

Public Bid Law

R.S. 38:2211, et seq.

Overview

This document discusses the general principles and guidelines concerning [Louisiana's Public Bid Law](#) using a frequently asked questions (FAQ) format. The FAQ also contains Attorney General Opinions and case law to aid understanding of this area of the law. While the document is fairly detailed, remember that every situation is unique and that each situation deserves careful individual review.

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Q.3. What types of contracts are covered by Louisiana’s Public Bid Law?

A.3. For State Agencies, Boards and Commissions:

All contracts for public works (defined in [\[Q.4\]](#)) are governed by the Public Bid Law.

Contracts by State Agencies for certain professional services such as architects, engineers, and landscape architects for projects estimated to cost greater than \$500,000 are subject to the Public Bid Law. See [\[Q.82\]](#)

For Local Entities:

Contracts for the purchase of materials and supplies are governed by the Public Bid Law unless the political subdivision has elected to follow the State Procurement Code.

All contracts for public works (defined in [\[Q.4\]](#)) are governed by the Public Bid Law.

Contracts for Printing Services, other than certain specialized printing, as defined in [R.S. 38:2255](#) are required to comply with the same thresholds and bidding requirements as contracts for materials and supplies under [R.S. 38:2212.1](#). See [AG Op. No. 14-0217](#)

The Attorney General (AG) in [AG Op. No.](#)

Any timely changes by a bidder to the bid prior to submission of the bid shall be scratched through and initialed by the bidder or the person who submits the bid. The change as initialed shall be binding.

[R.S. 38:2212\(B\)\(2\)](#)

For the purpose of bids submitted electronically, the last timely bid submission by each and any bidder shall be binding.

[R.S. 38:2212\(E\)\(1\)](#)

The Louisiana Uniform 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.](#)

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Q.14. What preparations must the public entity make before advertising for a public work? [R.S. 38:2212\(H\)](#)

A.14. Every public entity intending to advertise a public work for bids is required to estimate the probable construction costs of such public work or obtain an estimate from the project designer prior to advertising the public work for bids.

No public entity shall advertise a public work for bids unless the public entity has budgeted funds that meet or exceed the estimate of the probable construction costs for the project.

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ment Phase is the coordination of all technical project, the development of the specifications' and an updated statement of probable cost.

to, allowed to, or elect to allow for electronic ent shall contain the electronic address of the specific times for public access to the electronic s of submission of bids [R.S. 38:2212\(E\)](#).

through services such as Central Bidding does ents of [R.S. 38:2212\(G\)](#).

-qualify certain individuals and thereby
[R.S. 38:2215](#)

ification may occur. For instance, geographic he vendor and the public entity are not allowed. t for needed repairs if included in the contract.

neral rule. An example of an exception under restoration for projects other than bridges and cific skills needed for the job.

pre-qualify bidders, the public entity may still prevent a bidder from providing the requested ewing whether the bidder is responsive and his review shall comply with the due process

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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.

Q.20. May a public entity require bidders attend a pre-bid conference?

R.S. 38:2212(I)

A.20. Yes. Public Entities may mandate that prospective bidders on a public works contract attend a pre-bid conference. The public entity shall include notice of this mandate in its advertisement along with the date, time, and location of the pre-bid conference.

Prospective bidders must remain in attendance for the duration of the conference.

Prospective bidders who fail to attend the conference or remain for the duration shall be prohibited from submitting a bid for the project.

Q.21. May the requirements of R.S. 38:2212 be waived?

R.S. 38:2212(B)

A.21. Public entities may not waive the requirements of R.S. 38:2212.

If a public entity adds any additional requirements for information, unless mandated by State or Federal requirements, the requirements shall be void and not considered in the award of the contract. See [R.S. 38:2212\(B\)\(2\)*](#)

***Amended by Act 774 of the 2022 Regular Session (effective June 20, 2022)**



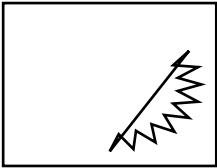
C. Bidding

Q.22. What documents must be included with a bid?

