

# **LOUISIANA STATE BID LAW**

**LETTING CONTRACTS**

**RS 38:2211**

**CONSTRUCTION – PUBLIC WORKS**

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**RS 38:2211**

## PART II. LETTING CONTRACTS

## §2211. Definitions

A. As used in this Chapter unless the context clearly indicates otherwise, the following terms shall mean:

(1) "Alternate" means an item on the bid form that may either increase or decrease the quantity of work or change the type of work within the scope of the project, material, or equipment specified in the bidding documents, or both.

(2) "Bidding documents" means the bid notice, plans and specifications, bid form, bidding instructions, addenda, special provisions, and all other written instruments prepared by or on behalf of a public entity for use by prospective bidders on a public contract.

(3)(a) "Change order" means any contract modification that includes an alteration, deviation, addition, or omission as to a preexisting public work contract, which authorizes an adjustment in the contract price, contract time, or an addition, deletion, or revision of work.

(b) "Change order outside the scope of the contract" means a change order which alters the nature of the thing to be constructed or which is not an integral part of the project objective.

(c) "Change order within the scope of the contract" means a change order which does not alter the nature of the thing to be constructed and which is an integral part of the project objective.

(4) "Contractor" means any person or other legal entity who enters into a public contract.

(5)(a) "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(P) 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.

(b) An "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.

(6) "Licensed design professional" means the architect, landscape architect, or engineer who shall have the primary responsibility for the total design services performed in connection with a public works project. Such professional shall be licensed as appropriate and shall be registered under the laws of the state of Louisiana.

(7)(a) "Louisiana resident contractor", for the purposes of this Part, includes any person, partnership, association, corporation, or other legal entity and is defined as one that either:

(i) Is an individual who has been a resident of Louisiana for two years or more immediately prior to bidding on work,

(ii) Is any partnership, association, corporation, or other legal entity whose majority interest is owned by and controlled by residents of Louisiana, or

(iii) For two years prior to bidding has maintained a valid Louisiana contractor's license and has operated a permanent facility in the state of Louisiana and has not had a change in ownership or control throughout those two years.

(b) For the purposes of Item (a)(ii) of this Paragraph, ownership percentages shall be determined on the basis of:

(i) In the case of corporations, all common and preferred stock, whether voting or nonvoting, and all bonds, debentures, warrants, or other instruments convertible into common or preferred stock.

(ii) In the case of partnerships, capital accounts together with any and all other capital advances, loans, bonds, debentures, whether or not convertible into capital accounts.

(8) "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.

(9) "Probable construction costs" means the estimate for the cost of the project as designed that is determined by the public entity or the designer.

(10) "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.

(11) "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.

(12) "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.

(13) "Written" or "in writing" means the product of any method of forming characters on paper, other materials, or viewable screen, which can be read, retrieved, and reproduced, including information that is electronically transmitted and stored.

B. Unless clearly indicated otherwise, compliance with this Part required of any public entity shall be done by the governing authority of such public entity if it has a governing authority.

Acts 1977, No. 103, §1. Amended by Acts 1979, No. 795, §1; Acts 1984, No. 894, §1; SCR No. 10, 1988 1st Ex. Sess.; Acts 1991, No. 1043, §1, eff. July 26, 1991; Acts 1995, No. 538, §1; Acts 1997, No. 120, §1; Acts 2003, No. 828, §1; Acts 2003, No. 831, §1; Acts 2011, No. 134, §1, eff. June 24, 2011; Acts 2012, No. 655, §1; Acts 2014, No. 759, §1.

**RS 38:2212**

§2212. Advertisement and letting to lowest responsible and responsive bidder; public work; electronic bidding; participation in mentor-protégé program; exemptions

A.(1)(a) All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible and responsive bidder who bid according to the bidding documents as advertised, and no such public work shall be done except as provided in this Part.

(b) Notwithstanding any provision of a home rule charter established subsequent to 1974 to the contrary, no municipality shall be required to advertise and let by contract to the lowest responsible and responsive bidder, who bid according to the bidding documents as advertised, any public work which is less than the contract limit established by this Section unless such municipality by affirmative act of its governing authority adopts a more restrictive contract limit than established in this Section. This Subparagraph shall apply only to municipalities with a population of not less than forty-five thousand persons and not more than forty-eight thousand eight hundred persons as of the most recent federal decennial census.

(2) The term "bidding documents" is defined in R.S. 38:2211(A).

