authentication, data replication, and system utilization and
5 performance management.

6 §198. Types of contracts permitted

7 * * *

8 E. The use of a multiyear contract for information technology systems,
9 information technology services, and professional services contracts and consulting
10 services contracts related to information technology shall be in accordance with rules
11 and regulations and under the following conditions:

12 * * *

13 (2) The director of the ~~state purchasing~~ office **of state procurement** shall
14 approve in writing the use of a multi-year contract over three years, not to exceed
15 five years.

16 * * *

17 H. Rental Contracts. Upon the advance written approval of the state central
18 purchasing agency, state agencies may enter into contracts for the rental of
19 information technology equipment and related services on a month-to- month basis
20 for a period not to extend beyond the end of the fiscal year in which the contract is
21 made. All such contracts shall be entered into only as a result of competitive sealed
22 bidding procedures.

23 (1) Equipment currently installed, or installed at the beginning of a fiscal year
24 under a valid rental contract, may be retained at the end of the fiscal year by
25 renewing or extending the existing rental contract for one additional term, not to
26 exceed twelve months, without competitive sealed bidding procedures, subject to the
27 following provisions:

28 * * *

29 (c) Renewal of a rental contract shall be subject to the advance ~~review and~~
30 ~~recommendation of the procurement support team and to the advance~~ written

1 approval of the state central purchasing agency and shall be permitted only if any
2 proposed price increases do not exceed the supplier's current published list prices.

3 * * *

4 J. Master Agreements. The ~~state director of purchasing~~ **chief procurement**
5 **officer** may enter into master agreements with vendors with which the state conducts
6 substantial business over a period of time.

7 (1) Such agreements shall set forth those terms and conditions of specific
8 legal import which relate to the basic provisions according to which procurement
9 activity will be conducted, and shall meet the following requirements:

10 * * *

11 (d) Each master agreement must be ~~negotiated by a procurement support~~
12 ~~team and~~ executed on behalf of the state by the ~~state director of purchasing~~ **chief**
13 **procurement officer**.

14 * * *

15 §199. Methods of procurement

16 * * *

17 D. Method for procuring software and software maintenance and support
18 services.

19 * * *

20 (4) ~~The procurement support team shall develop and deliver to the office of~~
21 ~~state procurement and the office of technology services proposed rules establishing~~
22 ~~guidelines for procurement activities under this Part.~~ Upon approval of the office of
23 technology services, the office of state procurement shall promulgate rules in
24 accordance with the Administrative Procedure Act.

25 * * *

26 §200. General provisions

27 The following general provisions shall apply to all procurements under this
28 Part:

29 * * *

30 K. The provisions of this Part shall, with respect to the procurement of

1 information technology systems or information technology services, supersede
 2 specifications of any contradictory or conflicting provisions of the following statutes:
 3 R.S. 38:2211 et seq. with respect to awarding of public contracts and R.S. 39:1551
 4 through 1736, but all other provisions in Chapter 17 of Title 39 apply to all
 5 procurements under this Part. ~~The provisions of this Part do not relate to the~~
 6 ~~procurement of services covered by R.S. 39:1481 through 1526 except as provided~~
 7 ~~in R.S. 39:198.~~ The Louisiana Lease of Movables Act, R.S. 9:3301 through 3342,
 8 shall not apply to the provisions of this Part.

9 * * *

10 §1556. Definitions

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

15 * * *

16 (31) "Invitation to negotiate" means a written or electronically posted
 17 solicitation for competitive sealed replies to select one or more vendors with which
 18 to commence negotiations for the procurement of information technology systems,
 19 information technology services, software, professional services, ~~or~~ consulting
 20 services, **or fiscal intermediary services.**

21 * * *

22 (62) "Using agency" means any governmental body of the state which utilizes
 23 any supplies, services, ~~or~~ major repairs, **or professional services, personal services,**
 24 **consulting services, or social services** purchased under this Chapter.

25 * * *

26 §1594. Competitive sealed bids

27 * * *

28 C. Public notice.

29 * * *

30 (3) Each advertisement may be published in the official journal of the state.

1 In the case of any purchase to meet the needs of a single budget unit the
2 advertisement ~~shall~~ **may** be published also in a newspaper of general circulation
3 printed in the parish in which the budget unit is situated or, if there is no newspaper
4 printed in the parish, in a newspaper printed in the nearest parish, which has a
5 general circulation in the parish in which the budget unit is situated.

6 * * *

7 §1597. Sole source procurements

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

13 * * *

14 §1600.2. Invitation to negotiate

15 * * *

16 C. The invitation to negotiate shall describe the questions being explored, the
17 facts being sought, and the specific goals or problems that are the subject of the
18 solicitation and shall be subject to all of the following conditions:

19 * * *

20 (4) ~~Auction techniques and~~ **Insights gained during the negotiation process,**
21 **including items of cost, may be used to refine a solution. However,** disclosure of
22 **proprietary** information derived from competing proposals ~~are~~ **is** prohibited while
23 negotiations are underway.

24 * * *

25 **G. All records related to the solicitation shall be public records upon**
26 **award of the contract or contracts, unless otherwise excepted by law.**

27 * * *

28 §1602.1. Prohibition of discriminatory boycotts of Israel in state procurement

29 * * *

30 C.(1)

1 (2) All competitive sealed bids ~~and, competitive sealed~~ proposals, ~~and~~
2 invitations to negotiate issued for procurement contracts with executive branch
3 agencies shall include the text of the following certification:

4 "By submitting a response to this solicitation, the bidder or proposer certifies
5 and agrees that the following information is correct: In preparing its response, the
6 bidder or proposer has considered all proposals submitted from qualified, potential
7 subcontractors and suppliers, and has not, in the solicitation, selection, or
8 commercial treatment of any subcontractor or supplier, refused to transact or
9 terminated business activities, or taken other actions intended to limit commercial
10 relations, with a person or entity that is engaging in commercial transactions in Israel
11 or Israeli-controlled territories, with the specific intent to accomplish a boycott or
12 divestment of Israel. The bidder also has not retaliated against any person or other
13 entity for reporting such refusal, termination, or commercially limiting actions. The
14 state reserves the right to reject the response of the bidder or proposer if this
15 certification is subsequently determined to be false, and to terminate any contract
16 awarded based on such a false response."

