

Office of State Procurement  
State of Louisiana  
Division of Administration

JOHN BEL EDWARDS  
GOVERNOR



JAY DARDENNE  
COMMISSIONER OF ADMINISTRATION

**MEMORANDUM OSP 17-05**

TO: All Department Undersecretaries, Agency Heads, Business Managers, and Contract Officers of all Non-Exempt State Departments and Agencies, Colleges and Universities, Boards and Commissions

FROM: Paula Tregre, Interim Director *Paula Tregre*

DATE: December 1, 2016

SUBJECT: Act 87 of 2015, as amended by Acts 408 and 589 of the 2016 Regular Session R.S. 39:1590 Monthly Reporting and Review by the JLCB of Professional, Personal, Consulting and Social Services (PPCS) Contracts

**NOTE: This memorandum replaces Memorandum OSP 16-03 regarding Act 87 of 2015.**

**2016 Legislative Session Changes to Act 87 of 2015**

Newly-passed Acts 408 and 589 of 2016 have revised Act 87 of 2015. Effective July 1, 2016, professional, personal, consulting and social services contracts must be reported, but are not subject to approval by the Joint Legislative Committee on the Budget.

The Louisiana State Law Institute merged provisions of both Acts, resulting in revisions to R.S. 39:1590 and R.S. 39:1567. The law now requires:

- Monthly reporting of all PPCS contracts approved in the prior month by OSP to the Joint Legislative Committee on the Budget (JLCB), advising whether the contract is discretionary or non-discretionary.
- Creation of the Contract Services Joint Legislative Task Force (CSJLTF), a joint committee of legislators which meets no more than five calendar days in a fiscal year.
- Informational review (not approval) by the JLCB and the CSJLTF of any professional, personal, consulting or social services contracts of \$50,000 or more per year

## **Agency Requirements for Compliance with Acts 87, 408 and 589**

- Agencies must continue to determine and identify to OSP (in the format prescribed by OSP) whether their contracts are discretionary or non-discretionary. The Act 87 indicators will remain in PROACT and in LaGov for reporting purposes. OSP has developed and provided some non-mandatory guidance on this below, to assist in statewide consistency. Nevertheless, agencies are independently responsible for classifying and justifying such classifications if called into question. Contracts which are not classified as non-discretionary will be considered to be, and reported to the JLCB as, discretionary.
- In the event that an agency's delegated procurement authority (DPA) for contracts meets or exceeds \$50,000, that agency must send any internally-approved contract for \$50,000 or more to OSP for evaluation of whether to send to JLCB and the Contract Services Joint Legislative Task Force for review. Agencies which fail to do this are independently responsible, and liable, for (non)compliance with R.S. 39:1590.
- Agencies must continue to report all Professional, Personal, Consulting and Social services contracts monthly to OSP (regardless of value, discretionary status, or means of finance) in the format prescribed by OSP, unless such contracts were approved by OSP. Notably, agencies must manually report contracts which are entered in LaGov but approved under an agency's DPA, because LaGov does not currently capture all necessary data fields. Monthly reporting to OSP is due for prior month's contracts by the 15<sup>th</sup> day of each month.

## **Detailed Analysis of 2016 Legislative Session Changes**

Act 87 of 2015, which has been amended as detailed in sections above and below, originally created two significant new requirements for PPCS contracts for fiscal years 2016 through 2018, specifically:

- A. Monthly reporting of all PPCS contracts approved in the prior month by OSP to the JLCB
- B. JLCB review and pre-approval of contracts meeting all four criteria below:
  - 1) Professional, Personal or Consulting Services (Social Services not included), and
  - 2) \$40,000 or more per year, and
  - 3) For a discretionary purpose, and
  - 4) Funded 100% by State General Fund or the Overcollections Fund

Act 87 required that such review and approval by the JLCB occur prior to the effectiveness of the contracts. Contracts not placed on the agenda of the JLCB within 30 days of submission could be presumed to be approved, but contracts rejected or reduced by the JLCB would have associated funding taken and re-appropriated to the Higher Education Financing Fund.

Acts 408 and 589 of the 2016 Regular Legislative Session amended Act 87's statutory provisions (R.S. 39:1590) considerably. Acts 408 and 589 have some overlapping and contradictory provisions, but the net effect of the two has been published in the current version of R.S. 39:1590.

Pertinent Provisions of Act 408

- 1) Adds Social Services contracts to the list of JLCB-reviewed types
- 2) Eliminates the criterion of discretionary status
- 3) Eliminates the criterion of 100% State General Fund financing
- 4) Eliminates JLCB Approval role, but requires that JLCB Review still occur prior to the effectiveness of the contract

Pertinent Provisions of Act 589

- 1) Eliminates JLCB Approval role, and eliminates pre-effectiveness requirement
- 2) Changes \$40,000/yr criterion to \$50,000/yr
- 3) Creates the Contract Services Joint Legislative Task Force (CSJLTF), and gives the Task Force authority to review contracts valued at \$50,000 or more per year

Combined Provisions of Act 87 of 2015, and Acts 408 and 589 of 2016

- 1) Professional, Personal, Consulting or Social Services contracts,
- 2) with a value of \$50,000 or more per year must be reported to the JLCB and CSJLTF for informational review monthly.

## OFFICE OF STATE PROCUREMENT NON-DISCRETIONARY CONTRACT GUIDELINES

For purposes of compliance with Act 87 of the 2015 Regular Session, relative to reporting requirements and JLCB review and approval requirements, the Office of State Procurement regards the following types of contracts for Professional, Personal, Consulting and Social Services as non-discretionary:

1. Contracts necessary to protect the life, health or welfare of the public or public employees from immediate harm;
2. Contracts necessary to protect public assets, including public funds or funding, from immediate harm or loss;
3. Contracts necessary to comply with judicial mandates;
4. Contracts for services in a circumstance which the Chief Procurement Officer has determined to be an emergency pursuant to RS 39:1600(E);
5. Contracts for services required by an event which the Governor and/or President has declared to be a disaster or an emergency;
6. Contracts for legal and related services when the State or its agents are being subjected to legal action;
7. Contracts for services which are funded by an appropriation from the Legislature to a specific entity;
8. Contracts for those services specifically designated as "essential" and exempted by the Governor from any expenditure freeze directed through Executive Order; and
9. Contracts necessary to comply with constitutional, legislative or regulatory mandates, including those related to R.S. 39:36(A)(1)(b) which defines the non-discretionary operating budget.