B.(1) The provisions and requirements of this Section and those stated in the bidding documents shall not be waived by any entity.

(2) Any public entity advertising for public work shall use only the Louisiana Uniform Bid Form as promulgated in accordance with the Administrative Procedure Act by the division of administration, office of facility planning and control. The bidding documents shall require only the following information and documentation to be submitted by a bidder at the time designated in the advertisement for bid opening: 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 Contractors License Number, and on public works projects where unit prices are utilized, a section on the bid form where the unit price utilized in the bid shall be set forth including a description for each unit; however, unit prices shall not be utilized for the construction of building projects, unless the unit prices and their extensions are incorporated into the base bid or alternates.

(3)(a) 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. If the apparent low bidder does not submit the proper information or documentation as required by the bidding documents within the ten-day period, 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. 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, the Regional Transit Authority, and all agencies of the City of New Orleans, including but not limited to the New Orleans Aviation Board, who shall require that the other documentation and information referred to in this Subparagraph be furnished by the two apparent low bidders no sooner than three days after the bid opening. The two apparent low bidders may submit such information or documentation at any time prior to the expiration of the three day period. If the two apparent low bidders do not submit the proper information or documentation as required by the bidding documents within the three day period, such bidders shall be declared non-responsive, and from that date, award may be made to the next lowest bidder, and afford that bidder not less than three days to submit the required information or documentation, and the process may continue until either a low bidder is determined or all bids are rejected.

(b) Notwithstanding the provisions of this Paragraph, all bidders bidding on public works for East Baton Rouge Parish or Jefferson Parish shall submit all bid forms required by statute or by the Louisiana Administrative Code to the governing authority of East Baton Rouge Parish or Jefferson Parish prior to the opening of all bids relative to a contract for public works.

(4) Notwithstanding any other provision of law to the contrary and in addition to any other requirements provided by this Subsection, the Acknowledgment of Addenda to the bid form provided for in this Section for the public bid of public works conducted by the New Orleans Sewerage and Water Board shall also include attachment of the addenda if pricing information is contained therein and the addenda requires attachment.

(5) Written evidence of the authority of the person signing the bid for public works shall be submitted at the time of bidding. The authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the following conditions are met:

(a) The signature on the bid is that of any corporate officer listed on the most current annual report on file with the secretary of state, or the signature on the bid is that of any member of a partnership, limited liability company, limited liability partnership, or other legal entity listed in the most current business records on file with the secretary of state.

(b) The signature on the bid is that of an authorized representative as documented by the legal entity certifying the authority of the person.

(c) The legal entity has filed in the appropriate records of the secretary of state of this state, an affidavit, resolution, or other acknowledged or authentic document indicating the names of all parties authorized to submit bids for public contracts. Such document on file with the secretary of state shall remain in effect and shall be binding upon the principal until specifically rescinded and canceled from the records of the office.

(6)(a) Each bid shall be either hand delivered by the bidder or his agent in which instance the deliverer shall be handed a written receipt, or such bid shall be sent by registered or certified mail with a return receipt requested, or shall be submitted electronically as provided in Subsection E of this Section. No public entity shall accept or take any bids, including receiving any hand delivered bids, on days which are recognized as holidays by the United States Postal Service.

(b) Only for the purpose of interpretation of the base bid total and alternate bids, when applicable, written words shall govern if a conflict exists between words and numerals.

(c) If the public works requires unit price bids and there is a discrepancy between the base bid total and the sum of the extended unit prices, the unit price bid shall govern.

(7) The provisions of this Subsection shall not apply to the Department of Transportation and Development.

C.(1) Except as provided in Paragraphs (2) and (3) of this Subsection, the term "contract limit" as used herein shall be equal to the sum of one hundred fifty thousand dollars per project, including labor, materials, and equipment as per the rates in the latest edition of the Associated Equipment Dealers Rental Rate Book and administrative overhead not to exceed fifteen percent, provided that beginning February 1, 2015, and annually on February first of each subsequent year, the office of facility planning and control within the division of administration shall adjust the "contract limit" by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year. The office of

facility planning and control within the division of administration shall publish the new contract limit for public works contracts in the Louisiana Register in January of each year.

(2) When the Department of Public Safety and Corrections intends to use inmates as labor in connection with projects which occur on the grounds or to the buildings, structures, or facilities located on the grounds of prisons or correctional institutions, the term contract limit shall be seventy-five thousand dollars per project.

