

# **The Legislative Auditor's Summary of the Public Bid Law**

## **Overview:**

The following is a summary of the general principles and guidelines concerning Louisiana's Public Bid Law. The summary includes a frequently asked questions (FAQ) section, an outline of the law that includes key statutes, Attorney General Opinions and case law to facilitate understanding of this area of the law. While fairly detailed, it is important to remember that every situation is unique and as a result each situation deserves careful individual review.

There are numerous links within the summary directing your attention to areas within the document and to other related documents posted on the Louisiana Legislative Auditor's website and on external websites to facilitate your use of this document. For example, under the Table of Contents section, you may go directly to any area of the summary by clicking the title of the section that you wish to view. Within the FAQ section, there are several links to direct you to various areas of the FAQ section, other areas of the summary, and to relevant external documents. You may find out what any link is for by placing your mouse pointer over it; a box will appear explaining what will happen if the link is used.

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## The Legislative Auditor's Summary of Public Bid Law

### I. Introduction

State and local governmental entities must follow various laws and rules when expending public funds to make purchases. The objective of the Public Bid Law is to increase the public's confidence in the government's ability to contract for the construction of public works and purchase goods and services for the best price and to ensure that all persons who are involved with the procurement are treated fairly.

This summary identifies the key sources of the Public Bid Law that include: statutes, case law, and Attorney General Opinions. It also highlights some of the major topics such as the bid process and contracting procedures.

#### Sources of Law

The Public Bid Law is one set of laws that govern the purchase of public works, materials and supplies by most public entities. The legal requirements are found in statute (R.S. [38:2211](#), *et seq.*). The Public Bid Law must be strictly followed. No substantive elements may be waived by the public entity.

#### Subject and Exempt Public Entities

Generally, all public entities must follow the Public Bid Law for contracts related to public works. It applies to all political subdivisions for the purchase of materials and supplies.<sup>2</sup> State agencies of the executive branch, however, are governed by the Louisiana Procurement Code (LPC) when making purchases of materials and supplies. (See the LLA's Summary of the LPC for detailed guidance). Political subdivisions are authorized to adopt all or any part of the LPC and its accompanying regulations for the procurement of supplies, services, and major repairs.

The LPC is different from the Public Bid Law (R.S. [38:2211-2296](#)) that governs the purchase of public works (R.S. [38:2212](#)) and materials and supplies by political subdivisions (R.S. [38:2212.1](#)). Political subdivisions, however, may choose to opt into all or part of the LPC.

#### Select Definitions

R.S. [38:2211](#)

- "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.

- "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.
- "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.
- "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.
- "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.
- "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. Public work includes labor and materials. (See R.S. [38:2212](#) A).
- "Operation" which was added by Act 134 of the 2011 Regular Session, eff. date 06/24/11 was deleted from the definition by [Act 655 of the 2012 Regular Session](#), effective 8/1/12.
- "Materials and supplies" are not defined in the statutes. *Black's Law Dictionary* does not define the phrase "materials and supplies." However, it defines material as "of or relating to matter; physical (material goods)"; and defines supplies as "means of provision or relief ...."



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## II. Public Works R.S. [38:2212](#)

### A. Definition

1. R.S. [38:2211](#) defines public work as "the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity."
2. R.S. [38:2212](#)(A)(1)(a) provides that public work includes labor and materials.

### B. Contract Amounts R.S. [38:2212](#)A(1)(d)

1. General Rule

- a. The contract limit shall be equal to **\$150,000** per project including labor, materials, and equipment. Public works contracts cannot be broken down so as to avoid the Public Bid Law.

## 2. Some Exceptions

- a. When the Department of Corrections uses inmate labor for projects which occur on the grounds or to the buildings located on grounds of the prison, the contract limit shall be \$50,000 per project plus a factor increase provided for in subparagraph (i).
  - o This provision does not apply to local government inmate labor such as sheriffs. There is no value to the inmate labor used by a sheriff in computing the \$150,000 for a public work. However, if the sheriff uses materials and supplies that are on hand, the value of the materials must be used in computing the total of the public work.
- b. When a political subdivision that did not have flood insurance at the time Hurricane Katrina or Hurricane Rita struck Louisiana is repairing damage caused by those storms, the contract limit shall be \$300,000 per project including labor, materials, and equipment according to rates referenced in subparagraph (iv). **This provision was effective until July 31, 2008.**
- c. The contract limit for any contract by a public entity for any project to restore or rehabilitate a levee which is not maintained with federal funds shall be \$1 million dollars provided that the project is undertaken by the public entity with its own resources and employees. This provision is effective until December 31, 2014.
- d. The contract limit for any public works project undertaken by the Bossier Parish Policy Jury by its own employees shall be \$130,000\*. This provision was effective as of September 1, 2005. \*The police jury can raise this amount each February based on changes in Consumer Price Index, but must announce any increase in their official journal. The current contract limit for this exception is \$151,305.85 as of Feb 2009.
- e.  [Act 344 of the 2012 Regular Session](#), effective 8/1/12, enacted R.S. 23:1726(B) which prohibits any employer against whom an assessment or penalty has been levied regarding unemployment compensation from submitting a bid or proposal for any public contract until full payment of the amount due under the assessment is made.
- f.  [Act 786 of the 2012 Regular Session](#), effective 8/1/12, enacted R.S. 23:1711(G) which prohibits an employer or any officer, agent, superintendent, foreman, or employee of the employer determined to knowingly or willfully fail to properly classify an individual as an employee in accordance with the law and who failed to pay required contributions, then, in addition to the penalties provided, the employer shall be prohibited from contracting, directly or indirectly, with any state agency or

political subdivision of the state for a period of three years from the date upon which the determination becomes final.

The division of administration shall maintain and place the employer on a list of such employers and make that list available to state agencies and political subdivisions of the state.

### C. Procedures

R.S. [38:2212](#)

1. There are no statutes governing public work contracts that are less than **\$150,000**. However, the Legislative Auditor recommends that for any public works project in excess of \$25,000, the governmental entity use a RFP process and/or solicit at least three bids.
2. Public works, which are estimated to cost less than the contract limit, may be undertaken by the public entity with its own employees.
3. All public works contracts over **\$150,000** (or over the established contract amount for the Bossier Parish Police Jury for contracts when undertaken by their own employees) including labor and materials (or if inmate labor, \$50,000 per project) by a public entity shall be:
  - a. Advertised
    - i. Advertised and let by contract to the lowest bidder who had bid according to the contract, plans, and specifications as advertised;
    - ii. The advertisement shall be published once a week for 3 different weeks in a newspaper in the locality; the first advertisement shall appear at least 25 days before the opening of bids;
    - iii. The first publication of the advertisement shall not occur on a Saturday, Sunday or legal holiday;
    - iv. 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.\* Note: effective 8/15/2008 under Act No. 726 of 2008 Regular Session;
    - v. Plans and specifications shall be available to bidders on the day of the first advertisement and until 24 hours before the bid opening date;
    - vi. When attendance by bidders is mandated at a pre-bid conference, the date, place, and time of the pre-bid conference shall be stated in the first advertisement; and
    - vii. If political subdivisions are required or elect to allow for electronic

submission of bids, the advertisement shall contain the electronic address of the public entity and shall establish the specific times for public access to the electronic interactive environment for purposes of submission of bids;

b. Bidder Information

- i. Bidder's signature required;
- ii. Bids shall be hand delivered by the bidder or his agent, who shall be given a written receipt;
- iii. Bids shall be sent by registered or certified mail with return receipt requested;
- iv. Bids shall not be accepted, either by mail or hand delivered, on holidays recognized by the U.S. Postal Service; and
- v. Political subdivisions must allow for the electronic submission of bids.\* See R.S. [38:2212A](#) (1)(f).

The following are exempted from this requirement:

- Public entities that are currently without available high speed internet access, until high speed internet access is available.
- Any Parish with a police jury form of government and a population of less than twenty thousand (<20,000).
- Any city or municipality with a population of less than ten thousand (<10,000).
- Any special service district created by a police jury form of government currently unable to comply with the provisions of 38:2212(A)(1)(f)(i) without securing and expending additional funding.
- Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.
- Public entities must include all bid documents as defined in R.S. 38:2211(A)(1), on the electronic website accepting the electronic bids.

c. Bid Form

The bid form shall contain the following:

- i. Bid Security or Bid Bond,
- ii. Acknowledgement of Addenda,

- iii. Base Bid,
- iv. Alternates,
- v. Bid Total,
- vi. Signature of Bidder, Name, Title and Address of Bidder,
- vii. Name of Firm or Joint Venture Corporate Resolution and Louisiana Contractors License Number, and
- viii. Unit Prices, when utilized, for public works projects.



Other documentation, 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 10 days after the bid opening. See also [AG Op. No 12-0065](#). 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 documentation required be furnished by the two lowest bidders three days after the bid opening. Added by [Act 823 of the 2012 Regular Session](#), effective August 1, 2012.

The Bid Form and documentation requirement does not apply to bid forms of the DOTD pursuant to Title 48 of the Louisiana Revised Statutes of 1950.

A copy of the bid form can be found on the DOA website Title 34:

<http://www.doa.louisiana.gov/osr/lac/34v01/34.doc>

Public entities must use the uniform bid form established by the Department of Administration and State Office of Facility and Planning for **all** contracts for **public works** that require bidding under the Public Bid Law. AG Op. 09-0304 states that the bid form is mandatory after 8/20/2009.

d. Escalation and De-escalation Clauses

The bid specification may include a fixed escalation or de-escalation in accordance with the Consumer Price Index or other recognized industry indexes. R.S. [38:2212A\(2\)](#).

