

Understanding Public Bid Law

La. R.S. 38:2211-2293



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Application



- All Political Subdivisions
- All Locally Elected Officials
- Louisiana Legislature
- State Judiciary
- State Agencies for Public Works Only

Public Works



- PBL applies to public works, by public entities, using public funds. This includes, but is not limited to, the following:
- Construction
- Remodeling
- Utilities
- Roads and Bridges
- Improvements



Application of PBL



- Total Project cost of \$152,550 or More
 - No procedures are prescribed for projects below the contract limit
- Design Build generally prohibited
- Does **not** apply to:
 - Purchase of Services
 - Professional or Otherwise*
 - Pure Leases
 - Insurance

Application of PBL

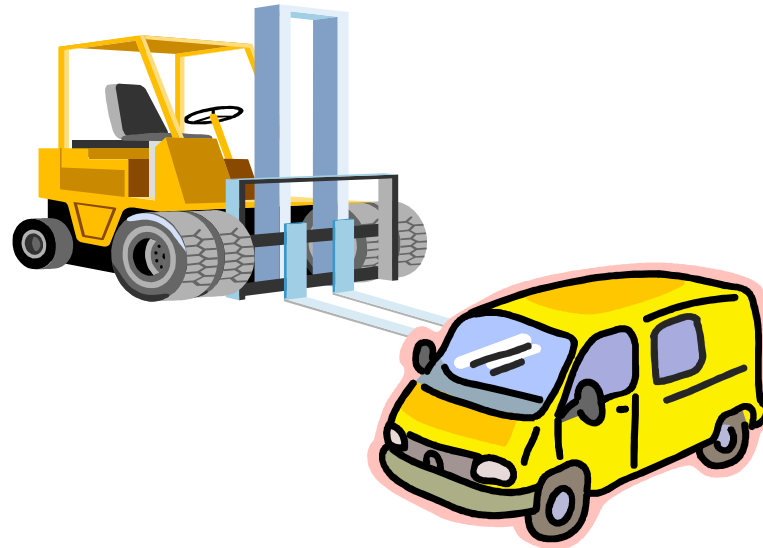


- Projects under \$152,550 may be done by Force Account (regular employees)
 - To determine if job is under the contract limit, you add the costs of all materials that will go into the job, including wages and benefits that will be paid to employees, costs of supervision and overhead, and rental value of the owned equipment used on the job
- Contracts for construction over \$50K require a licensed contractor
- Maintenance of Public Works can always be done with your entity's own employees

Purchases: Materials and Supplies



- Equipment
- Vehicles
- Supplies
- All Other Movable Property



Purchases: Materials and Supplies



- Below \$10K –
No procedure specified
- \$10K to \$30K –
Three telephone or fax quotes required
- \$30K and Above –
Advertise for sealed bids

Division of Contracts



- Division or separation of any purchase to avoid bid law is *illegal*

Data Processing and Telecommunications



- May use Invitation to Bid (ITB)
- May use Request for Proposals (RFP)
 - RFP has advantage of letting the vendor do much of the engineering or planning that may be required with complex systems and allows you to use evaluation factors **other than price** in making the award
 - The criteria must be set forth and point valued in the RFP.

Specifications



- **MUST BE OPEN**
- Must not exclude products that are functionally equivalent to one described in specifications
- May use a brand name and model number
- Must state that products of similar quality are acceptable

Specifications



- **Change orders** authorized if within the scope of the contract
- **Alternates**
 - Maximum of 3
 - Alternate by any name still an alternate
 - Order of acceptance cannot affect award

Bidding Documents



- Bid notice (advertisement)
- Plans and specifications
- Bid Form
- Bidding instructions
- Addenda
- Special Provisions
- Any other written instruments prepared for use by bidders

Advertising: Public Works



- In the official journal
 - May also public by electronic media available to the general public
 - If a public entity is required by law to provide bidders with the option of submitting their bids electronically, the public entity must also publish a copy of the bid documents on the website accepting the electronic bids.
- Once a Week for Three Different Weeks
 - First ad must appear 25 days before bid opening date
 - First ad cannot begin on a Saturday, Sunday, or legal holiday
- Funds that meet or exceed the probable construction costs must be budgeted
 - Probable Construction Costs = estimate for the cost of the project as designed that is determined by the public entity or designer

Advertising: Public Works



- Must indicate time and place of any mandatory pre-bid conference
- Must tell when and where bids will be opened
- All bidding documents and complete plans/specifications must be available on the date of 1st advertisement and remain so until 24 hours before bidding
 - Distribution may be electronic and/or paper