NOTE: Paragraph (3) eff. until Dec. 31, 2022. See Subparagraph (b) of this Paragraph.

(3)(a) The annual limit by a public entity for any work to restore or rehabilitate a levee that is not maintained with federal funds, including mitigation on public lands owned by the state or a political subdivision, shall not exceed the sum of one million dollars, including labor, materials, and equipment, which is not publicly bid, as per the rates in the latest edition of the Associated Equipment Distributors Rental Rate Book, and administrative overhead not to exceed fifteen percent; provided that the work is undertaken by the public entity with its own resources and employees, or with the resources and employees of another public entity through a cooperative endeavor or other agreement with such entity.

(b) The provisions of this Paragraph shall remain effective until December 31, 2022.

D. Each public entity advertising and letting for bid a public works contract under the provisions of this Section shall furnish all prime bidders who request bidding documents and who are properly licensed by the Louisiana State Licensing Board for Contractors with at least one set of complete bidding documents. The public entity may require a deposit on the bidding documents; however, the total cost of the deposit, including handling fees and other costs shall not exceed twice the actual cost of reproduction. Deposits on the first set of documents furnished prime bidders shall be fully refunded upon return of the documents no later than ten days after receipt of bids. On other sets of documents furnished to bidders, the deposit less the actual cost of reproduction shall be refunded upon return of the documents no later than ten days after receipt of bids. Where the public entity, itself, prepares and distributes the bidding documents, the public entity may, in lieu of a deposit, charge a fee for the documents, which fee shall not exceed the actual cost of reproduction. Prime bidders shall obtain an original set of electronic or paper bidding documents either from the public entity or the design professional who prepared such documents. Either the public entity or the design professional may choose the method and service of plan distribution. When the public entity utilizes an electronic bid submittal system, bidding documents shall be distributed in the manner chosen by the public entity. At its sole discretion, the public entity may authorize its design professional of record to choose an electronic bid submittal system. The public entity or its design professional of record shall maintain a list of all prime bidders for the purpose of addenda distribution.

E.(1) Public entities shall provide, as an additional bidding option, a uniform and secure electronic interactive system for the submittal of bids for public works requiring competitive bidding. Any public entity providing such system shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of technology services as provided for in LAC 4:XV.701. Any special condition or requirement for the submission shall be specified in the advertisement for bids required by this Section.

(2) Public entities that are currently without available high-speed Internet access shall be exempt from this requirement until such time that high-speed Internet access becomes available.

(3) 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 Subsection.

(4) Any city or municipality with a population of less than ten thousand shall be exempt from the provisions of this Subsection.

(5) Any other public entity which is unable to comply with the electronic bidding provisions of this Subsection without securing and expending additional funding shall be exempt from its requirements.

(6) Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.

(7) Public entities shall include all "bidding documents" as defined in R.S. 38:2211(A), on the electronic website accepting the electronic bids.

F. The bid specification may contemplate a fixed escalation or de-escalation in accordance with the United States Bureau of Labor Statistic's Consumer Price Index or the Producer Price Index. Bids based on specifications which are subject to a recognized escalation index shall be legal and valid for any item of a public work, at the discretion of the public entity.

G.(1) The advertisement required by this Section for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality, and the first advertisement shall appear at least twenty-five days before the opening of bids. In addition to the newspaper advertisement, a public entity may also publish an advertisement by electronic media available to the general public.

(2) The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. All bidding documents shall be available to bidders on the day of the first advertisement and shall be available until twenty-four hours before the bid opening date.

H. Every public entity intending to advertise a public work for bids shall estimate the probable construction costs of such public work or obtain such estimate from the project designer prior to advertising such public work for bids. No public entity shall advertise a public work for bids unless funds that meet or exceed the estimate of the probable construction costs have been budgeted by the public entity for the project. The estimate of probable construction costs for the project shall be made available at the time of bid opening, either by posting such estimate electronically or announcing aloud such estimate at the bid opening. Any and all bidders' information shall be available upon request, either no sooner than fourteen days following the bid opening or after the recommendation of award by the public entity or the design professional, whichever occurs first, and the requester shall pay reasonable reproduction costs. The provisions of this Subsection shall not apply to the Department of Transportation and Development.

I. When a design professional or public entity mandates attendance by prospective bidders at pre-bid conferences as a prerequisite to bid on a public works project, the date, place, and time of the pre-bid conference shall be stated in each advertisement notice.