Escalation and de-escalation clauses operate to allow for unexpected fluctuations in costs, such as rising costs following hurricanes or for inflation, during performance of the contracts.

e. Change Orders

- i. All change orders shall be in writing;
  - o Any change order outside the scope of the contract in excess of the contract limit shall be let out for public bid; and
- ii. Any change order pertaining to public work not required to be put out for bid, shall either be negotiated in the best interest of the public entity or let out for public bid. Where the change order is negotiated, the change order shall be fully documented and itemized as to costs. Where unit prices are contained in the initial contract, no deviations shall be allowed in computing negotiated change order costs.
- iii. **Act 343 of the 2011 Regular Session**, effective 8/15/11, enacted **R.S. 38:2222** which requires that each change order to a public works contract or to a contract for materials and supplies which adds an amount of 10% or more of the original contract amount and which additional amount is at least \$10,000 or all change orders to a contract aggregating to an amount of 20% or more of the original contract amount and which additional amount is at least \$10,000 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 30 days after the date of the change order which requires that the recordation take place. In addition, if not previously recorded, the original contract shall be recorded with the change order. This requirement does not apply to the office of facility planning and control and the office of state purchasing.

f. Addenda

- i. Bid period may be extended up to 30 days through the issuance of an addendum without the requirement of re-advertising;
- ii. However, if the addendum is issued within 72 hours of the advertised time of opening bids, opening of bids is extended for at least 7 but not more than 21 working days without the requirement of re-advertising. The addendum shall state the revised time and date of opening bids;
  - (a) If the addendum modifying plans and specifications is issued within 7 days prior to the advertised time for opening bids, the public entity shall transmit within 24 hours of the issuance of the addendum a copy of the addendum to all prime bidders who have requested bid documents by one of the following methods:
    - (1) facsimile transmission;

- (2) e-mail; or
- (3) hand-delivery

(b) A copy of the addendum shall be sent by regular mail to all prime bidders who have requested bid documents.

g. Documentation

- i. Written confirmation of the accepted offer shall be obtained and made a part of the contract file; and
- ii. Records of all elements of the public bid process shall be retained for a minimum of 6 years following the purchase or completion of the public work.
- iii. **Verification of employees, R.S. 38:2212.10. [Act 142 of the 2012 Regular Session](#), effective 08/01/12, adds Paragraph F that states that the verification system related to illegal immigrants found in R.S. 38:2212.10 applies only to contracts for public works.**



h. Alternates

No more than 3 alternates shall be included in any proposal; 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.

i. Publicly owned utility

A publicly owned utility may undertake a public works project, other than the construction of a building, for the contract limit or less by either:

- A. Entry into contracts with or without public bid; or use of the employees of the public entity owning the utility;
- B. The public entities are prohibited from owning or operating manufacturing plants that manufacture construction materials, excluding such facilities owned and operated prior to September 11, 1981; or
- C. Public entities shall not be prevented from using their regular maintenance employees for labor necessary in the maintenance, construction, or extension of publicly owned and operated electric public utilities. In the construction or extension of all other public utilities, public entities are not prevented from using their regular maintenance employees when the cost of the work per project does not exceed **\$150,000** including labor and materials.

j. Brands and Open Specifications

Public entities may specify a particular brand, make, or manufacturer in the specifications let out for public bid, if it is clearly in the public interest. The model and catalog number shall be specified in the bid. However, the bid documents must also state that equivalent products are acceptable.

k. Disqualification

To disqualify any bidder on grounds that bidder is not a “responsible bidder,” the public entity shall:

- i. Give written notice to the bidder of the proposed disqualification and all reasons for disqualification; and
- ii. Give the bidder the opportunity to be heard at an informal hearing to refute the reasons for disqualification.

R.S. [38:2212.5](#) allows an exception to the general rule against prequalification for historic restorations that are not constructions or repairs of bridges or roads.



iii. [Act 598 of the 2012 Regular Session](#), effective 08/01/12, made changes to R.S. [38:2227\(A\)](#), requiring an attestation from the **lowest** bidder, if he is a sole proprietor, that he has not been convicted of or pled guilty or nolo contendere to certain crimes. The **lowest** bidding entity shall also submit an attestation for other individuals in the business.

l. No third party financing.

No public entity shall enter into a public works contract with a contractor who finances the project.

m. Mentor- protégé.

Any public entity may include bid selection provisions in bid documents relative to participation in a mentor-protégé program for any contract exceeding \$15,000 to be paid out of public funds.

n. Bonds.

- i. Bid. 5% bid bonds or other forms of bid security are required. R.S. [38:2218](#).
- ii. Performance. Not less than 50% of contract for public works contracts of \$50,000 or more are required. R.S. [38:2216](#).

o. Written Contract.

When any public works bid is accepted, the public entity and bidder shall enter into a written contract. R.S. [38:2216A\(1\)](#).

- p. Time Limit R.S. [38:2215](#)
- i. Upon receipt of bids for a public work the State or State Agency has 30 days upon the conclusion of to either accept the lowest responsible bidder or reject all bids;
  - ii. Upon receipt of bids for a public work a political subdivision has 45 days upon the conclusion of to either accept the lowest responsible bidder or reject all bids;
  - iii.  [Act No. 647 of the 2012 Regular Session](#), effective July 1, 2012, added [R.S. 38:2215](#), Paragraph C which states that 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 the public entity shall execute the contract not later than 45 days from the public entity's acceptance of the lowest responsible bid.
  - iv. Upon execution of the contract, the public entity, within 30 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.
  - v. The time limit is not 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; and
  - v. If the time limit is not applicable because of one of the exceptions outlined above, the fact that the limit does not apply and the exception that is applicable shall be mentioned in the specifications for the project and in the official advertisement for bids required in accordance with R.S. [38:2212](#).

### III. Materials and Supplies

#### A. Definition

No definition of materials and supplies in the statutes. In *Black's Law Dictionary* the term "materials and supplies" is not defined; however, it defines material as "of or relating to matter; physical (material goods)"; and defines supplies as "means of provision or relief; ...."

**B. Contract Amounts**R.S. [38:2212.1](#)

There are different procedures for purchases of different types of items for various amounts. Although there are no statutory requirements for purchases that are less than \$10,000, the LLA recommends some procedures. Materials and supplies purchases can not be broken down so as to avoid the Public Bid Law.

1. Purchases that are not governed by statute:
  - a. Purchases less than \$1,000
    - i. No statutory requirement for bids or telephone or fax quotes;
    - ii. However, it is good public policy to obtain and document 3 verbal quotes, if possible.
  - b. Purchases less than \$10,000
    - i. No statutory requirement for bids or telephone or fax quotes as above;
    - ii. However, it is good public policy to obtain 3 written quotes on purchases that are \$1,000 to \$9,999.
2. Purchases that are governed by statute:
  - a. Purchases are \$10,000 but less than **\$30,000**
    - i. Three telephone or fax quotes;
    - ii. Obtain written confirmation of accepted offer;
    - iii. If lower quote than the accepted quote, reasons for rejection required.
  - b. Purchases are **\$30,000** or greater
    - i. Advertised and let by contract to lowest bidder according to specifications.

**C. Procedures**R. S. [38:2212.1](#)

1. Purchases that are not governed by statute:
  - a. Purchases less than \$1,000
    - i. No statutory requirement for bids or telephone or fax quotes;
    - ii. It is good public policy to obtain and document 3 verbal quotes, if possible.
  - b. Purchases less than \$10,000

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- i. No statutory requirement for bids or telephone or fax quotes as above;
    - ii. However, it is good public policy to obtain 3 written quotes on purchases that are \$1,000 to \$9,999.
  2. Purchases of materials or supplies totaling between \$10,000 and less than **\$30,000**:
    - a. Obtain at least 3 telephone or facsimile quotes;
    - b. Obtain written confirmation of the accepted offer for the file; and
    - c. If a lower bid than the accepted bid is not accepted, the reason for the rejection must be noted.
  3. Purchases of materials and supplies totaling **\$30,000** or more must be bid:
    - a. Advertised
      - i. Advertisement for bid shall be published 2 times in a newspaper in the locality; the first advertisement must appear at least 15 days before the opening of the bids;
      - ii. The first publication shall not occur on a Saturday, Sunday or legal holiday;
      - iii. Plans and specifications shall be available to bidders the day of the first advertisement and until 24 hours before bid opening date.
    - b. Bidder information
      - i. Effective 1/1/09, Act 590 of the 2008 Regular Session required Political subdivisions to allow for the electronic submission of bids.\* See R.S. [38:2212.1B.\(4\)\(a\)](#). Act 227 of the 2009 Regular Session, enacting R.S. 38:2212.1(B)(4)(e), provided an exemption for special service districts:
        - **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.**

The following are also exempted from this requirement:

- Public entities that are currently without available high speed internet access, until high speed internet access is available.

- Any Parish with a police jury form of government and a population of less than twenty thousand (<20,000).
- Any city or municipality with a population of less than ten thousand (<10,000).
- Any special service district created by a police jury form of government currently unable to comply with the provisions of R.S. 38:2212.1(B)(4)(a) without securing and expending additional funding .
- Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.  
Added by **Act 81 of the 2011 Regular Session**, effective 8/15/11.

c. Alternates

Proposals shall include no more than 3 alternates. Alternates shall be accepted in the order in which they are listed on the bid form.

d. Brands and Open Specifications

If in the public interest, a public entity may specify a particular brand, make, or manufacturer in the specifications using the model or catalog number. These specific brand names denote the quality standard of the product desired and does not restrict prospective bidders; equivalent products will be acceptable.

4. Exceptions:

a. Surplus Supplies

This Section does not apply to a public entity purchasing surplus materials and supplies from another public entity, or the government of the U.S. or when the transaction is governed by the Louisiana Procurement Code (LPC).

b. Office of State Purchasing

Any public entity may procure materials, supplies, and equipment by using the Office of State Purchasing. Such purchases need not comply with the competitive bidding requirements, but a higher price than the price available on the state purchasing contract cannot be paid.

c. Cooperative Purchasing

Any public entity may purchase materials, supplies, and equipment pursuant to the cooperative purchasing provisions in R.S. [39:1701](#) *et seq.*

- d. Hospitals

There are exceptions for hospitals purchasing under a “qualified group purchasing organization.”
- e. Food items

There are specific rules and regulations when political subdivisions contract for perishable food items.
- 5. The exceptions for contracts for the purchase of a used or new motor vehicle for conversion into a law enforcement vehicle and purchase of road maintenance or improvement equipment should be treated as impliedly repealed by Act 392 of 2009, which increased the general contract limit for contracts for the purchase of materials and supplies to \$30,000 and thus exceeding the amounts provided for with the statutory exceptions.
- 6. Bonds. The public entity may require a performance of bond of not less than 50% of contract for materials and supplies. R.S. [38:2216B](#).
- 7. Written Contract. When any materials and supplies bids are accepted, the public entity and bidder may enter into a written contract. R.S. [38:2216B](#).