Advertising: Addendum



- Addenda are use to make changes to the bid documents
- The bid period may be extended up to 30 days through the issuance of an addendum without the requirement of re-advertising; **HOWEVER:**
- If addendum is issued **within 7 days** of the bid opening, the public entity must transmit a copy of the addendum within 24 hours to all prime bidders who have requested bid documents
 - May be transmitted by fax, e-mail, other electronic means, by hand, or by overnight delivery using a nationally recognized carrier.
 - If the addendum cannot be transmitted, bid opening must postponed at least 7 days
- If addendum is issued **within 72 hours** of the bid opening
 - Entity must extend the bid at least 7 but no more than 21 working days required
 - Addendum shall state the revised bid opening date

Advertising: Materials and Supplies



- Two advertisements in official journal
- Must begin at least 15 days before bids are to be received

Bidding Submittal



- Bid documents shall only require the following:
 - Bid Bond or Bid Security
 - Acknowledgement of Addenda
 - Base Bid and alternates, if any
 - Name, Title, Address, and Signature of Bidder
 - Corporate Resolution or written evidence of authority
 - La Contractors License Number
 - Unit price form, if applicable
- Other documents/info may be request of the lowest bidder within 10 days after bid opening

Bill Submittal



- **Delivery:**
 - Hand delivered by bidder or agent
 - ✦ Written receipt given to bidder
 - May be sent through registered or certified mail w/ return receipt requested
 - Submitted electronically

- **Cannot accept any bids on days recognized as holidays by USPS**
 - This includes hand delivery

Opening of Bids



- Must be done at time and place in advertisement
- Does not have to be done before the public body
- Late bids should be returned unopened
 - They should be marked with the time and date and **returned to the bidder unopened**
- Designer's estimate must be read aloud
- Bids must be publicly opened and read aloud
- Bids are public records – 14 days after bid opening or recommendation of award
- **No comment** should be made at bid opening about the low bid or about award.

Bid Evaluation



- Additional information requested, other than that required for bid submittal, must be submitted within 10 days of bid opening or bidder is disqualified.
- An award should be made and the purchase order or contract document should be entered only after careful review of the apparent low bidder's **responsiveness** and **responsibility**.

Bid Evaluation



- Responsible and responsive bidder:
 - One whose bid meets the requirements set out in the advertised bidding documents and who provides the required documentation within 10 days of the bid opening

Bid Evaluation



“Responsibility”

- Refers to the character or quality of the bidder
 - ✦ Past experience with bidder
 - ✦ Are you safe doing business with this contractor?

Bid Evaluation



- “Responsiveness”
 - Has bidder offered you what you ask for?

Bid Evaluation



- Disqualification for lack of **responsibility**
 - Requires written notice to bidder
 - Notice must include reasons for disqualification
 - Must provide opportunity for hearing within 5 days of the notice of disqualification
 - ✦ Hearing must be held prior to award of public work
 - Written ruling must be sent w/in 5 days of hearing
 - Contract cannot be awarded to another bidder until ruling has been sent
- Rejection for **unresponsiveness**
 - Notify bidder of reason why rejected

Bid Evaluation



- Public entity should not include any requirements in its advertisement for bids or bid form that it considers insignificant or waivable; once included, the requirements are non-waivable

Canceling Bid



- Entity may cancel solicitation for any reason before bid opening
- Entity must have “just cause” after bids opened to cancel solicitation
 - Unavailability of sufficient funds for the project or purchase;
 - All bids come in over budget;
 - Substantial change in scope or design of project; or
 - Decision not to go forward with the project for at least 12 months.

Withdrawing a Bid



- Must be done by affidavit
- Must be done within 48 hours of bid opening
- Only for “patently obvious, unintentional and substantial mechanical, clerical or mathematical errors, or errors of unintentional omission of a substantial quantity of work, labor, material, or services”

Awarding the Contract



- Within 45 days entity must:
 - Award to lowest responsive and responsible bidder;
 - Reject all bids for just cause; or
 - Extend deadline with consent of lowest responsible and responsive bidder
- Failure to do one of these can result in a **mandamus** by a court to grant the contract to the lowest responsive, responsible bidder
- Contract must be **executed** within 60 days of contract being awarded
- **Notice to Proceed** must be given within 30 days after execution of the contract

Emergencies



- Very narrow definition
- Public body must declare emergency and publish the declaration within 10 days of declaration
- Public Body must negotiate the contract and document the process
- Extreme emergency authorized when public body cannot meet to make the declaration

Bonds and Recordation



- Public works contracts of **\$5,000 or more** must be reduced to writing
- Public works contracts of **\$25,000 or more must be recorded** in the official mortgage records of the Clerk of Court

Importance of PBL to Private Vendors



- Contracts in violation of the PBL are null.
- Requirements of PBL and bid specifications are not waivable.
- Public entity must award contract to lowest bidder.