All prospective bidders shall be present at the beginning of the pre-bid conference and shall remain in attendance for the duration of the conference. Any prospective bidder who fails to attend the conference or remain for the duration shall be prohibited from submitting a bid for the project.

J. Bidding documents shall include no more than three alternates. An alternate bid by any name is still an alternate. 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. However, the public entity shall reserve the right to accept alternates in any order which does not affect determination of the low bidder.

K. Use of allowances in bidding documents shall be restricted to minor items and shall be limited to hardware, face brick, landscaping, electric light fixtures, miscellaneous steel, tile, wallpaper and other exterior finishes, fixtures and furnishings, and carpeting. Allowances may not be utilized by the design professional or public entity to control the selection of a subcontractor or supplier.

L.(1) No construction manager or any other third-party consultant employed by a public entity may manage a construction project as a general contractor or act in the role of the general contractor to oversee, direct, or coordinate individual trade contractors on behalf of the public

entity, or accept bids or itself 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.

(2) The provisions of Paragraph (1) of this Subsection 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 provisions of this Paragraph shall not relieve the Orleans Hospital Service District from complying with all other applicable provisions of this Title.

M.(1) All public work contracts shall contain provisions authorizing the issuance of change orders within the scope of the contract.

(2) All change orders shall be in writing or in electronic format if the public entity has the capability to receive change orders electronically. All change orders shall be signed by the contractor and the public entity or its design representative.

(3) 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.

(4) Any change order outside the scope of the contract in excess of the contract limit as defined herein shall be let out for public bid as provided by this Part.

(5) Any change order pertaining to public work, not required by this Part to be let out for public bid, shall either be negotiated in the best interest of the public entity or let out for public bid as provided by this Part. Where the change order is negotiated, the public entity shall require that such change order be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit, and overhead. Where certain unit prices are contained in the initial contract, no deviations shall be allowed in computing negotiated change order costs.

N. Those contracts let by any public entity for public works estimated to cost in excess of the contract limit shall be advertised and let by contract to the lowest responsible and responsive bidder. Public works which are estimated to cost less than the contract limit may be undertaken by the public entity with its own employees.

O.(1) Except as provided by Paragraph (2) of this Subsection, the public entity may, through the issuance of an addendum, extend the bid period for up to thirty days, without the requirement of re-advertising as provided by Subsection A of this Section.

(2)(a) If a public entity issues or causes to be issued on a public work exceeding the contract limit any addendum modifying the bidding documents within a period of seven days prior to the advertised time, or the time extended as provided for in this Section, for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays, then the public entity shall transmit a copy of the addendum to all prime bidders who have requested bidding documents pursuant to Subsection D of this Section. This shall be completed within twenty-four hours of the issuance of the addendum and may be delivered by either facsimile transmission, e-mail, other electronic means, by hand, or by overnight delivery using a nationally recognized carrier provided the prime bidder has supplied the facsimile transmission number or e-mail address to the public entity. If the addendum cannot be transmitted by facsimile transmission, e-mail, other electronic means, overnight delivery using a nationally recognized carrier, or otherwise effected by hand delivery, the public entity shall postpone the bid opening by at least seven days.

(b) No public entity shall issue or cause to be issued any addenda modifying the bidding documents within a period of seventy-two hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays; however, if the necessity arises to issue an addendum modifying the bidding documents within the seventy-two-hour period prior to the advertised time for the opening of bids, then the opening of bids shall be extended for at least seven but not more than twenty-one working days, without the requirement of re-advertising as provided by Subsection A of this Section. The addendum shall state the revised time and date for the opening of bids.

P.(1)(a) This Section shall not apply in cases of public emergency where such emergency has been certified to by the public entity and notice of such public emergency shall, within ten days thereof, be published in the official journal of the public entity proposing or declaring such public emergency.

(b)(i) This Section shall not apply in the event that an extreme public emergency occurs.

(ii) 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.

(c) This Section shall not apply with respect to repairs administered by the office of facility planning and control for addressing damage caused by Hurricanes Katrina and Rita. However, the office of facility planning and control shall not be allowed to negotiate such projects, but shall be required to publicly advertise such projects in the official journal of the locality of the project and in the state's official journal. Public bids may be taken in a minimum of ten days after advertisement of such projects. However, if there are no bidders for such projects, the office of facility planning and control may enter into competitive bidding negotiations with no fewer than two contractors.