#### IV. Professional Services

R.S. [38:2310](#)

- A. “Professional services” are those services performed by an architect, engineer, or landscape architect. R.S. [38:2310\(7\)](#). Further, the estimated project cost for the contract must exceed five hundred thousand dollars. R.S. [38:2316](#).
- B. The bidding requirements of R.S. [38:2312](#) require an “agency” of the state to bid for contracts for “professional services.”
- C. “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. R.S. [38:2310\(1\)](#). Political subdivisions of the state are not agencies as defined in R.S. [38:2310\(1\)](#). AG Op No. 87-31.
- D. All other services not included above do not fall under professional services for purposes of R.S. [38:2310\(7\)](#). These contracts for services by State Agencies and Local Governments that have adopted the Louisiana Procurement Code (LPC) are addressed in the Professional, Personal, Consulting and Social Services Procurement Code found in R.S. [39:1481-1526](#).
- E. **Act 343 of the 2011 Regular Session** effective 8/15/11 added R.S. 38:2192 regarding amendments to contracts for services (or insurance

contracts). The new statute provides that each amendment or other revision to any service or insurance contract which adds an amount of 10% or more of the original contract amount and which additional amount is at least \$10,000 or all amendments and other revisions to any service or insurance contract aggregating to an amount of 20% or more of the original contract amount and which additional amount is at least \$10,000 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 30 days after the date of such amendment or other revision takes place. Also, proposed law provides that the original contract shall be recorded together with the amendments or other revisions if not previously recorded.

## V. Homeland Security

R.S. [38:2212.6](#)

- A. 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; and
  3. Receive prior approval from the director of the State Office of Homeland Security and Emergency Preparedness, or his designee.

## VI. Emergencies

- A. Types: there are two types of emergencies: emergency and extreme emergency for both public works including labor and materials **and** for purchases of materials or supplies. (R.S. [38:2212\(D\)](#) and [2212.1\(K\)](#));
1. Emergency. If there is an emergency and such emergency has been certified by the public entity, the Public Bid Law may be waived provided that notice was given to the public by publishing in the official journal within 10 days of declaring such public emergency; and
  2. Extreme emergency. The same waiver as above applies. However, publication must occur in the official journal within 10 days of declaring such public emergency or as soon as practicable thereafter.
- B. Documentation:
1. Every contract negotiated shall be supported by written determination and findings by the public entity justifying the emergency;
  2. If contract action is taken pursuant to telephone or other oral offers, written confirmation of the accepted offer must be included in the file;
  3. The file of the public entity must contain:

- a minimum of the 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 quotes lower than the accepted quote are not accepted, reasons for rejection must be in the file. Records must be kept a minimum of 6 years.

- C. Contracts through the Office of Facility, Planning, and Control for repairs to damage caused by Hurricanes Katrina and/or Rita.

Any contracts by the OFPC, as of May 31, 2006, for repairs to damage caused by Katrina and/or Rita is exempted from the normal time delay rules under the Public Bid Law, but are still subject to the advertisement and bid rules under Public Bid Law. The contracts must:

1. The OFPC must advertise for bids for the contract in the official journal of the municipality and in the state official journal.
2. A minimum of 10 days must be allowed for acceptance of Bids.
3. If no bids are submitted, only then may the OFPC enter into competitive negotiation on contracts with at least two contractors.

## VII. Specially Noted Provisions

1. Despite all of the provisions set forth above, [Article VII, Section 14\(E\)](#) of the Louisiana Constitution allows the donation or exchange of movable surplus property between or among political subdivisions whose functions include public safety.

This section is to allow transfers of movable items such as vehicles between various police agencies, such as transfer of cars between the State Police or a Sheriff's Office and the police department of a municipality.

The exception from the general rule that prohibits donation of state property is narrowly tailored and should be largely restricted to traditional police and fire department agencies and should not apply to a political subdivision simply because public safety is an element of its duties.

2. Governmental units may sell to, acquire from, or use supplies belonging to another governmental unit or to an external procurement activity independent of requirements of Part III of this Chapter [R.S. [39:1591-1645](#)] or of Title 38 [Public Contracts, Works and Improvements]. (R.S. [39:1703](#))

This is meant to restrict the amount of bureaucratic red tape for the acquisition of supplies to allow for the continuity of general governmental business.

3. Governmental units may piggyback another governmental unit's bid process.

If a state agency or political subdivision has contracted for the purchase of materials and supplies from a vendor using the public bid process, another state agency or political subdivision can contract with the vendor for the same or lesser price while foregoing use of public bid. This, however, would likely only be allowed if the existing contract that was publicly bid is still in effect. The AG has stated in AG Op. No. 09-0296 that the contract must be viable, must have been bid in compliance with state law, and the political subdivision must obtain written consent from the other public entity who bid the contract, obtain confirmation as to the contract number and, if necessary, the Resolution accepting the bid, and confirm that the vendor and the product are the same and that the price is the same or lower.

4. Any public entity may procure materials, supplies, and equipment from federal General Services Administration (GSA) supply schedules. These purchases need not comply with the competitive bidding requirements of Chapter 10 Public Contracts (R.S. [38:2181-2320](#)); 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. Use of GSA supply schedules requires participation of a Louisiana licensed dealer or distributor. (R.S. [38:2212.1E](#))
5. Local governing authorities may purchase items at the state bid price through a local vendor and may pay to the local vendor the costs for shipping, preparation, and delivery provided that the costs do not exceed the amounts provided for in R.S. [39:1710](#).
6. Any public works contract or purchase of materials and supplies contract that is contrary to the law is null and void. R.S. [38:2220](#).

### VIII. Procurement of Computers and Computer Software

- A. Political subdivisions may procure data processing equipment, hardware and software including maintenance thereof, through the bid process in R.S. [38:2211](#), *et seq.* or through a *request for proposals* method in R.S. [38:2234-2237](#).
  1. At least 30 days prior to the scheduled date for opening the request for proposals written notice for request for proposals shall be mailed to persons, firms, or corporations who are known to be in a position to furnish such equipment and services.
  2. The request will indicate the relative importance of price and other evaluation factors, 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.
  3. The governing authority shall award in writing the contract to the responsible offeror whose proposal was the most advantageous taking into consideration price and other evaluation factors set forth in the request for proposals.

4. The governing authority of the political subdivision may reject all proposals if it is in the best interest of the political subdivision.
  5. Where written proposals are submitted by vendors, the proposals of the successful bidder shall be incorporated into the final contract.
- B. Any contracts that provide only professional services and that do not require purchase of any equipment, software, or other materials, are contracts for services and thus are not subject to the Public Bid Law and need not be advertised for bid.
- C. Contracts for internet services must be viewed on a case by case basis. If the contract requires the purchase of any equipment, such as servers, hubs, switches, etc, then the contract will likely be considered subject to R.S. [38:2211](#), *et seq.* and R.S. [38:2234-2237](#).
- D. Software upgrades, that do not require purchase of a substantially new version of the software, would likely not require bid as they likely fall under routine maintenance.

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## Frequently Asked Questions

### General Questions

**Q.1. [What are Public Bid Laws and where are they located?](#)**

A.1. The Public Bid Law is one set of laws that govern [public works](#), and the purchase of [materials and supplies](#) by most [public entities](#). The legal requirements are found in statute (R.S. [38:2211 et seq.](#)). The Public Bid Law must be strictly followed. No elements may be waived by the public entity.

There are [exceptions](#) that may apply to contracts for either public works or purchase of materials and supplies.

**Q.2. [To whom does the Louisiana Public Bid Law apply?](#)**

A.2. Generally, all [public entities](#) must follow the Public Bid Law for contracts related to [public works](#). It applies to all political subdivisions for the purchase of [materials and supplies](#), unless they choose to follow the Louisiana Procurement Code (LPC).

Public Bid Laws may apply whenever any public funds are expended. It does not matter that public funds constitute only a portion of all funds expended.

**Q.3. [What types of contracts are covered by Louisiana's Public Bid Law?](#)**

A.3. All contracts by public entities for [public works](#) and for purchases of [materials and supplies](#).

**Q.4. [What does Louisiana's Public Bid Law require?](#)**

A.4. The requirements differ according to whether the contract is for a [public work](#) or for purchase of [materials and supplies](#), or if there is an exception such as contracts for most services, purchases for homeland security, emergency situations, or other miscellaneous exceptions.

### Public Entity

**Q.5. [What is a public entity?](#)**

A.5. Public entities include 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.

Public entities also specifically include any public housing authority, public school board, or any public officer whether or not an officer of a public corporation or political subdivision.

Public entities 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 [LPC](#). State agencies of the executive branch are subject to the LPC for purchases of supplies and materials and are therefore exempted from the Public Bid Law for these purchases.

## Louisiana Procurement Code (LPC)

**Q.6. What is the LPC?**

A.6. Click [here](#) to go to the memo on the LPC.

**Q.7. May a public body choose to be subject to the LPC?**

A.7. Political subdivisions are [authorized](#) to adopt all or any part of the LPC and its accompanying regulations for the procurement of supplies, services, and major repairs. If the LPC is adopted for the procurement of supplies, service, or major repairs by a political subdivision then the LPC applies to those purchases and not the Public Bid Law.

**Q.8. What if there is a conflict between LPC and R.S.38:2212.1?**

A.8. R.S. [38:2212.1](#) does not apply to purchases governed by the LPC. If a political subdivision adopts the LPC for purchases of supplies then the LPC will govern those purchases and R.S. [38:2212.1](#) will no longer apply.

**Q.9. May a local entity make a purchase off a state contract and not bid it out when that entity has not adopted the Louisiana Procurement Code (LPC) in whole or in part? If they do so, what are the requirements?**

A.9. Yes, a local entity may make a purchase off a state contract because the public bid process has been accomplished by the Office of State Purchasing (OSP). Under this method, the entity is employing the cooperative purchasing provision of R.S. 39:1701 *et seq.* The entity does not have to adopt the LPC in "all or part" for this transaction because this purchase is authorized through public bid law. R.S. 38:2212.1(F). The entity would go to the OSP web site and follow the links to the questionnaire for purchasing off state contract. Once OSP approves the questionnaire, the entity may contact the vendor and make the purchase off of the state contract for the same or a lower price. The vendor must also approve the purchase. The entity should enter a purchase order against the appropriate state contract in accordance with the terms and conditions of the contract. As a matter of prudent administration, the governing body should at a minimum document the details for the purchase through some means (resolution, ordinance or minutes.)