R.S. 38:2212(B)(2)

A.22. R.S. 38:2212(B)(2) provides that the “bidding documents” shall require only the following to be submitted by a bidder on a public works project:

- Completed Louisiana Uniform Bid Form;
- Bid Security or Bid Bond;
- Acknowledgment of Addenda;
- Base Bid;
- Alternates;
- Signature of Bidder,
- Name, Title, and Address of Bidder;
- Name of Firm or Joint Venture;
- Corporate Resolution or written evidence of the authority of the person signing the bid;
- and
- Louisiana Contractor’s License Number (must also be on the envelope)



Any parish with a police jury form of government and a population of less than twenty thousand;

Any city or municipality with a population of less than ten thousand; and,

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The law does not define “responsive bidder” but a reading of the law as to what constitutes a non-responsive bidder demonstrates that a responsive bidder is the apparent low bidder who submits the proper documentation within ten days of the opening of the bids.

The law provides that the bidding documents shall not require any bidder, other than the apparent low bidder, to furnish any other information or documentation, including the Attestation Affidavit and the E-Verification Form, any sooner than ten days after the date bids are opened; however, the apparent low bidder may submit such information or documentation at any time prior to the expiration of the ten-day period. b

If the apparent low bidder does not submit the proper information or documentation as required by the bidding documents within the ten-day period, the law states that such bidder shall be declared **non-responsive**, and the public entity may award the bid to the next lowest bidder, and afford the next lowest bidder not less than ten days from the date the apparent low bidder is declared non-responsive, to submit the proper information and documentation as required by the bidding documents, and may continue such process until the public entity either determines the low bidder or rejects all bids.

Therefore, by deduction, a responsive bidder is the apparent low bidder who submits the rf tore,(1ker)-5

If the lowest responsible and responsive bidder has timely provided all documents required by [R.S. 38:2212](#), and no injunction or temporary restraining order is in effect, the lowest responsible and responsive bidder and the public entity shall execute the contract not later than sixty calendar days after the date of the public entity's award of the contract to the lowest responsible and responsive bidder.

The public entity shall issue to the contractor a notice to proceed with the project or work order not later than thirty calendar days following the date of the second party's execution of the contract. However, the public entity and the contractor, upon mutual written consent of both parties, may agree to extend the deadline to issue the notice to proceed.

The provisions of this law do not apply to contracts to be financed by bonds that are required to be sold after opening of bids on the contract, or when the contract is to be financed in whole or in part by federal or other funds that will not be readily available at the time bids are opened, or on contracts that require a poll of the Legislature of Louisiana before funds are available to fund the contract. This exception shall be mentioned in the bidding documents for the project and in the official advertisement for bids required in accordance with [R.S. 38:2212](#).

These provisions are not subject to waiver.

Q.34. May changes be made to the contract after the contract has been executed?

E. Change Orders

Q.35. What is a change order?

R.S. 38:2211(A)(3)

A.35. A change order is any contract modification that includes an alteration, deviation, addition, or omission as to a preexisting public work contract that authorizes an adjustment in the contract price, contract time, or an addition, deletion, or revision of work. Change orders may be either “within the scope of the contract” or “outside the scope of the contract.”

Q.36. What is a change order that is within the scope of the contract?

R.S. 38:2211(A)(3)(c)

A.36. A change order is within the scope of the contract when it does not alter the nature of the thing to be constructed and that is an integral part of the project objective.

Q.37. What is a change order that is outside the scope of the contract?

R.S. 38:2211(A)(3)(b)

A.37. A change order is outside the scope of the contract when it alters the nature of the thing to be constructed or that is not an integral part of the project objective
(See the AG Opinion discussed in [\[Q.38\]](#))

Q.38. What are the requirements for a change order?

