

that must be followed are found in Title 34 of the Louisiana Administrative Code (See [LAC 34:I.5101-5513](#) and [34:V.101-3301](#)). These rules may provide definitions and procedures that are not found in the statutes.

### Executive Orders

In addition to the LPC statutes and administrative rules, executive orders are also an important source of law. For example, [Executive Order JBE 17-18](#) provides the procedures required when making certain purchases (including small purchases). Executive orders issued by a governor terminate on the date provided in the order or in a later order. If the order does not contain a termination date, the order terminates 60 days after the legislature's regular session adjourns after the issuing governor leaves office. See [R.S. 49:215](#)(C).

### [Executive Order JBE 17-18](#)

#### **Q.4. Which entities must follow the LPC?**

- A.4.** The answer to this question depends on the type of public entity involved. The LPC generally applies to the executive branch and its agencies. Universities and colleges must also follow the LPC, subject to certain exceptions and exemptions. See [R.S. 39:1572](#)B(1)(d)(i)\*.

Further, some agencies within the executive branch and some services are exempt from the requirements of the LPC. Exempt agencies follow the Public Bid Law.

\*[R.S. 17:3139.5](#)(B)(1)(d)(i) provides that eligible institutions of higher education may participate in the Higher Education Procurement Code (See Part XIII of [Title 34 of the Louisiana Administrative Code](#)) in lieu of the LPC.

#### **Q.5. Which entities are exempt from the LPC?**

- A.5.** The LPC does not apply to the legislative and judicial branches of state government nor to any agency within the legislative branch. The Public Bid law applies to these two branches of government. However, these two branches of government may choose to subject themselves to the LPC.

Political subdivisions and quasi-public entities are also exempt from the LPC. The Public Bid Law applies. However, they also may choose to subject themselves to the LPC.

#### **Q.6. How is “political subdivision” defined under the LPC?**

- A.6.** Political subdivision is not defined in the LPC. Political subdivisions are, however, defined in [Art. VI, §44](#) to mean a parish, municipality, incorporated city, town, or village, and any other unit of local government, including a school board and a special district, authorized by law to perform governmental functions. Political subdivision also refers to quasi-public entities that are also exempt from the LPC. The only definition of quasi-public entity is found in the audit law ([R.S. 24:511](#), et seq.). [R.S. 24:513](#)(A)(1)(b). The courts and the Attorney General have generally found that a quasi-public entity is an entity that performs a governmental function.

Political subdivisions are exempt from the LPC. For example, fire protection districts would be exempt from the LPC. See [R.S. 39:1554](#) for exclusions. Though exempt, political subdivisions may choose to make themselves subject to the LPC.

**Q.7. Which laws do exempt entities follow?**

- A.7.** Entities that are exempt from the LPC follow the Public Bid Law ([R.S. 38:2211-2296](#)). The Public Bid Law governs procurement related to public works ([R.S. 38:2212](#)) and to the purchase of certain services, materials and supplies ([R.S. 38:2212.1](#)). (For more information see the LLA Summary of the [Public Bid Law FAQ](#).)

Political subdivisions, however, may choose to opt into all or part of the LPC ([R.S. 39:1554E](#)). For more information related to public entities that opt into the LPC [See [Section VII of this Summary](#)].

**Q.8. Which laws address the construction of public works?**

- A.8.** All public entities must follow the Public Bid Law for the construction of public works. Please see the LLA's [Public Bid Law FAQ](#) for more information concerning contract requirements for constructions of public works.

**Q.9. What is the Office of State Procurement?**

- A.9.** Although much procurement occurs at the agency level, the Office of State Procurement (OSP), located within the Division of Administration, is the main hub of purchasing in Louisiana. The OSP supervises the procurement of certain services, materials and supplies.

The main page for the OSP is found at <http://www.doa.la.gov/Pages/osp/Index.aspx>.

[Act 864 of the 2014 Regular Session](#) combined the Office of State Purchasing and the Office of Contractual Review into the current Office of State Procurement.

**Q.10. Does the law provide for exemptions from the OSP central purchasing authority and its promulgated rules ?**

- A.10.** Yes. Some entities are exempt from OSP central purchasing authority and its promulgated rules . For example, the Department of Transportation and Development has authority to procure materials and supplies for component parts of roads, bridges and highways. Other examples include the New Orleans Food Center Authority and the Louisiana Crawfish Market Development Authority.