## Public Works



New

### Q.10. What are public works?

A.10. Public works include any contract for the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a [public entity](#). This also includes labor and materials. **“Operation” was deleted from the definition of Public Work by [Act 655 of the 2012 Regular Session](#), effective August 1, 2012.**

Public works do not include any contract for [professional services](#) other than contracts whose estimated project cost exceeds five hundred thousand dollars and are by “Agencies” of the State as defined in R.S. [38:2310\(1\)](#) for architects, engineers, or landscape architects. However, contracts for the purchase of any [materials and supplies](#) with public funds needed to carry out the services by or for the [public entity](#) must be bid if they exceed the [contract limits](#) for the purchase of [materials or supplies](#).

### Q.11. What are the requirements for contracts for public works?

A.11. There are both [contractual limits](#) and [procedures](#) that must be followed with public works.

## Contract Limits for Public Works

### Q.12. What is the contract limit for Public Works?

A.12. Generally contracts for public works that exceed \$150,000\* must be bid and let for contract with the lowest [responsible bidder](#). \* as amended by Act 161 of 2009 Regular Session.

Some Exceptions:

- There is an exception for contracts which utilize [inmate labor](#) on prison grounds or on prison buildings, which have a contractual limit of \$50,000.
- There was a temporary [exception for political subdivisions that did not have flood insurance](#) at the time Hurricane Katrina or Hurricane Rita struck Louisiana that are repairing damage caused by those storms. Contracts by these entities for repairs to damages, caused by these hurricanes are limited to \$300,000. **This exception expired on July 31, 2008.**
- There is a temporary exception for a contract by a public entity for any project to [restore or rehabilitate a levee](#) which is not maintained with federal funds. The project shall be \$1 million dollars **provided that the project is undertaken by the public entity with its own resources and employees**. This exception was extended by Act 1011 of the 2010

Regular Session, amending R.S. 38:2212(A)(1)(d)(v)(bb), and now is slated to expire on December 31, 2014.

- Finally, there is an exception for contracts for public works [projects by the Bossier Parish Police Jury utilizing their own employees](#). The contractual limit for such projects is \$130,000\*. The police jury may adjust the contract limit each year by an amount not to exceed the annual percentage increase in the Consumer Price Index (CPI) in the preceding year. \*Note that this amount could potentially be lower than the newly raised general contract limit of \$150,000 or may exceed it depending on the CPI.

## Procedures for Public Works

### Q.13. [What are the procedures for contracts for public works?](#)

- A.13. All contracts for public works exceeding the contractual limit must be [advertised](#) for bid and let for contract with the lowest [responsible bidder](#).

Contracts for public works valued \$25,000 to **\$150,000**, although not requiring bid under statute, are [recommended](#) by the Legislative Auditor to be done through a request for proposals (RFP) process and/or solicitation of at least three bids.

Contracts for public works less than the contractual limit may be undertaken by the public entity through its employees. However, [public utilities](#) cannot contract for the construction of buildings through use of their own employees.

All contracts for public works by public entities must utilize the uniform bid form established by the Department of Administration and State Office of Facility Planning.

The Louisiana Public Work Bid Form is published in the Louisiana Administrative Code under Title 34, Government Contracts, Procurement and Property Control, Part III. Facility Planning and Control, Chapter 3. [Louisiana Uniform Public Work Bid Form](#).

### Q.14. [Are there any requirements regarding the advertisement of bids for public works?](#)

- A.14. Yes, all advertisements for contracts for public works exceeding **\$150,000**, unless an exception applies, shall be published once a week for 3 different weeks in a newspaper in the locality; the first advertisement shall appear at least 25 days before the opening of bids and not occur on a Saturday, Sunday, or other legal holiday.

#### **Exceptions:**

All contracts which utilize [inmate labor](#) on prison grounds or on prison buildings which exceed the contractual limit of \$50,000 must be advertised;

Contracts for hurricane repairs by political subdivisions that did not have flood insurance at the time Hurricane Katrina or Hurricane Rita struck Louisiana that exceed the contract limit of \$300,000 must be advertised for bid. This exception for a heightened contract limit **expired on July 31, 2008**;

Contracts by a public entity for any project to restore or rehabilitate a levee, which are not maintained with federal funds, that exceed \$1 million dollars or that are not undertaken by the public entity with its own resources and employees must be advertised for bid. This exception for a heightened contract limit is slated to expire on December 31, 2014; and

Contracts for public works projects by the Bossier Parish Police Jury exceeding the contract limit of \$130,000 (or new annual amount based on CPI - \$151,305.85 as of Feb 2009) or **\$150,000** for contracts in which they do not utilize their own employees must be advertised for bid.

Plans and specifications shall be available to bidders on the day of the first advertisement and until 24 hours before the bid opening date;

When attendance by bidders is mandated at a pre-bid conference, the date, place, and time of the pre-bid conference shall be stated in the first advertisement; and

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.

If political subdivisions are required, allow, or elect to allow for electronic submission of bids, the advertisement shall contain the electronic address of the public entity and shall establish the specific times for public access to the electronic interactive environment for purposes of submission of bids.

**Q.15. Can changes be made to the contract once the contract is advertised?**

A.15. Yes, the contract can be amended through change orders and addenda.

## Change Orders

**Q.16. What is a change order?**

A.16. A change order is an alteration, deviation, addition, or omission as to a preexisting public work contract. Change orders can either be "within the scope of the contract" or "outside the scope of the contract."

**Q.17. What does it mean for a change order to be within the scope of the contract?**

A.17. A change order is within the scope of the contract when it does not alter the nature of the thing to be constructed and which is an integral part of the project objective.

**Q.18. What does it mean for a change order to be outside the scope of the contract?**

A.18. A change order is outside the scope of the contract when it alters the nature of the thing to be constructed or which is not an integral part of the project objective.

**Q.19. What are the requirements for a change order?**

A.19. All change orders must be in writing.

Change orders within the scope of the contract must be negotiated in the public's best interest or let out for bid.

Change orders outside of the scope of the contract that exceed the contract limit must be let for bid.

**Act 343 of the 2011 Regular Session**, effective 8/15/11, enacted R.S. 38:2222 which requires that each change order to a public works contract or to a contract for materials and supplies which adds an amount of 10% or more of the original contract amount and which additional amount is at least \$10,000 or all change orders to a contract aggregating to an amount of 20% or more of the original contract amount and which additional amount is at least \$10,000 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 30 days after the date of the change order which requires that the recordation take place. In addition, if not previously recorded, the original contract shall be recorded with the change order. This requirement does not apply to the office of facility planning and control and the office of state purchasing.

## **Addenda**

**Q.20. What are addenda?**

A.20. Addenda are used to make changes to the bid documents, often to extend the bid period.

**Q.21. What are the requirements for addenda?**

A.21. The bid period may be extended up to 30 days through the issuance of an addendum without the requirement of re-advertising.

However, if the addendum is issued within 72 hours of the advertised time of opening bids, the opening of bids is extended for at least 7 but not more than 21 working days without the requirement of re-advertising. The addendum shall state the revised time and date of opening of bids.

If an addendum modifying plans and specifications is issued within 7 days prior to the advertised time for opening bids, the public entity shall transmit within 24 hours of the issuance of the addendum a copy of the addendum to all prime bidders who have requested bid documents by one of the following methods:

- (1) Facsimile transmission;
- (2) E-mail; or
- (3) hand-delivery.

A copy of the addendum shall be sent by regular mail to all prime bidders who have requested bid documents.

**Responsible Bidder****Q.22. What is a responsible bidder?**

A.22. A responsible bidder, according to R.S. [38:2212\(A\)\(1\)\(a\)](#), is one whose bid meets the requirements according to the contract, plans, and specifications as advertised.

**Q.23. Are the requirements of R.S. 38:2212 waivable?**

A.23. According to R.S. [38:2212\(A\)\(1\)\(b\)](#), the provisions and requirements of R.S. [38:2212](#), those stated in the advertisement for bids and those required on the uniform bid form, shall not be waived by any public entity. All other requirements that are non-substantive may be waivable.

**Act 281 of the 2011 Regular Session**, effective 6/28/11, added requirements to the bid form including a requirement related to unit prices, deletes the requirement to include the bid total using instead a base bid, and that only the low bidder is required to furnish other documentation within ten days of the bid opening. **Act 823 of the 2012 Regular Session**, effective 8/1/12, modified R.S. 38:2212, adding the governing authority of any publicly owned commercial aviation airport to the Sewerage and Water Board of New Orleans and all agencies of the City of New Orleans including the Regional Transit Authority and the New Orleans Aviation Board as those required to furnish certain documentation by the two lowest bidders three days after the bid opening.



New

Note: **Act 338 of the 2011 Regular Session** added R.S. 38:2212(A)(8)(a) & (b) related to the New Orleans Sewerage and Water Board and the Acknowledgment of Addenda on the bid form.

**Q.24. What happens if a bidder does not meet the requirements?**

A.24. The answer depends on whether the requirements that have not been met are waivable.

If the requirements cannot be waived, and requirements should otherwise be presumed non-waivable, the bid must be rejected and the bidder must be given written notification that the bid is being rejected and reasons why it was rejected. The bidder must also be provided the opportunity to be heard to contest the reasons for disqualification of the bid.

If the requirements can be waived, therefore not a substantive requirement, the bid may be accepted, but there is no obligation on the public entity to make the waiver and the public entity can choose to disqualify the bid for any violation for failure to meet the stated requirements.

The courts have largely found most requirements to be unwaivable.

**Q.25. Can the advertisement pre-qualify certain individuals and thereby disqualify others?**

A.25. No, the general rule is that no pre-qualification can occur; however there are limited exceptions.

For example, under R.S. 38:2215, contracts for historic restoration for projects other than bridges and roads can be pre-qualified, due to the specific skills needed for the job.