R.S.38:2212(M)
R.S. 38:2222

A.38. All change orders shall be in writing or in electronic format if the public entity is able to receive change orders electronically. All change orders shall be signed by the contractor and the public entity or its design representative.

The public entity shall pay the contractor for work performed by change order not later than sixty days after the date the public entity approves the application for payment for completion of the work performed in the change order.

Change orders within the scope of the contract may be negotiated in the public's best interest or let out for bid. Public entities may wish to consider letting out for bid change orders within the scope which are more than the contract limit as a best use of public funds.

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

The AG has opined that any additional public work outside of the scope of the existing contract that is below the contract limit should be negotiated or let out for public bid rather than by change order to the existing contract.

See **AG Op. No. 03-0263**

[R.S. 38:2222\(A\)](#) requires that each change order 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 i6 17.748 l54.749 1p55en 999977 1.6 (he)15 Tf11.0



Q.40. May construction managers or other third party consultants employed by a public entity manage a construction project as the general contractor or act in the role of a general contractor?

III. Materials and Supplies

R.S. 38:2212.1

Q.42. What are materials and supplies?

A.42. Materials and supplies are not defined in the statutes; in this context, however, they are commonly understood to be the movable property necessary to conduct public business, from paper and pens to computers and printers.

Q.43. Are all contracts for the purchase of materials and supplies subject to the Public Bid Law?

A.43. Local political subdivisions and local governmental entities are required to use the Public Bid Law for the procurement of materials and supplies if the cost is over the contract limit of **\$60,000***, unless an exception exists. Examples of exceptions include: group purchasing options for hospitals ([R.S. 38:2212.1\(G\)](#)) and schools ([R.S. 38:2212.1\(N\)](#)); emergency procurements; or buying items off the state contract using the LPC. Transactions between public entities are not subject to the Public Bid Law, as long as a fair price is received for the goods.



*** Amended by Act 204 of the 2022 Regular Session (effective August 1, 2022)**

State entities are required to use the LPC for the purchase of materials and supplies, and may purchase off the state contract or bid for items over \$30,000 pursuant to [R.S. 39:1594](#). [Executive Order JBE 2020-21](#) provides executive branch entities with certain procurement procedures for items under \$30,000.

A. Contract Limits

Q.44. What is the threshold, or contract limit (minimum), for purchases of materials and supplies by local political subdivisions?

A.44. Contracts by local political subdivisions and local governmental entities for purchases of materials and supplies with a value of more than **\$60,000*** must be advertised and let for contract with the lowest responsible bidder. Purchases of \$30,000* or more, but less than **\$60,000*** dollars, shall be made by obtaining no fewer than 3 quotes by telephone, facsimile, or electronic means.



Q.49. May a public entity specify alternates?

R.S. 38:2212.1(B)(3)

A.49. The public entity may specify no more than three (3) alternates and must accept them in the order they appear 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. However, the public entity may accept alternates in any order that does not affect determination of the low bidder.

The Attorney General has opined that public entities are under no obligation to accept an alternate. If the public entity exercises its discretion to accept alternates, they must be accepted in the order in which they are listed, unless it does not affect the determination of the low bidder.
See AG Op. No. 15-0052

Q.50. May a public entity specify a particular brand?

R.S. 38:2212.1(C)(1) and (2)

A.50. 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 must be acceptable.

purchases of animals trained to perform special task, including but not limited to narcotics detection, bomb detection, arson investigation, and rescue techniques by:

- Any local law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders, and
- Any local public safety agency for the purpose of search and rescue services.

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A state agency or any local government agency may rely on certificates of the office of state procurement (OSP) that the contract was bid in compliance with Title 39 (Procurement Code) and was adopted as a statewide cooperative contract pursuant to the cooperative purchase provisions of [R.S. 39:1702](#), et seq., or from a local political subdivision that the contract was bid in compliance with State law. State agencies should consult with OSP prior to utilizing this provision.