(2)(a) Every contract negotiated by a public entity under the authority of this Subsection shall be supported by a written determination and findings by the public entity justifying use of the authority.

(b) When contract action under this authority is taken pursuant to telephone or other oral offers, a written confirmation of the accepted offer shall be obtained and made a part of the contract case file. In addition, whenever contract action is taken as authorized by this Subsection, a record shall be established by the public entity which shall contain, at a minimum, the following information with respect to each offer: a 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 quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded and made a part of the contract case file. Such records shall be retained for a minimum of six years following the purchase or completion of the public work.

Q. A publicly owned utility, as recognized by the Louisiana Public Service Commission, may undertake a public works project, other than construction of a building, for the contract limit or less by either of the following methods:

(1) Entry into contracts with or without public bid.

(2) Use of the employees of the public entity owning the utility.

R. Public entities are herein prohibited from owning or operating manufacturing facilities or plants that produce or manufacture construction materials.

S. The provisions of this Section shall not prevent public entities from using their regular maintenance employees for labor necessary in the maintenance, construction, or extension of publicly owned and operated electric public utilities. With respect to the construction or extension of all other public utilities, the provisions of this Section shall not prevent public entities from using their regular maintenance employees when the cost of the work per project does not exceed one hundred fifty thousand dollars, including labor and materials. All purchases of materials or supplies exceeding the contract limit provided for in this Section shall be let by public bid as provided in this Part.

T.(1) Whenever a public entity desires to purchase technical equipment, apparatus, machinery, materials, or supplies of a certain type and such purchases are clearly in the public interest, the public entity may specify a particular brand, make, or manufacturer in the bidding documents

let out for public bid as provided by this Part. If a particular brand, make, or manufacturer is specified, the model or catalog number also shall be specified.

(2) Wherever a public entity specifies the name of a certain brand, make, manufacturer, or uses a definite specification, the bidding documents shall state clearly that they are used only to denote the quality standard of product desired and that they do not restrict bidders to the specific brand, make, manufacturer, or specification named; that they are used only to set forth and convey to prospective bidders the general style, type, character, and quality of product desired; and that equivalent products may be acceptable. It shall be the responsibility of the professionally employed architect or engineer to determine what is considered an equivalent product on any and all projects in which he has been legally employed to perform his professional services.

U. Public entities may enter into maintenance contracts for the repair and maintenance of public facilities owned, controlled, or operated by a public entity for a fixed annual fee. Such contracts shall extend for a duration of not less than two years. Any such contract entered into by a public entity shall include a nonappropriation clause and shall not be considered a debt of the public entity. Such maintenance contract shall not be considered a public works contract.

V. Under no circumstances shall there be a division or separation of any public work project into smaller projects which division or separation would have the effect of avoiding the requirement that public work be advertised and let by contract to the lowest responsible and responsive bidder as provided in this Section.

W.(1) This Section shall not apply to labor necessary for the maintenance of public works built and completed.

(2) Volunteer citizen labor used for the construction of a project which is funded by the Louisiana Community Development Block Grant Louisiana Small Town Environment Program shall not be subject to the requirements of this Section. However, the value of the donated volunteer service shall not be used as a component of any bid if the public work has to be bid or to determine which is the lowest responsible and responsive bid.

X.(1) If the public entity letting the contract proposes to disqualify any bidder, either as a potential bidder or as the low bidder, on grounds that such bidder is not a "responsible bidder" such public entity shall do all of the following:

(a) Give written notice of the proposed action to such bidder and include in the written notice all reasons for the proposed action.

(b) Give the bidder who is proposed to be disqualified the opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the proposed action.

(2) The informal hearing shall be conducted prior to award of the public work.

(3) The informal hearing shall be a condition precedent to any action by the bidder adverse to the public entity, its representatives, employees, and designers.

(4) The informal hearing shall be conducted by the public entity not later than five business days after the date of the notice of disqualification of such bidder. The public entity shall issue a ruling in writing and deliver it to the affected bidder not later than five business days after the date of the informal hearing.

(5) No award of the contract for the public work shall be made by the public entity prior to the expiration of at least five working days following the date of issuance of the decision by the hearing official.

(6) The provisions of this Subsection shall not apply to such actions of the Department of Transportation and Development.