Some entities are exempt from OSP central purchasing authority but are still subject to OSP promulgated rules . For example, the LSU System, Southern University System and the Board of Trustees of State Colleges and Universities System are subject to OSP promulgated rules but are not subject to the OSP's central purchasing authority. That is, when these university systems enter into contracts for purchasing, any required determination and documentation are made and maintained at the university level. See Higher Education Procurement Code (Part XIII of [Title 34 of the Louisiana Administrative Code](#)).

**Q.11. Where may one find more information on OSP?**

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

**Q.12. How does an entity make purchases under the LPC?**

**A.12.** The answer to this question depends on:

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

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

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

**Q.13. What does it mean to have a contract on the OSP “state contract list”?**

**A.13.** The OSP provides a state contracts list from which public entities may purchase certain services, materials and supplies. The items that are available for purchase through state contract have been subjected to a competitive process conducted by the OSP. The list saves the public entity time and money that would otherwise be spent on performing the required competitive procedures. Entities that are subject to the LPC are generally required to purchase from state contract. Commodities and entities that are exempt from OSP's control but that are still subject to the LPC are found in [R.S. 39:1572](#).

**Q.14. May an agency purchase outside of the state contract list?**

**A.14.** In general, executive branch agencies that are subject to the LPC must purchase items from OSP's state contract list. Agencies that want to make a purchase that is not on state contract must first submit a written request to OSP asking permission. An agency must submit a letter that provides a sound business reason for not purchasing an item that is on state contract. OSP will review the request and the agency will be notified if OSP has approved its making a “non-contract” purchase. See also [\[Q.40\]](#).

**Q.15. What if an equivalent item appears to be on the state contract list?**

**A.15.** Occasionally, public entities want to purchase a specific commodity that it is not on the state contract list although an equivalent item appears to be available for purchase on the list. To issue bids instead of purchasing the commodity from the state contract list, public entities that are subject to the OSP must provide a written valid business case. If OSP approves the entity's bidding out the item, the entity must use “open specifications.”

**Q.16. What are “open specifications?”**

**A.16.** A public entity must use open specifications when soliciting bids. If doing so is clearly in the public interest, public entities may specify a particular brand, make, or manufacturer in the specifications let for public bid. While the entity may specify a model and catalog number in the bid, the bid documents must clearly state that equivalent products are acceptable.

**Q.17. How does a public entity purchase something that is not on the state contract list?**

**A.17.** The type of procurement procedure that a public entity, subject to the provisions of the LPC, must use depends on several factors. One consideration is the cost of the items to be procured, another is the type of contract in question, i.e. purchasing materials and supplies versus contracts for personal, professional, consulting, or social services. The law does not require competitive bidding for purchases that are \$5,000 or less. Purchases that are greater than \$5,000, and up to \$15,000, require quotes from at least three vendors by telephone, fax or other means. Purchases greater than \$15,000, but less than \$25,000, should use OSP’s state contract list when feasible. However, if the state contract vendor list cannot be used, then written invitations for bids must be sent to at least five bidders. Contracts that are greater than \$25,000 generally must be awarded through competitive sealed bidding, however there are exceptions. For example, contracts for professional services, as defined under the LPC, are not required to be let through competitive sealed bidding, regardless of the amount of the contract. Additionally, the LPC in R.S. 39:1595 authorizes the Commissioner of Administration to allow a State Agency to use competitive sealed proposals for supplies, services or major repairs when the State Chief Procurement Officer substantiates through written documentation that doing so would be in the best interest of the State.

[R.S. 38:321.1](#) authorizes State agencies, municipalities, parishes, and other political subdivisions to purchase items through existing (Louisiana) public contracts of other political subdivisions within one year of the opening of bids. State agencies may rely on certificates from the Office of State Procurement that the contract is in compliance with the LPC and has been adopted as a statewide cooperative contract pursuant to [R.S. 39:1702](#), et seq, or from a local political subdivision that the contract was bid in compliance with State law. State agencies should consult with OSP prior to utilizing this new provision.

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

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

Source: [\\*Executive Order JBE 17-18](#).