[R.S. 38:321.1](#) is not applicable to contracts for Public Works. [AG Op. No. 16-0192](#)

Q.61. With enactment of R.S. 38:321.1, can parishes, municipalities and political subdivisions still “piggyback” using the Local Services Law?

[R.S. 33:1324](#)

The term “**qualified group purchasing organization**” means an organization, whether for profit or not for profit, that has contracts for the sale of materials or supplies with at least fifteen hospitals within the United States.

1. The qualified group purchasing organization shall submit

- (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.

Procedures for such procurement are contained in [R.S. 38:2237](#).

Public notice of the RFP shall be given at least thirty days prior to the date scheduled for opening the RFP.

Written notice of the RFP shall be mailed to persons and corporations who are known to be in a position to furnish the equipment, systems, and related services.

This public notice may also be given by electronic media available to the general public.

The RFP will indicate the relative importance of price and other evaluation factors, shall clearly 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.

An award shall be made to the responsible offeror whose proposal is determined in writing by the governing authority of the political subdivision to be the most advantageous, considering price and other evaluation factors set forth in the RFP. This is different from when the public entity is letting the contract through sealed bidding as the public entity is required to award the contract to the lowest responsive and responsible bidder.

The governing authority of the political subdivision may reject all proposals when

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Q.73. What special documentation is required

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Q.85. What laws apply to other contracts by executive branch agencies?

R.S. 39:1551

A.85. Other contracts by executive branch agencies for services are addressed in the State Procurement Code found at [R.S. 39:1551, et seq.](#)

Q.86. Are garbage contracts professional services contracts?

R.S.33:4169.1

A.86. Yes garbage contracts are professional services contracts. However, if the granting of a garbage contract creates a monopoly, they are required by R.S. 33:4169.1(A)(2) to be let through public bid.

VII. Louisiana Procurement Code (LPC)

R.S. 39:1551,et seq.

Q.87. What is the LPC?

A.87. The LPC is the set of procurement laws that executive branch agencies of the State are required to follow instead of the Public Bid Law when they are purchasing materials and supplies. The LPC, through the Office of State Procurement, provides a list of vendors and products that have been pre-bid for easy purchase by executive branch agencies. Click [here](#) to go to the Legislative Auditor's Summary of the LPC.

Q.88. May a public entity that is subject to the Public Bid Law choose to be subject to the LPC?

R.S. 38:2212.1(F)

A.88. Yes. Political subdivisions are authorized to adopt by ordinance or resolution all or any part of the LPC and its accompanying regulations for the procurement of material and supplies. If the political subdivision adopts the LPC for the procurement of materials and supplies, then the LPC and not the Public Bid Law applies to those purchases. Any public entity may, however, purchase materials, supplies, and equipment from the state contract under the LPC without actually adopting the LPC.

Q.89. May a local governmental entity purchase an item on the state contract?

R.S. 39:1702

A.89. Yes, a local entity may purchase an item on the state contract employing the cooperative purchasing provisions of [R.S. 39:1701](#) et seq. The entity is not required to adopt the LPC "all or in part" for this transaction because the purchase is permitted through the Public Bid Law pursuant to [R.S. 38:2212.1\(F\)](#). As a matter of prudent administration, the governing body should, at a minimum, document the details for the purchase through resolution, ordinance, or minutes.

Q.90. May a local governmental entity purchase an item from a local vendor at the state bid price?

R.S. 39:1710

A.90. Yes, R.S. 39:1710 allows these purchases with certain limitations. The statute provides that:

When a local governing authority purchases an item at the state bid price through a local vendor, the local governing authority may pay to the local vendor the costs for shipping, preparation, and delivery of the item, provided that these costs shall not exceed the state bid price by seven percent on purchases up to ten thousand dollars, five percent on purchases over ten thousand dollars and up to twenty thousand dollars, and three percent on purchases over twenty thousand dollars.