How to Avoid the PBL



- Purchase off of available state procurement contracts
- Purchase at state contract price through local dealer selling the exact same product
 - May pay the costs for shipping, preparation, and delivery of the item, as long as these costs do not exceed the state bid price by:
 - ✦ 7% on purchases up to \$10,000
 - ✦ 5% on purchases over \$10,000 and up to \$20,000
 - ✦ 3% on purchases over \$30,000
- “Piggy back” purchases
- Emergencies
- Political subdivisions and municipalities can adopt all or part of the Louisiana Procurement Code to govern purchases of materials and supplies
 - Still have to use PBL for public works contracts

PUBLIC BID LAW: CURRENT DEVELOPMENTS



- **2016 LEGISLATIVE SESSION**
- **2017 LEGISLATIVE SESSION**
- **ATTORNEY GENERAL OPINIONS**

2016 LEGISLATIVE SESSION



- **Act 373** (HB 1044) amended and reenacted La. R.S. 38:2290, which concerns exceptions to closed specifications.
- Act 373 adds an exception to the closed specification prohibition for products or materials required as part of an integrated coastal protection project for the evaluation of new and improved integrated coastal protection technologies.

2016 LEGISLATIVE SESSION



- **Act 406** (HB 204) amended and reenacted provisions in La. R.S. 38:2212(B)(3)(b) concerning information submitted by bidders of public works at the time of bid.
- Act 406 requires that bidders bidding on public works for Jefferson Parish must submit all bid forms to the Jefferson Parish governing authority prior to the opening of bids. Previously, this provision only applied to East Baton Rouge Parish.

2016 LEGISLATIVE SESSION



- **Act 510** (HB 1066) amended and reenacted provisions of La. R.S. 38:321.1 concerning piggy-backing off local contracts.
- La. R.S. 38:321.1 previously authorized levee districts to purchase materials, supplies, and equipment from existing public contracts of another political subdivision within one year of the opening of bids of that contract, as long as it followed certain requirements.
- Act 510 extends this authority to the State of Louisiana, as well as all municipalities, parishes, and political subdivisions of the state.
- Act 510 essentially formalizes the method by which a local public entity may “piggy back” off another local public entity’s contract.

2016 LEGISLATIVE SESSION



- **Act 548** (HB 429) amends and reenacts provisions of La. R.S. 38:2212.1(N) relative to cooperative purchasing by school boards.
- Act 548 authorizes school boards to enter into agreements for the purchase of materials, equipment, and supplies with one or more “qualified group purchasing organizations.”
- Act 548 limits purchases of equipment to the price contained on the “state bid list;” however, it does not define the term “state bid list.”
- Act 548 does not add any provision that such purchases or agreements can be entered into without the necessity of bidding as required by La. R.S. 38:2212.1(A) for purchases above the \$30,000 threshold.

2016 LEGISLATIVE SESSION



- **Act 566** (HB 1086) amends and reenacts provisions of La. R.S. 38:2212(A)(1) relative to contract limits for public works contracted by certain municipalities.
- Act 566 allows a municipality with a population between 45,000 and 48,800 people to follow the thresholds for bidding public works contained in the Public Bid Law, even though its Home Rule Charter may have more restrictive contract limits for public works projects.
- Currently, Act 566 would only apply to the City of Alexandria.

2017 Legislative Session



SR 149:

- Establishes the **Best Practices in Public Contracts Task Force** to study best practices from other states to determine a fair method to evaluate bids on public works contracts based on best value instead of lowest cost, and determine best means to leverage public/private partnerships to deliver public works projects.
- Requires a report to the chairman of the Senate Committee on Transportation, Highways and Public Works, not later than February 15, 2018.

ATTORNEY GENERAL OPINIONS



- **15-0052** - The apparent low bidder's failure to comply with the bid documents and instructions to bidders, which required all potential bidders to complete all spaces on the bid form including the space to provide a price for alternate no.1, renders their bid non-responsive and the Town must reject the bid.
- **15-0080** – A 501(c)(3) Volunteer Fire Department is not a public entity; and therefore, it is not subject to the Louisiana Public Bid Law.

ATTORNEY GENERAL OPINIONS



- **15-0139**- Pursuant to plain language of La. R.S. 38:2212(B)(2), the City may not require potential bidders to complete either Document A305, or Statement C-451 as part of the pre-bid materials. The City may, however, include such forms as part of their bidding documents and include a requirement and instruction to potential bidders that such forms would be required to be completed and submitted by the apparent low bidder within ten days after the date bids are opened.
- **15-0151**- The public bid law does not apply to a lessee's planned renovation of publicly owned property using 100% private funds. However, if public funds will be used to either renovate public property, or construct a new facility on publicly owned property the public bid law would apply.

ATTORNEY GENERAL OPINIONS



- **16-0020**- Louisiana's Public Bid Law does not provide any authority for establishing a local hiring preference.
- **16-0153** – Insurance services provided by an agent of record to negotiate and purchase insurance policies are professional services and not public works, materials, equipment or supplies. As such, contracts for such services are not subject to the Public Bid Law.
- **16-0201** – La. R.S. 38:2248 prohibits a contracting agency from withholding more than 10% of the contract price on projects less than \$500,000 and 5% of the contract price on projects of \$500,000 or more.

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