**Q.26. May construction managers or other third party consultants employed by a public entity manage a construction project as a general contractor or act in the role of a general contractor?**

R.S. 38:2212(A)(3)(g)(ii)

A.26. No, and this individual may not accept bids or 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. This provision 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 HSD must comply with all other provisions of Title 38.

Furthermore, 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. Added by Act 493 of the 2012 Regular Session, effective 08/01/2012.



## Materials and Supplies

**Q.27. [What are materials and supplies?](#)**

A.27. Materials and supplies are not defined in the statutes. *Black's Law Dictionary* does not define the phrase "materials and supplies." However, it defines material as "of or relating to matter; physical (material goods)" and defines supplies as "means of provision or relief."

**Q.28. [Are all contracts for the purchase of materials and supplies subject to Louisiana Public Bid Law?](#)**

A.28. No, Louisiana's Public Bid Law concerning purchase of certain types of materials and supplies and by certain individuals are subject to [exceptions](#).

**Q.29. [What are the requirements for contracts for materials and supplies?](#)**

A.29. There are both [contract limits](#) and [procedures](#) that must be followed for purchases of materials and supplies.

## Contract Limits for Materials and Supplies

**Q.30. [What are the contractual limits for purchases of materials and supplies?](#)**

A.30. The general rule is that contracts for purchases of materials and supplies with a value of **\$30,000\*** or more must be [advertised](#) and let for contract with the lowest responsible bidder.

## Procedures for Materials and Supplies

**Q.31. [What are the procedures for contracts for Materials and Supplies?](#)**

A.31. Contracts for the purchase of materials and supplies that exceed the [contract limit](#) must be [advertised](#) for bid and let for contract to the lowest [responsible bidder](#).

According to the Attorney General (AG), public entities that have contracts for purchases of materials and supplies for less than \$1,000 should as part of a good public policy requiring governmental accountability obtain and document at least 3 verbal quotes if possible.

According to the Attorney General, public entities that have contracts for purchases of materials and supplies for less than \$10,000, but greater than \$1,000, should as part of good public policy requiring governmental accountability obtain at least 3 written quotes.

Public entities that have contracts for purchases of materials and supplies for less than **\$30,000** but greater than or equal to \$10,000 must:

Obtain at least 3 telephone or facsimile quotes; and  
Obtain written confirmation of the accepted offer.

If a lower bid than the accepted bid is rejected, the reason for the rejection must be noted.

\* **Note** The exceptions providing for contracts for the purchase of a new or used motor vehicle for conversion into a [law enforcement vehicle](#) and for the purchase of [road maintenance and improvement equipment](#) should be construed as being impliedly repealed through Act 392 of 2009 Legislative Session, as the new general contract limit exceeds the lower amounts described in the statutory exceptions.

**Q.32. Are there special provisions under public bid law for purchases made by a public safety agency expending federal grant dollars?**

[R.S. 38:2212.1\(M\)](#)

A.32. Yes, the agency shall obtain no fewer than three telephone or facsimile quotations.

**Q.33. [Are there any requirements regarding the advertisement of bids?](#)**

A.33. The advertisement for bids shall be published 2 times in a newspaper in the locality; the first advertisement must appear at least 15 days before the opening of the bids.

The first publication shall not occur on a Saturday, Sunday or legal holiday.

Plans and specifications shall be available to bidders the day of the first advertisement and until 24 hours before bid opening date.

Act 625 of the 2010 Regular Session, amending R.S. 38:2214(A), states that the advertisement for bids shall include 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. No public entity shall accept or take any bids including hand-delivered bids on days which are recognized as holidays by the United States Postal Service.

**Q.34. [Can changes be made to the contract once the contract is advertised?](#)**

A.34. Yes, the contract can be amended through [change orders](#) and [addenda](#).

**Q.35. [Can a public entity specify alternates?](#)**

A.35. The public entity can specify no more than three (3) alternates and must accept them in the order they appear on the bid form.

**Q.36. [Can a public entity specify a particular brand?](#)**

A.36. Yes, if in the public interest, a public entity may specify a particular brand, make, or manufacturer in the specifications using the model or catalog number. These specific brand names denote the quality standard of the product desired and does not restrict prospective bidders; equivalent products will be acceptable.

**Exceptions for materials and supplies****Q.37. [Are there any exceptions to bidding requirements for contracts for materials and supplies?](#)**

A.37. Yes, there are exceptions for purchases of surplus supplies, purchases from the Office of State Purchasing, purchases under cooperative purchasing agreements, purchases by hospitals under qualified group purchasing organizations, and contracts for perishable foods by political subdivisions.

**Exceptions applying to Public Works and Materials and Supplies****Emergency Exception****Q.38. [Are there any exceptions to the Public Bid Law for emergencies?](#)**

A.38. Yes, there are exceptions for 2 types of emergency situations (emergency and extreme emergency).

**Q.39. [What is an emergency?](#)**

A.39. An emergency is an unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury.

An emergency may also be 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 the Public Bid Law, because there is not sufficient time to follow the advertising requirements as provided in R.S. 38:2212.

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.

**Q.40. [When is the emergency exception applied?](#)**

A.40. After the emergency has been certified by the public entity, the Public Bid Law may be waived provided that notice was given to the public by publishing in the official journal within 10 days of declaring such public emergency.

**Q.41. Is there any special documentation for purchases under the emergency exception?**

A.41. Every contract that is negotiated shall be supported by written determination and findings by the public entity justifying the emergency.

If contract action is taken pursuant to telephone or other oral offers, written confirmation of the accepted offer must be included in the file.

The file of the public entity must contain:

- A minimum of the 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 quotes lower than the accepted quote are not accepted, reasons for rejection must be in the file. Records must be kept a minimum of 6 years.

**Extreme Emergency Exception****Q.42. What is an extreme emergency?**

A.42. An extreme emergency is 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.

**Q.43. When is the extreme emergency exception applied?**

A.43. 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.

**Q.44. Are there documentation requirements for purchases under the extreme emergency exception?**

A.44. The requirements are the same as for emergencies listed above.

**Other Exceptions or Limitations****Q.45. Are there any other exceptions or limitations that apply to contracts for public works and materials and supplies?**

A.45. Yes, there are exceptions for purchases for homeland security, as well as other miscellaneous exceptions that preclude the necessity of following Public Bid Law.

**Q.46. Are there any limitations on a consultant competing for contracts?**

A.46. Act 433 of the 2009 Regular Session amending R.S. 38:2212.7 that provides limitations on consultants competing for contracts enacts Subsection (B) to provide exceptions to the limitations of Subsection (A). Subsection (A) provides that 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. However, Subsection (B) provides some exceptions to the limitations in (A). The exceptions are not considered “developing bidding documents, requests for proposals, or any other type of solicitation.”

These exceptions are:

- (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.

**Q.47. Are there any exceptions for the Spill of National Significance (SONS) emergency?**

A.47. Yes, see [Executive Order BJ 2010-8](#) which provides that for procurement and contracting necessitated by the SONS Emergency, strict compliance with [R.S. 39:1481](#), *et seq.* and [R.S. 39:1551](#) *et seq.* shall not be required.

**Professional Services****Q.48. What are professional services?**

A.48. Professional services are defined in R.S. [38:2310](#)(7) to only include contracts for services performed by architects, engineers, or landscape architects. Further, the estimated project costs for these contracts must exceed five hundred thousand dollars. R.S. [38:2316](#).

**Q.49. Are contracts for professional services subject to Public Bid Law?**

A.49. Local governments and political subdivisions are not required to advertise, receive bids or engage in competitive negotiations for contracts for professional services. Contracts by "Agencies" of the state as defined in R.S. [38:2310](#) for services performed by an architect, engineer, or landscape architect must be bid according to R.S. [38:2312](#). Competence and qualifications must be the factors. AG Op. Nos. 07-0061 and 87-31.

**Q.50. Are other contracts for services also subject to the Public Bid Law?**

A.50. No, other contracts for services are not considered "professional services" as defined under R.S. [38:2310](#)(7).

**Q.51. What laws apply to contracts for services not subject to the Public Bid Law?**

A.51. These other contracts by State Agencies for services are addressed in the Professional, Personal, Consulting and Social Services Procurement Code found in R.S. [39:1481-1526](#).

**Q.52. Who is exempt from the electronic bidding requirement under the Public Bid Law?**

A.52. The exemptions provided by R.S. 38:2212(A)(1)(f) include Special Service districts. (Act 227, 2009 Regular Session). Special Service Districts include entities created by the parish such as water, sewerage, garbage, lighting, law enforcement, fire protection, hospital, recreation, gas utility, and garbage districts, etc. Essentially they are political subdivisions of the parish that usually serve as funding mechanisms for the purpose of incurring debt and for tax levying purposes. They also may or may not have authority to sue/be sued, issue bonds, or perform other powers that may be vested in them by the Parish.

For example, law enforcement districts are usually used for the purpose of contracting and issuing bonds for long-term capital improvements regarding things such as construction of parish prisons, substations, etc. They exist largely in part because the office of sheriff terminates and begins anew with each term of the current sheriff, creating a need for a sustaining legal entity (i.e. sheriffs contract only for their term of office, but law enforcement districts can contract beyond that amount of time)

The exception for Special Service Districts is only for special service districts such as those mentioned above that are created by a police jury form of government; it would not apply to parishes operating under a home rule (or legislative) charter form of governance.

Further the Special Service District must show that it is unable to comply with the electronic bidding provisions without securing or expending additional funding.

**Act 81 of the 2011 Regular Session** further amended and enacted new exemptions from the requirement for electronic bidding. The amendments are:

- 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.
- Any city or municipality with a population of less than **ten** thousand shall be exempt from the provisions of this Subparagraph.
- Act 81 added the following:
- Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.
- Public entities must include all bid documents as defined in R.S. 38:2211(A)(1), on the electronic website accepting the electronic bids.

**Q.53. What changes does Act 864 of the 2010 Regular Session make to the Public Bid Law regarding convicted felons and rejecting bids?**

- A.53. Act 864 of the 2010 Regular Session enacted R.S. 38:2212.8. The new legislation states that 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.

The Act does 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 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. If proven, 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.