The Attorney General in [AG Op. No. 96-0044](#) opined that the following steps would be required to comply with the statute:

In order to facilitate use of these provisions, we would advise that the following steps be taken by a local governing authority:

1. Determine from State Central Purchasing if there is a competitively bid state



[R.S. 38:2211](#)(A)(7) defines liquidated damages as follows:

“Liquidated Damages” means a fixed sum of damages stipulated in a public works construction contract that are intended to compensate a public entity as a result of a delay in performance by the contractor and 43s(d)0.6652 4 (f)-55n per-e0.6 (e)0.6Tw 0 -10.67t (f)-554t(8o

Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities, as described in Section 889(f)(3)(A) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019;

Video surveillance equipment or telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, Dahua Technology Company, or any subsidiary or affiliate of such entities, as described in Section 889(f)(3)(B) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019;

Telecommunications or video surveillance equipment or services produced or provided by an entity found to be owned, controlled, or otherwise connected to the government of the People's Republic of China, as described in Section 889(f)(3)(D)

[AG Op. No. 18-0006](#) - Tax exempt foundation created by charter school for the purpose of financing, constructing, and leasing building for use by charter school was a private entity and was not required to follow the public bid law for construction of a new school building on land subleased from the charter school utilizing private funds.

[AG Op. No. 17-0152](#) – With the enactment of [R.S. 38:321.1](#), the Legislature provided parishes, municipalities and political subdivisions an additional procurement method to piggyback off of a contract procured by another political subdivision. However, the method for parishes, municipalities and other political subdivision to piggyback off of an existing public contract of another political subdivision under the Local Services Law ([R.S. 33:1324](#)) is still available. A parish, municipality or political subdivision may use either method to piggyback provided all relevant steps are followed.

[AG Op. No. 16-0192](#) – [R.S. 38:321.1](#) (piggy backing) is not applicable to public works by ba2.o..6 (i)

AG Op. No. 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 nonresponsive and the Town must reject their bid.

AG Op. No. 15-0018 - Louisiana municipalities may not make a direct purchase from a NJPA contract. A NJPA contract is not a purchasing contract that was competitively bid by another Louisiana local political subdivision. As such, the piggyback direct purchasing alternative is not available to a Louisiana municipality.

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[AG Op. No. 04-0079](#) - Public works contracts that do not exceed the contract limit are not subject to the advertising and b6 (ha)109dd(ha)109ng -6 (t)10.6 (aq11.3 (l)u(ha)1094.9 (acem6 (t)10.6

observed, and that a bidder's

XII. Case law

Barriere Construction Co., L.L.C. v. Parish of Tangipahoa, 2018-0279 (La. App. 1 Cir. 9/24/18);259 So.3d 458.

Summary: The court held that the provisions of the Public Bid Law, specifically R.S. 38:2212(B)(6)(c), which requires that in cases where there is a discrepancy between the base bid total and the sum of the extended unit prices, the unit price bid shall govern, and not the provisions of the Public Bid Law prohibiting waiver of provisions in the stated bid documents was applicable in regard to post-bid opening request by low bidder to clarify their bid.

F.H. Myers Construction Co. v. State of Louisiana, Division of Administration, Office of Facility Planning and Control, 2013-2153 (La. App. 1 Cir. 06/18/14); 2014 WL 3702302, Writ Denied, 2014-C-1793 (La. 11/07/14); 152 So.3d 183.

Summary: The court held that R.S. 38:2216(H) prohibits the inclusion of contractual language which limits a contractor from recovery of delay damages only in circumstances where the delay is wholly attributable to the public entity.

Concrete Busters of Louisiana, Inc. v. The Board of Commissioners of the Port of New Orleans, LA. 69 So.3d 484 (La. App. 4 Cir. 2/2/11), rehearing denied (02/25/2011)

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

See [\[Q.6.\]](#) For additional information concerning demolition contracts.

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

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 a mandatory and not waivable requirement for bidder. Public board acted impermissibly in waiving the requirement and selecting bidder that did not include the certificate.

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.

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 its 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.