Y. No public entity shall enter into a contract for the purpose of public works with a contractor who then finances the project. Under no circumstances shall the agreement of a contractor to finance a public works project be used in any way to avoid the requirement that public work be advertised and let by contract to the lowest responsible and responsive bidder as provided in this Section.

Z. The provisions of this Section shall not apply to purchases of materials and supplies by contractors awarded public works contracts by a public entity; or to subcontractors of such contractors, who have been appointed or designated agents for the purchase of materials and supplies to be incorporated into a public work pursuant to a contract properly bid in accordance with this Chapter when acting pursuant to said appointment or designation.

Acts 2001, No. 346, §1; Acts 2001, No. 1106, §1, eff. June 28, 2001; Acts 2001, No. 1114, §1, eff. June 28, 2001; Acts 2002, 1st Ex. Sess., No. 120, §1; Acts 2003, No. 348, §1, eff. July 1, 2003; Acts 2003, No. 524, §1, eff. June 22, 2003; Acts 2003, No. 828, §1; Acts 2003, No. 831, §1; Acts 2003, No. 958, §1; Acts 2004, No. 445, §1; Acts 2004, No. 458, §1, eff. June 24, 2004; Acts 2004, No. 522, §1, eff. June 25, 2004; Acts 2005, No. 44, §1; Acts 2006, No. 102, §1, eff. May 31, 2006; Acts 2006, No. 203, §1, eff. June 2, 2006; Acts 2006, No. 362, §1, eff. June 13, 2006, and §2, eff. July 31, 2007; Acts 2006, No. 652, §1, eff. June 29, 2006; Acts 2007, No. 336, §1, eff. July 31, 2007; Acts 2007, No. 336, §2, eff. July 31, 2008; Acts 2007, No. 373, §1, eff. July 10, 2007; Acts 2008, No. 117, §2; Acts 2008, No. 220, §11, eff. June 14, 2008; Acts 2008, No. 230, §1, eff. June 17, 2008; Acts 2008, No. 590, §1, eff. Jan. 1, 2009; Acts 2008, No. 726, §1; Acts 2008, No. 727, §1; Acts 2009, No. 161, §1; Acts 2009, No. 174, §1, eff. June 29, 2009; Acts 2009, No. 227, §1; Acts 2010, No. 1011, §1, eff. July 8, 2010; Acts 2011, 1<sup>st</sup> Ex. Sess., No. 5, §2; Acts 2011, No. 81, §1; Acts 2011, No. 281, §1; Acts 2011, No. 338, §1, eff. June 29, 2011; Acts 2012, No. 493, §1; Acts 2012, No. 823, §1; Acts 2013, No. 63, §1, eff. Jan. 1, 2014; Acts 2013, No. 125, §1, eff. June 5, 2013; Acts 2013, No. 364, §1, eff. June 17, 2013; Acts 2014, No. 759, §1; Acts 2014, No. 791, §12; Acts 2016, No. 406, §1; Acts 2016, No. 566, §1; Acts 2018, No. 295, §1.

**RS 38:2212.1**

§2212.1. Advertisement and letting to lowest responsible bidder; materials and supplies; exemptions

A.(1)(a) All purchases of any materials or supplies exceeding the sum of thirty thousand dollars to be paid out of public funds shall be advertised and let by contract to the lowest responsible bidder who has bid according to the specifications as advertised, and no such purchase shall be made except as provided in this Part.

(b) However, purchases of ten thousand dollars or more, but less than thirty thousand dollars, shall be made by obtaining not less than three quotes by telephone, facsimile, email, or any other printable electronic form. If telephone quotes are received, a written confirmation of the accepted offers shall be obtained and made a part of the purchase file. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded in the purchase file.

(2)(a) Any purchase by a local governmental unit of a used or new motor vehicle for conversion into a law enforcement vehicle, which purchase cost does not exceed the sum of twenty thousand dollars, shall not be subject to the threshold delineated in Paragraph (1) of this Subsection. Written specifications, quotations, and confirmation of accepted offers for such purchase shall be obtained and made a part of the purchase file. However, any such purchase which sum is in excess of twenty thousand dollars shall be advertised and let for bid under the procedures outlined by the provisions of this Section.

(b) Any purchase by a local government unit of road maintenance or improvement equipment, which purchase cost does not exceed the sum of twenty-five thousand dollars, shall not be subject to the threshold delineated in Paragraph (1) of this Subsection. Written specification, quotations, and confirmation of accepted offers for such purchase shall be obtained and made a part of the purchase file. However, any such purchase which sum is in excess of twenty-five thousand dollars shall be advertised and let for bid under the procedures outlined by the provisions of this Section.