**Q.54. Is there any provision in the Revised Statutes regarding the splitting or sharing of a commission, fee or other consideration ?**

- A.54. **Act 343 of the 2011 Regular Session** repealed R.S. 38:2196.1 effective 8/15/11, the former general provision that was in Public Bid Law regarding splitting of fees. However, Act 343 amended criminal code article R.S. 14:141 to add a provision related to splitting of fees derived from the sale of goods and services from which a public officer or employee in his official capacity receives a portion of the fee or commission. The penalty, upon conviction, is a mandatory fine of not more than \$10,000 or imprisonment for not more than 10 years, or both. The contract shall be a public record.

**Q.55. Are there exemptions to Public Bid Law for “reverse auctions” via electronic online bidding?**

[R.S. 38:2271](#)

A.55. Yes, if the procurement officer for the political subdivision determines that electronic bidding is in the best interest of the political subdivision and that electronic online bidding is more advantageous than other methods, reverse bidding may be used.

**Act 210 of the 2011 Regular Session**, effective 7/1/11, enacted R.S. 38:2271 which provides the detailed procedure. The new statute defines "reverse auction" as a competitive online solicitation process on the Internet for materials, supplies, services, products, or equipment in which vendors compete against each other online in real time in an open and interactive environment. The Act further provides that in a reverse auction, the political subdivision shall develop policies and may require, among other things, that:

- (1) Vendors register before the opening date and time.
- (2) Vendors be prequalified prior to placing bids.
- (3) The solicitation shall designate an opening date and time and the closing date and time.
- (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.
- (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.

**Q. 56. What are the notice requirements for a “reverse auction”?**

**R.S. 38:2271(C)**

A.56. The new statute requires adequate public notice for purchases of materials, supplies, or equipment by a political subdivision using a reverse auction be given as follows:

- The advertisement or notice shall be published twice in a newspaper in the locality, the first advertisement to appear at least 15 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.
- The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday.


 New

**Q.57. May any entity utilize the design-build method in the construction or repair of any public building or structure?**

[R.S. 8:2225.2.1\(A\)\(1\)](#)

A.57. In very limited circumstances, the design-build method may be used in the construction or repair of any public building 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.** [Act 777 of the 2012 Regular Session, effective 06/12/2012, added the Sewerage and Water Board of New Orleans to the list.](#) [Act 354 of the 2012 Regular Session, effective July 1, 2012, added the Orleans Parish School Board to the list.](#)


 New

**Q.58. What is the time limitation on design-build projects?**

[R.S. 38.2225.2.1\(A\)\(3\)](#)

A.58. [Act 777 of the 2012 Regular Session, effective 6/12/2012, extended the time for 6 years from July 10, 2007, after which time only those projects that were contracted for prior to that date may proceed under design-build. \[See Q.57 for parishes and entities\]](#)

### Statutes\*

\* Updated through 2011 Regular Session.

R.S. 38:2181-2196

Public Contracts

- |                              |   |   |
|------------------------------|---|---|
| R.S. <a href="#">38:2181</a> | – | Venue of suits  |
| R.S. <a href="#">38:2182</a> | – | Information for contracts let without competition under executive order   |
| R.S. <a href="#">38:2184</a> | – | Preference for supplies, materials, etc produced or offered by LA Citizen |
| R.S. <a href="#">38:2188</a> | – | Mandamus to compel performance of contract                                |
| R.S. <a href="#">38:2189</a> | – | Prescription for claims against contractor, surety, or bond               |

- R.S. [38:2189.1](#) – Prescription for claims by contractor or surety
- R.S. [38:2190](#) – Prohibitions for architects and engineers in some circumstances from owning substantial interest in organizations furnishing materials for construction of public work
- R.S. [38:2191](#) – Payments under contract.
- R.S. [38:2192](#) – Certain contract amendments and revisions; recordation.
- R.S. [38:2193](#) – Suits to invalidate contracts containing prohibited donation loan or pledge of public credit or property
- R.S. [38:2194](#) – Exemption for purchases of natural gas by political subdivisions
- R.S. [38:2195](#) – Prohibited contract provisions
- R.S. [38:2196](#) – Invalidation of certain provisions in public contracts
- R.S. [38:2196.1](#) – Repealed by Act 343 of the 2011 Regular Session.

**R.S. 38:2211-2226****Letting Contracts**

- R.S. [38:2211](#) – Definitions
- R.S. [38:2212](#) – Public Works
- R.S. [38:2212.1](#) – Materials and supplies
- R.S. [38:2212.2](#) – Demolition of State Buildings
- R.S. [38:2212.3](#) – Right to reject bids from Communist countries
- R.S. [38:2212.4](#) – Purchasing from public trusts
- R.S. [38:2212.5](#) – Prohibition of prequalification & exceptions
- R.S. [38:2212.6](#) – Materials and supplies for Homeland Security
- R.S. [38:2212.7](#) – Limitations on consultants competing for contracts
- R.S. [38:2212.8](#) – To allow for the prohibition of certain convicted felons from participating in the contract and procurement process, enacted by Act 864 of the 2010 Regular Session
- R.S. [38:2213](#) – Purchase and sale of land by public bodies
- R.S. [38:2214](#) – Rules for opening bids and rights to reject bids
- R.S. [38:2215](#) – Holding of bids and commencement orders
- R.S. [38:2216](#) – Written contract and bond
- R.S. [38:2217](#) – Independent arbitration and judicial review
- R.S. [38:2218](#) – Evidence of good faith and countersigning
- R.S. [38:2219](#) – Procurement of surety bonds and insurance
- R.S. [38:2220](#) – Purchases or contracts contrary are void
- R.S. [38:2220.1](#) – Provides for civil action for violations
- R.S. [38:2220.2](#) – Requirements for civil action
- R.S. [38:2220.3](#) – Procedures and notifications for civil action
- R.S. [38:2220.4](#) – Available recovery & protection for providing info
- R.S. [38:2221](#) – Prohibition against cost-plus contracts & exceptions
- R.S. [38:2222](#) – Change orders; recordation.  
Added by Act 343 of the 2011 Regular Session,  
effective 8/15/11
- R.S. [38:2223](#) – Work orders for underground utilities
- R.S. [38:2224](#) – Affidavit attesting no use of solicitor to get contract
- R.S. [38:2225](#) – Potential for limited preference of La bidders

- R.S. [38:2225.1](#) – Preference on bids based on employee residency
- R.S. [38:2225.2](#) – Design-build contracts
- R.S. [38:2225.2.1](#) – Design-build contracts and hurricane damaged areas.  
[Act 777 of the 2012 Regular Session](#), effective 6/12/12, extends authority for design-build until July 10, 2013.
- R.S. [38:2225.2.2](#) – Design-build contracts, authorized use by Slidell, Hurricane Katrina, Hurricane Rita, or both damage.
- R.S. [38:2225.3](#) – Prohibited contracts for public works & exceptions
- R.S. [38:2225.4](#) – Expansion of certain convention centers
- R.S. [38:2225.5](#) – Prohibits public entities from requiring certain agreements related to labor organizations as a condition of bidding on projects.
- R.S. [38:2226](#) – Exclusion of certain contractors from water well contracts

**R.S. 38:2234-2237****Telecommunications and Data Processing  
Procurement by Political Subdivisions**

- R.S. [38:2234](#) – Short Title
- R.S. [38:2235](#) – Application to constitutionally defined political subdivisions
- R.S. [38:2236](#) – Definitions
- R.S. [38:2237](#) – Methods of procurement

**Additional Legal Sources****I. Relevant Attorney General Opinions****Political Subdivisions**

[AG Op. No. 03-0357](#) - The Louisiana Public Bid Law, LSA-R.S. [38:2211](#), et seq. should govern CAHSD, as a political subdivision, with respect to purchasing vehicles for its local governmental entity use, and not the Fleet Management Program, LSA-R.S. [39:361](#), that applies to state agencies

[AG Op. No. 00-0484](#) - Public housing authorities created pursuant to Louisiana law are not state agencies but rather are political subdivisions of the state or of local government bodies. Housing authorities are not subject to the Louisiana Procurement Code but are subject to the Louisiana Public Bid Law, R.S. [38:2211-2296](#).

[AG Op. No. 97-0220](#) - The Capital Area Human Services District (CAHSD) is a political subdivision and is not subject to the State Procurement Code.

**General Rules**

[AG Op. No. 12-0065](#) – R.S. [38:2212\(A\)\(1\)\(b\)\(ii\)\(bb\)](#) gives the low bidder ten days after the bid opening to comply with the requirement to furnish the affidavit required by R.S. [38:2212.10](#).

[AG Op. No. 11-0177](#) - Louisiana's Public Bid Law does not authorize a public entity to mandate that all potential bidders obtain bid documents from the public entity's engineer in order to be a responsive bidder. Accordingly, the failure to comply with such a requirement cannot be used as the basis for rejecting a bid.

[AG Op. No. 11-0079](#) – Discusses several questions related to stipulated savings clauses and “savings” under energy efficiency contracts.

[AG Op. No. 11-0181](#) - A prospective bidder should not be penalized for failing to comply with a bidding requirement or condition that is not allowed or authorized by Louisiana's Public Bid Law.

[AG Op. No. 11-0059](#) – Citing [R.S. 33:4169.1](#) relative to municipal and parish collection and disposal of garbage and trash, The AG opines that contracts for the collection and disposal of solid waste, unless structured as an exclusive franchise, may be negotiated rather than awarded by public bid.

[AG Op. No. 10-0134](#) – If an entity requires attendance at a re-bid conference, a bidder who does not attend the entire conference is disqualified.

[AG Op. No. 10-0255](#) – The AG responds to a question regarding no bids for the amount of the appraised value of the property. The AG opines that the City of Opelousas cannot sell surplus immovable property for less than fair market value. A bid for less than the appraised value may be accepted if the City can adequately document that the bid reflects fair market value. In order to ensure compliance with La. Const. art. VII, Sec. 14, we recommend that the City either obtain an updated appraisal taking into consideration the City's marketing of the property or obtain other detailed documentation that adequately demonstrates why and how the City determined that the fair market value of the property was less than the original appraised value.

[AG Op. No. 10-0058](#) - Debris removal is a contract for services which is not subject to the advertising and bidding requirements of Louisiana's Public Bid Law as long as the municipality does not violate other applicable local statutes or charter provisions.