17 * * *

18 §1606. Responsibility of bidders and proposers

19 * * *

20 B. Whenever the chief procurement officer, commissioner, or head of a
21 governmental body with such authority proposes to disqualify the lowest bidder on
22 bids ~~of five thousand dollars or more~~ that exceed the amount established by
23 executive order of the governor pursuant to R.S. 39:1596, such individual shall:

24 * * *

25 §1619. Social service contracts

26 A. Social services include:

27 (1) Rehabilitation and health supports include services rendered by a
28 contractor with special knowledge or service available to assist individuals in
29 attaining or maintaining a favorable condition of physical and mental health. These
30 services include but are not limited to:

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(i) Other services in support of same, **including the furnishing of support staff with specialized training to support the underlying social service objectives and deliverables.**

(2) Habilitation and socialization include services rendered by a contractor with special knowledge to assist specified client groups to enhance their self-sufficiency or alleviate their dependency or isolation from the community. These services include but are not limited to:

* * *

(k) Other services in support of same, including the furnishing of support staff with specialized training to support the underlying social service objectives and deliverables.

(3) Protection for adults and children include services rendered by a contractor to provide therapeutic intervention for adults or children who are in danger or threatened with danger of physical or mental injury, neglect, maltreatment, extortion, or exploitation, including victims of family violence. These services include but are not limited to:

* * *

(h) Other services in support of same, including the furnishing of support staff with specialized training to support the underlying social service objectives and deliverables.

(4) Improvement of living conditions and health include services rendered by an authorized contractor with special knowledge or services available to assist individuals to attain or maintain favorable conditions in which to live. These services include but are not limited to:

* * *

(f) Other services in support of same, including the furnishing of support staff with specialized training to support the underlying social service objectives and deliverables.

(5) Evaluation, testing, and remedial educational services for exceptional

1 nonpublic school students with physical or learning disabilities include services
2 rendered by a contractor with special knowledge or services available to provide
3 special educational and related services for exceptional students or students with
4 disabilities voluntarily enrolled in approved nonpublic schools of Louisiana who are
5 not otherwise provided with such services through either their local school program
6 or through other services afforded to them by local school boards or other public
7 agencies. These services include but are not limited to:

8 * * *

9 **(d) Other services in support of same, including the furnishing of support**
10 **staff with specialized training to support the underlying social service objectives**
11 **and deliverables.**

12 * * *

13 §1630. Finality of determinations

14 The determinations required by R.S. 39:1568.1, 1597, 1598(C), 1605, 1606,
15 1608(C), 1612(A), 1614, and 1671(F) are final and conclusive unless **the reviewing**
16 **court, exercising its appellate jurisdiction, finds** they are clearly erroneous,
17 arbitrary, capricious, or contrary to law.

18 * * *

19 §1685. Contract and breach of contract controversies

20 * * *

21 **F. A final decision of the commissioner may be made executory by the**
22 **Nineteenth Judicial District Court in accordance with Code of Civil Procedure**
23 **Article 2782.**

24 §1691. Venue of actions by or against the state in connection with contracts

25 A. Solicitation and award of contracts. The Nineteenth Judicial District Court
26 shall have exclusive venue over an action between the state and a person, bidder,
27 proposer, offerer, or contractor, prospective or actual, to determine whether a
28 solicitation or award of a contract is in accordance with the constitution, statutes,
29 regulations, and the terms and conditions of the solicitation. Such actions shall
30 invoke, **and the court shall exercise, only** the appellate jurisdiction ~~of the court.~~

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§1692. Commencement of actions

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D. Actions requesting judicial review of any determination listed in R.S. 39:1630 shall be commenced within fourteen days after the receipt of the written determination.

E. All actions under R.S. 39:1691 shall be instituted by the filing of a petition for judicial review in the Nineteenth Judicial District Court invoking, and the court shall exercise, only appellate jurisdiction.

F.(1) In any petition for judicial review filed pursuant to R.S. 39:1691(A), a copy of the petition for judicial review shall be served upon the commissioner of administration, the head of the agency which issued the solicitation, and, if applicable, the person awarded the contract. The head of the using agency is the chief executive or administrative officer of the using agency.

(2) In any petition for judicial review filed pursuant to R.S. 39:1691(B), a copy of the petition for judicial review shall be served upon the commissioner of administration.

(3) In any petition for judicial review filed pursuant to R.S. 39:1691(C), a copy of the petition for judicial review shall be served upon the commissioner of administration and the head of the using agency which is a party to the contract. The head of the using agency is the chief executive or administrative officer of the using agency.

(4) In any petition for judicial review filed pursuant to R.S. 39:1692(D), a copy of the petition for judicial review shall be served upon the commissioner of administration and the chief procurement officer.

G. Within sixty days after the service of the service of the petition upon the commissioner of administration, or within further time allowed by the court, the division of administration shall transmit to the reviewing court the original or a certified copy of the administrative record.

Section 2. R.S. 39:197(22) is hereby repealed in its entirety.

1 Section 3. This Act shall become effective upon signature by the governor or, if not
2 signed by the governor, upon expiration of the time for bills to become law without the
3 signature by the governor, as provided by Article III, Section 18 of the Constitution of
4 Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act
5 shall become effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____