B.(1) The advertisement required by this Section for any contract for materials or supplies shall be published two times in a newspaper in the locality, the first advertisement to appear at least fifteen days before the opening of the bids. In addition to the newspaper advertisement, a public entity may also publish an advertisement by electronic media available to the general public.

(2) The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until twenty-four hours before the bid opening date.

(3) Any proposal shall include no more than three alternates. An alternate bid by any name is still an alternate. 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. However, the public entity may accept alternates in any order which does not affect determination of the low bidder.

(4)(a) Contractors shall be provided the option to submit bids for public contracts through a uniform and secure electronic interactive system. Political subdivisions shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of technology services as provided for in LAC 4:XV.701, and shall make the appropriate provisions necessary for the acceptance of electronic bids for all purchases requiring competitive bidding as required by this Section. Any special condition or requirement for the submission shall be specified in the advertisement for bids required by this Section.

(b) Public entities that are currently without available high speed Internet access will be exempt from this requirement until such time that high speed Internet access becomes available.

(c) 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.

(d) Any city or municipality with a population of less than ten thousand shall be exempt from the provisions of this Subparagraph.

(e) Any special service district created by a police jury form of government and which is unable to comply with Subparagraph (a) of this Paragraph 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.

(f) Public entities shall have the option to require that all bids be submitted electronically for any competitive bid let out for public bid.

C.(1) Whenever a public entity desires to purchase technical equipment, apparatus, machinery, materials, or supplies of a certain type and such purchases are clearly in the public interest, the public entity may specify a particular brand, make, or manufacturer in the specifications let out for public bid as provided by this Part. If a particular brand, make, or manufacturer is specified, the model or catalog number also shall be specified.

(2) Wherever in specifications the name of a certain brand, make, manufacturer, or definite specification is utilized, the specifications shall state clearly that they are used only to denote the quality standard of product desired and that they do not restrict bidders to the specific brand, make, manufacturer, or specification named; that they are used only to set forth and convey to prospective bidders the general style, type, character, and quality of product desired; and that equivalent products will be acceptable.

D. The provisions of this Section shall not apply to a public entity purchasing surplus materials and supplies from another public entity or the government of the United States or when the particular transaction is governed by the procurement code.

E. Any public entity may procure materials, supplies, and equipment from federal General Services Administration supply schedules in compliance with the Federal Acquisitions Streamlining Act (Public Law 103-355) and regulations adopted pursuant to that law, and with rules and regulations which may be adopted by the central purchasing agency of the division of administration. Such purchases need not comply with the competitive bidding requirements of this Chapter. 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. No use shall be made of federal General Services Administration supply schedules under the provisions of this Section without the participation of a Louisiana licensed dealer or distributor.

F. Any public entity may purchase materials, supplies, and equipment pursuant to the cooperative purchasing provisions of Part VII of Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes of 1950, R.S. 39:1701 et seq.

G.(1) Notwithstanding any provision of this Part, any hospital owned or operated by a hospital service district, a municipality, the state, or any other public entity may enter into an agreement with one or more qualified group purchasing organizations for the purpose of obtaining bids for the purchase of materials and supplies. Any such agreement shall provide that the qualified group purchasing organization shall submit a price list for those materials and supplies offered by it, and shall further provide that the prices quoted on the list shall remain in effect for a stated period of time not less than three months. Any such price list shall thereafter be considered for all purposes to be a valid and binding bid by the qualified group purchasing organization during the effective period of the agreement, and no additional bid by the qualified group purchasing organization shall be necessary.

(2) Any price lists submitted by a qualified group purchasing organization shall not be a public record and shall not be available for public inspection. The agreement setting forth the existence of the price list and the effective date thereof shall, however, be a public record, and that portion of the price list setting forth the price of the materials or supplies being purchased shall become a public record at the time of opening of bids for those materials or supplies.

(3) As used in this Section, "qualified group purchasing organization" shall mean an organization, whether for profit or not for profit, which has contracts for the sale of materials or supplies with at least fifteen hospitals within the United States.