[AG Op. No. 10-0026](#) – Issued 05/04/10 states: A demolition contract is a contract for services which is not subject to the advertising and bidding requirements of Louisiana's Public Bid Law as long as the municipality does not violate other applicable local statutes or charter provisions.

[AG Op. No. 09-0296](#) issued 3/19/10 states: A contract for the purchase of materials and supplies is no longer “viable” once the materials and supplies have been transferred to the public entity and payment has been received by the contract vendor. Further, a contract would no longer be “viable” if it has a specific term of duration and that term has passed.

It has been our opinion that the following steps are necessary for a local political subdivision to piggy-back off an existing public contract of another local political subdivision pursuant to R.S. 33:1321-1327:

1. Verify that the contract was bid in compliance with state law.
2. Verify that the contract is still active, fresh or “viable.”
3. Obtain written consent or approval from the other public entity who bid the contract and obtain confirmation as to the contract number and, if necessary, the Council Resolution accepting the contract/bid.
4. Confirm that the vendor and the product, services, materials, supplies or equipment are the same and that the price is same or lower.

[AG Op. No. 09-0304](#) - Issued 1/21/10 states: Under Louisiana's Public Bid Law and beginning August 20, 2009, public entities are required to use the Louisiana Uniform Public Works Bid Form when soliciting bids for public works projects required by R.S. 38:2212.

[AG Op. No. 06-0051](#) - If a public entity utilizes the bid method for contract then the entity is bound to follow the rules for Public Bid Law regardless of whether or not the Public Bid Law applied to the contract initially.

[AG Op. No. 03-0401](#) - Discussion of the purpose of the Public Bid Law.

[AG Op. No. 00-0435](#) - The 72 hour requirement for addenda does not include legal holidays or weekends.

[AG Op. No. 00-0168](#) - Failure of a municipality to reject all bidders upon conclusion of 45 day time period created a ministerial duty upon the municipality to accept the lowest responsible bidder.

### **Public Works**

[AG Op. No. 05-0445](#) - Absent an escalation clause in a public works contract, a municipality may not amend a public works contract to pay a contractor for increases in material cost required to perform under the contract.

[AG Op. No. 04-0197](#) - Public Bid Law is applicable to public works contracts let by public entities even when only a portion of funds are public.

[AG Op. No. 04-0079](#) - Public works contracts that do not exceed the contract limit set forth in LSA R.S. [38:2211A\(1\)\(d\)](#) are not subject to the advertising and bidding requirements of the Louisiana Public Bid Law and may be undertaken by the public entity using its own employees, may be negotiated with one or more contractors, or may be let out for public bid. Public work contracts undertaken by a public entity using its own employees and which is less than the contract limit set forth in LSA R.S. [38:2211A\(1\)\(d\)](#) are not subject to the contractor licensing requirements of LSA R.S. [37:2150-2163](#) including the requirement that any contract that exceeds the sum of \$50,000.00 be performed by a duly licensed contractor. However, a licensed contractor must perform a public works contract that exceeds the sum of \$50,000 that the public entity either bids or negotiates.

[AG Op. No. 04-0030A](#) - Public works contracts that do not exceed the statutory contract limit as set forth in LSA R.S. [38:2211A\(1\)\(d\)](#) are not subject to the advertising and bidding requirements of the Louisiana Public Bid Law and may be undertaken by the public entity using its own employees, may be negotiated with one or more contractors, or may be let out for public bids. However, public entity does not include a public body where the particular transaction is governed by the State Procurement Code including the procurement of supplies, services, and major repairs as set forth in R.S. [39:1554\(B\)](#).

[AG Op. No. 03-0298](#)-Louisiana Public Bid Law requires a Bid Bond of not more than five percent of the contract price for public works projects exceeding \$25,000.00. Bid Bond submitted by low bidder was responsive to public works bid solicitation of public entity.

[AG Op. No. 03-0263](#) – When proposed addition to existing public work contract is outside scope of contract it must be either negotiated or let by public bid rather than by change order to existing contract.

[AG Op. No. 02-0113](#) - Contracts by private lessee for improvements to state land paid by private lessee, for which he/she is not reimbursed, are not public works.

### **Materials and Supplies**

[AG Op. No. 07-0278](#) - Louisiana's Public Bid Law applies to the proposed food services contract where the predominant component of the proposed food services contract is the purchase of food materials needed to prepare the meals. This constitutes the purchase of materials and supplies under the Public Bid Law.

[AG Op. No. 05-0314](#) - Louisiana Public Bid Law authorizes a school board purchasing a school bus to specify the type, quality or performance standards of the bus to be purchased, but such specifications must permit a functionally equivalent equal; the board must interpret its bid specifications in a fair and legal manner.

[AG Op. No. 04-0073](#) - The bid law does not apply to a contract to supply cafeteria services when food will be purchased through school food authority as provided by statute.

[AG Op. No. 01-0126](#) - When no bids are received in response to a solicitation, public entity should re-advertise and actively solicit bids from potential vendors in the area. Consideration should also be given to state contracts or contracts of other Louisiana public entities which can be accessed without bids. As a last resort, public body should consider whether the emergency provisions of the Public Bid Law can be utilized.

[AG Op. No. 00-0433A](#) - The term “operating lease” has no significance in procurement determinations. Regardless of that term, any lease of equipment with an option to purchase provision must be publicly bid if the cost of the lease is in excess of \$15,000 during its term. R.S. [38.2319.7](#) & [2319.10](#) are irrelevant unless the lessor is a non-profit entity. Leases which span more than one fiscal year and which contain no non-appropriation clause, or a non-appropriation clause with an anti-substitution provision must be submitted to the State Bond Commission for approval.

[AG Op. No. 00-0433](#) - Contracts for lease of equipment which contain an option for purchase of the equipment are treated as “purchases” under the Public Bid Law and are

required to be publicly bid if the price exceeds the bidding threshold. Potential violations of the bid law must be examined on a case by case basis. Allegations of criminal conduct should be reported to the local District Attorney.

[AG Op. No. 00-0055](#)- Bidding is not required for sale of equipment and materials between public entities.

### **Lowest Responsible Bidder**

[AG Op. No. 05-0140](#) - General rule prohibiting prequalification of bidders also prohibits using bidding documents to pre-qualify only Louisiana resident contractors for contract.

[AG Op. No. 03-0401](#) - Provided bid form stipulated its use was mandatory and gave notice that failure to utilize it might lead to disqualification; therefore the failure to utilize the provided bid form was means for disqualification of bidder.

[AG Op. No. 03-0298](#) - Because the provided bid form did not state that its use was mandatory and give notice for failure of its use, the failure to utilize the provided bid form was not means for disqualification of bidder.

[AG Op. No. 01-0145](#) - Motor Vehicle Dealer Licensing law, R.S. [32:1251](#), imposes a public policy that also applies to Public Bid Law making only Louisiana licensed motor vehicle dealers responsible bidders for vehicle purchases.

### **Contracts for Services**

[AG Op. No 07-0185](#) - The St. Bernard Port, Harbor and Terminal District is prohibited from requesting price quotes on design services from engineering firms or from using price or price-related information as a factor in its selection process for design professional services.

[AG Op. No. 07-0061](#) - Contracts entered into by the St. Bernard Parish Government for management and removal of debris generated as the result of Hurricanes Katrina and Rita constitute contracts for services which are not subject to the Louisiana Public Bid Law. Public Bid Law is not applicable when contracting for services, whether of a professional or other nature.

[AG Op. No. 06-0183](#) - Legal services constitute a contract for professional services which are not subject to the Louisiana Public Bid Law. Public Bid Law is not applicable when contracting for services, whether of a professional or other nature. Parish Governments are authorized to retain such services and are also authorized to prepare a resolution calling for a parish wide tax proposition.

[AG Op. No. 05-0260](#) - Contract entered into by the Town of Amite for cemetery maintenance is a contract for services, not subject to the Louisiana Public Bid Law.

[AG Op. No. 04-0284](#) - Contract to provide attorney services for the indigent was a contract for services and thus not subject to Louisiana Public Bid Law.

[AG Op. No. 03-0108](#) - Professional contracts entered into by the City of Shreveport to perform environmental studies and investigations are for services and are not subject to

the Public Bid Law. Public Bid Law is applicable to contracts relating to the removal and transportation of contaminated soil and backhaul of replacement soil.

[AG Op. No. 02-0418](#) - Contracts entered into by the Parish of Terrebonne for the routine eradication and removal of aquatic vegetation, fallen trees and other debris in reservoirs or canals and on levees constitute contracts for services which are not subject to the Louisiana Public Bid Law. Public Bid Law is not applicable when contracting for services, whether of a professional or other nature.

[AG Op. No. 02-0229](#) - Acadia-St. Landry Hospital Service District may enter into a management contract pursuant to R.S. [46:1055](#) B without having to comply with Public Bid Law.

[AG Op. No. 02-0220](#) - As contract between the Town of Port Barre and RMR was a contract for services it could be awarded without the necessity of competitive bidding or competitive negotiation so long as the municipality did not violate other statutes or restrictions.

[AG Op. No. 02-0152](#) - Contracts for services are not required to be bid under the Public Bid Law. A "request for proposals" is a valid method to evaluate potential contractors to consider relevant factors in addition to cost.

[AG Op. No. 02-0145](#) - Contract for construction management agreement is for a service and need not be bid under the Public Bid Law but person contracted as Construction Manager must be licensed by the Contractors' Licensing Board as a "general contractor". Public works project subject to a construction management agreement cannot be divided into separate trade contracts to avoid Public Bid Law.

[AG Op. No. 00-0246](#) - School Board may contract for service of installing parts purchased by public bid without seeking bids for such installation service.

[AG Op. No. 00-0225](#) - Contract between university and photographer for graduation was not subject to Public Bid Laws since no public funds were to be expended.

### **Emergencies**

[AG Op. No.-06-0067](#) - Due to health and safety concerns at its post-Hurricane Katrina temporary courthouse facility, Plaquemines Parish may invoke the emergency provisions of the Public Bid Law in the construction of new temporary courthouse facilities.