(4) A hospital owned by the state may purchase equipment from a qualified group purchasing organization if the price is less than that for the same or comparable equipment on the state bid list. For that equipment not contained on the state bid list, the Louisiana Department of Health shall, pursuant to the Administrative Procedure Act, promulgate rules containing a mechanism for determining that the purchase of the equipment through a qualified group without bidding is cost effective and is in the best interest of the state. Until said rules become effective, no equipment not contained on the state bid list shall be purchased from qualified group purchasing organizations without complying with all other applicable laws.

H. The commissioners, governing board, or governing authority of any hospital owned or operated by a hospital service district, a public trust, any municipality, or any other public entity may authorize by resolution, and the secretary of the Louisiana Department of Health for any hospital owned or operated by the state, may authorize the participation in, or the purchasing from, a qualified group purchasing organization for the purchase of supplies and materials, without complying with this Section or any other applicable provision of law when it appears to any such authority or said secretary that participation would affect the economic situation or efficiency of operations of the hospital in a positive manner. A positive effect on the economic situation or efficiency of operations shall be presumed when the total price of items to be purchased from the qualified group purchasing organization is less than the total price of those items if purchased from the state bid list.

I.(1) Whenever a political subdivision enters into an estimated use or delivery contract for a perishable food item, the political subdivision shall be prohibited from awarding another estimated use contract for the same perishable food item without first having taken delivery of at least seventy-five percent of the perishable food item under the existing contract.

(2) "Perishable food items" as used in this Subsection shall mean consumable food items which have a shelf life of less than six months.

(3) Sheriffs and other political subdivisions which operate jails in the various parishes of the state shall be required to purchase food wholesale at the lowest prices quoted for quality products or at prices no greater than the wholesale rate for the same item.

J. The opening of bids shall be governed by the provisions of R.S. 38:2214.

K. The purchase of materials or supplies in the case of an extreme public emergency shall be governed by the provisions of R.S. 38:2212(P).

L. The public entity purchasing the materials or supplies may require a written contract or bond as provided in R.S. 38:2216(B).

M. Purchases made by a public safety agency following the guidelines and restrictions established pursuant to the expenditure of federal grant dollars shall be made by obtaining not less than three telephone or facsimile quotations.

N.(1) Notwithstanding any provision of this Part to the contrary, any public school district or public school may enter into an agreement with one or more qualified group purchasing organizations for the purchase of materials, equipment, and supplies, including any installation thereof. Any such agreement shall require that the qualified group purchasing organization submit a price list for materials, equipment, and supplies offered by it and that the prices quoted on the list remain in effect for a stated period of time of not less than three months. Any such price list shall be considered, for all purposes, to be a valid and binding bid by the qualified group purchasing organization during the effective period of the agreement, and no additional bid by the qualified group purchasing organization is necessary.

(2) Price lists submitted by a qualified group purchasing organization are not public record and shall not be available for public inspection. The agreement setting forth the existence of the price list and the effective date thereof is, however, a public record, and that portion of the price list setting forth the price of the materials, equipment, or supplies being purchased shall become a public record at the time of opening of bids or upon the execution of a contract for the purchase of materials, equipment, or supplies.

(3) As used in this Subsection, "qualified group purchasing organization" means an organization, whether for profit or not for profit, of which two or more public school districts are members and which solicits proposals or bids from vendors of materials, equipment, or supplies of the type and nature as may be purchased by a public school district or public school.

(4) A school board may purchase materials, equipment, or supplies directly from or through a qualified group purchasing organization if the price is less than that for the same or substantially similar materials, equipment, or supplies on the state contract or bid list.

O. The provisions of this Section shall not apply to the purchase of animals trained to perform special tasks, including but not limited to narcotics detection, bomb detection, arson investigation, and rescue techniques by the following public entities:

(1) Any local law enforcement agency for the principal purpose of aiding in the detection of criminal activity, enforcement of laws, or apprehension of offenders.

(2) Any local public safety agency for the purpose of search and rescue services.

Acts 1999, No. 768, §1; Acts 2002, 1st Ex. Sess., No. 120, §1; Acts 2003, No. 84, §1, eff. May 28, 2003; Acts 2003, No. 575, §1, eff. June 27, 2003; Acts 2006, No. 203, §1, eff. June 2, 2006; Acts 2008, No. 590, §1, eff. Jan. 1, 2009; Acts 2009, No. 227, §1; Acts 2009, No. 392, §1; Acts 2011, No. 81, §1; Acts 2014, No. 823, §1; Acts 2016, No. 548, §§1, 2; Acts 2018, No. 306, §1; Acts 2018, No. 465, §1, eff. May 23, 2018.