[AG Op. No. 02-0413](#) - Terrebonne Parish Consolidated Waterworks District No. 1 may not declare a emergency under the Louisiana Public Bid Law for the completion of its waterplant expansion project. To the extent completion of project equals or exceeds the statutory contract limit it will be necessary to comply with advertising and bidding requirements of the Louisiana Public Bid Law. "The mere possibility of a problem does not give rise to the emergency exception."

[AG Op. No. 01-0289](#) - "Emergency" provisions of Public Bid Law may be used to repair hail storm damage long after it occurred only where water intrusion has caused health and safety concerns. Other repairs should be bid in compliance with public bid requirements.

### Computers and Computer Software

[AG Op. No. 04-0275](#)- A contract for internet services can be either a purchase of materials and supplies or a service that is not subject to Louisiana Public Bid Law, and determination must be made on a case by case factual basis. R.S. [38:2234-2237](#) is only mandatory for contracts subject to R.S. [38:2212](#) or [38:2212.1](#).

[AG Op. No. 04-0264](#) - A contract to install, provide connectivity to or for, support or maintain software would be a contract for services, not subject to the public bid requirements. A contract for purchase of an existing, commercially available software package (with an accompanying license for its use), the development of a computer software program or the modification, enhancement, or customization of existing computer software would be a purchase of materials and supplies and therefore subject to the Public Bid Law.

### Miscellaneous Opinions

[AG Op. No. 03-0437](#) - Purchase of prescription drugs on an acquisition cost basis conflicts with the "cost plus" prohibition of LSA R.S. [38:2221](#). The use of an identifiable and recognized price index is authorized with the bid competition occurring solely on the margin over index price offered by each bidder.

[AG Op. No. 03-0374](#) - Contracts for the collection, transportation and disposal of solid waste, unless structured as an exclusive franchise, may be negotiated rather than awarded by public bid subject to term limitations set forth in LSA R.S. [33:4169.1](#).

[AG Op. No. 03-0069](#) - Town of Homer should not sell topsoil to its residents for their private use.

[AG Op. No. 02-0491](#) - R.S. [38:2212](#)(l) allows public bodies to provide labor necessary for maintenance of parish levy system once built and completed without seeking public bids. Purchase of materials and supplies for such maintenance and the construction of new levees still must be procured in compliance with Public Bid Law.

[AG Op. No. 02-0288](#) - City of Hammond may accept and acknowledge donation from Entergy. Monies, including money donated for purchase of cameras, become public funds upon receipt, and thus any purchases utilizing the donated money are still subject to Louisiana Public Bid Laws.

[AG Op. No. 01-0303](#) - Condition required to avoid RFP requirement for grant of social services contracts interpreted.

**II. Case law**

*Concrete Busters of Louisiana, Inc. v. The Board of Commissioners of the Port of New Orleans, LA.* App. 4 Cir. 2/2/11

Summary: The court held that a contract for demolition is a public work and subject to Public Bid Law.

*Board of Supervisors Of Louisiana State University v. Louisiana Agriculture. Finance Authority,* 984 So.2d 72, 2008 WL 398893.

Summary: The court found that LAFA is exempt from the requirements of the Public Bid Law.

**Note:** [Act No. 117 of 2008 Regular Session](#) specifically requires LAFA to adhere to the requirements of the Public Bid Law effective 8/15/2008.

*Beverly Const. Co., L.L.C. v. Parish of Jefferson,* 979 So.2d 551, 2008 WL 331185 (La. App. 5 Cir., 2008).

Summary: The court held that the advertised bid requirement that corporate resolution form be returned with the bid package could not be waived by the parish.

*Hamp's Const., L.L.C. v. City of New Orleans,* 924 So.2d 104 (La., 2006).

Summary: The Supreme Court held that any requirements of the Public Bid Law, any requirements stated in the advertisement for bid, and any requirements required on the bid form cannot be waived by the public entity.

*State Machinery & Equipment Sales, Inc. v. Iberville Parish Council,* 952 So.2d 77 (La.App. 1 Cir., 2006).

Summary: The court held that the Plaintiff's bid did not follow the bid specifications in a materials and supplies case.

*J.S. Rugg Const., Inc. v. Ouachita Parish School Bd.,* 895 So.2d 713, 39,340 (La.App. 2 Cir. 3/2/05), writ denied 904 So.2d 703, 2005-0859 (La. 6/17/05)

Summary: The unsuccessful bidder on a public contract failed to use the relief granted by statute and did not attempt to enjoin timely the execution or the performance of the contract, although the facts necessary for injunctive relief were known or readily ascertainable by the bidder. The unsuccessful bidder was precluded from recovering damages against the public body.

*Regency Construction, Inc. v. Lafayette City-Parish Consolidated Government,* 2003 WL 2127719, 847 So.2d 796 (La. App. 3 Cir. 6/4/2003)

Summary: Contract for removal of Hurricane Lili debris from property including private property was not a public work thus not subject to Louisiana's Public Bid Law.

*Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Authority*, (App. 4 Cir. 2003), 865 So.2d 136, 2003-1996 (La. App. 4 Cir. 12/22/03), writ granted 868 So.2d 702, 2004-0211, 2004-0212 (La. 2/11/04), affirmed 867 So.2d 651, 2004-0211, 2004-0212 (La. 3/18/04), rehearing denied, on subsequent appeal 896 So.2d 251, 2004-1274, 2004-1275, 2004-1276 (La.App., writ denied 896 So.2d 985, 2005-0483 (La. 3/16/05), writ denied 896 So.2d 985, 2005- 0542 (La. 3/16/05).

Summary: Public entity waived certain requirements mandated under Public Bid Law. For example, the bid form required the attachment of an insurance certificate thus making attachment mandatory and unwaivable requirement for bidder. Public board acted impermissibly in waiving the requirement and selecting bidder that did not include the certificate.

*Tiger Air & Heat, LLC and Berg, Inc. v. Jefferson Parish School Board and Star Services of New Orleans, Inc.*, 832 So.2d 324 (La. App. 5 Cir. 10/16/2002)

Summary: Contract for operation, maintenance, service, and repair of heating, ventilation, and air conditioning systems (HVAC) in 10 schools, that was entered into by school district and company, was a service contract rather than public works contract. The contract was thus not subject to the bidding requirements of the Public Bid Law.

*Mickey O'Connor General Contractor, Inc. v. City of Westwego*, 804 So.2d 128 (La. App. 5 Cir. 11/27/2001)

Summary: Acceptance of bid that failed to meet deadline by one minute, when the bidder was present and attempting to submit bid before deadline, was permitted and not deemed a substantial deviation from the bid law or an impermissible waiver of a substantial element of the bid process.

*Barriere Construction Co., LLC v. Terrebonne Parish Consolidated Government and Terrebonne Parish Council*, (La. App. 1 Cir. 2000), 754 So.2d 1123, writ denied (La. 5/5/2000)

Summary: A parish government's decision to reject a bid that did not have project name and number on the bid envelope as required was lawful. Even if the parish was permitted to waive the error, they cannot be required to do so.

*State Mach. & Equip. Sales, Inc. v. Livingston Parish Gravity Drainage No. 5*, 98-1207 742 So.2d 26 (La. App. 1 Cir. 6/25/99)

Summary: The court found that the evidence established that the bid specifications tracked one manufacturer's product description to such an extent that, although no brand name was specified, the criteria were so limited that the effect was that of a closed specification bid.

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*Hebert Brothers Engineers, Inc. v. Department of Transportation and Development*, 744 So.2d 40 (La. App. 1 Cir. 1998), writ denied 742 So.2d 893 (La. 1999)

Summary: DOTD's acceptance of a bid in which the written amount for the proposal guarantee was incorrect while the numerical amount was correct was permitted and not an impermissible waiver of a substantial matter.

Distinguished by: *Barriere Construction Co. v. Terrebonne Parish Consolidated Government*, 754 So.2d 1123 (La. App. 1 Cir. 2/18/2000)

*Kleiser, Inc., Kirkland Kleiser and Vicki Kleiser v. Airport Commission of Airport District No. 1 of Jefferson Davis Parish and Shop Rite, Inc.*, 640 So.2d 751 (La. App. 3 Cir. 1994)

Summary: Bid that exceeded the minimums set out in the specifications by providing public entity with additional documentation related to other projects was not improper.

*JTS Realty Corp v. City of Baton Rouge*, 499 So.2d 274 (La. App. 1 Cir. 1986), writ denied, 503 So.2d 19 (La. 1987)

Summary: Public Bid Law and public lease law were inapplicable to industrial inducement contract for construction of hotel, office building and additional parking facilities. The proposal solicited by city-parish from public was far too complex to be subject to the Public Bid Law and the express statutory authority rendered Public Bid Law inapplicable.

*Browning-Ferris, Inc. v. City of Monroe, LA, et al.*, 465 So.2d 882 (La. App. 2 Cir. 1985), writ denied, 467 So.2d 538 (La. 1985).

Summary: City's contract allowing deposit of trash collected at landfill owned and operated by private company was a service contract and not public work and thus not subject to Public Bid Law.

*Baton Rouge Roofing & Sheet Metal Contractors v. East Baton Rouge Parish School Board*, 380 So.2d 151 (La. App. 1 Cir. 1979)

Summary: Contract to re-roof several completed public building was maintenance and not new construction and thus not subject to Public Bid Law.

*Board of Directors of the Industrial Development Board of the City of Gonzalez, LA v. All Taxpayers, Property Owners, Citizens of the City of Gonzalez, LA, et al. (Cabela)*, 938 So.2d 11 2005-2298 (La. 2006)

Summary: In reviewing application of the TIF Act, the Louisiana Supreme Court overturned their prior decision in *City of Port Allen*, 439 So.2d 399 (La. 1983) regarding Constitutional [Article VII, §14](#) (A) and its prohibition of donations of public funds and public property. The Court held that the TIF Act was constitutional and that Louisiana Constitution [Article VII, §14](#) (A)'s prohibition applied only to gratuitous donations in which there were no reciprocal obligations incurred by the parties. [See Cabela Memo](#).

III. Executive Orders

2010 [Executive Order BJ 2010-8](#) for procurement and contracting necessitated by the Spill of National Significance (SONS) Emergency, strict compliance with R.S. 39:1481, *et seq.*, and R.S. 39:1551, *et seq.*, shall not be required.