

Center for Local Government Excellence



**Public Bid Law
and
Donations (*Cabela*)**

Daryl G. Purpera, CPA, CFE
Louisiana Legislative Auditor

Presented by:
**Jenifer Schaye, CFE
General Counsel**

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Part I



Public Bid Law



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I. Public Bid Law



Public Trust

- Public Money
- Public Property
- Public Time
- Public Employee

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I. Public Bid Law



Summary

- BE PRECISE
- CAREFULLY ADVERTISE
- CAREFULLY EXECUTE
- CAREFULLY MONITOR THE PURCHASE OR THE CONSTRUCTION

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I. Public Bid Law



Public Contracts

- Two Types
 - Public Works
 - Materials & Supplies

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I. Public Bid Law



- **Article VII §14A of the Constitution**

Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private

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I. Public Bid Law



- **Statutory References**
 - R.S. 38:2211 *et seq.*
 - ❖ Whenever a public entity purchases **materials** and **supplies** exceeding the sum of \$30,000 or desires to construct or alter a **public work**, such as a building, for a sum exceeding \$152,400 there must be a public bid process which will give notice to potential vendors and contractors
 - ❖ Beginning January 2016, the contract limit for Public Works contracts was adjusted for inflation by the Office of Facility Planning and Control through the Louisiana Register. This is effective February 1, 2016



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I. Public Bid Law



- **Facts**
 - Materials and Supplies are materials and supplies
 - ❖ Less than \$10,000: prudent person standard
 - ❖ \$10,000 - \$30,000: 3 Telephone bids or fax bids
 - ❖ \$30,000 +
 - Advertise 2 times
 - Electronic bid
 - Advertise at least 15 days before opening of bids
 - Open bids or cancel all bids



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I. Public Bid Law



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

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I. Public Bid Law



- **Materials & Supplies (cont'd)**
 - ❖ Requirements for letting a contract for materials & supplies:
 - Amount
 - Advertisement for Bid
 - Receiving & opening of Bids
 - Selection of lowest responsive & responsible bidder
 - Contract formation/Purchase Order

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I. Public Bid Law



Facts

- Public Work is building and renovation
 - ❖ For a public work under \$152,400 – Prudent business person standard
 - ❖ Suggested to use RFP and/or solicitation of at least three bids



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I. Public Bid Law



Facts

- Public Work is building and renovation
 - ❖ \$152,400+ (Act 759 of 2014 Regular Session)
 - Advertise 3 times
 - First advertisement to appear 25 days before opening of bids and not occur on a Saturday, Sunday, or legal holiday
 - Electronic bidding exceptions (Note Act 759)
 - ❖ General Facts
 - No changes within 72 hours of opening
 - Can extend opening one week
 - Emergency requires notice



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I. Public Bid Law



Public Works

- Requirements for letting a contract for public works:
 - Amount
 - Advertisement for Bid
 - Receiving & Opening of Bids
 - Selection of lowest responsive & responsible bidder
 - Contract formation

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I. Public Bid Law



Public Works – Change Orders

- Change Orders – 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.

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I. Public Bid Law



Public Works – Change Order (cont'd)

- Requirements – R.S. 39:1557.1
- 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.
- 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.

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I. Public Bid Law



Issues

- No splitting of jobs
- No out of hand disqualification
- Contract drafting must follow bid specs
- Change orders must be within contract scope and may require recordation.
- Procedure & Practice: precise and monitored
- Mandatory to use standard bid form provided by DOA

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

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I. Public Bid Law



- Exception to Public Bid Law for “**Emergency**” and “**Extreme Emergency**” are defined in R.S. 38:1211(A)(5):
 - R.S. 38:2212(P)(1) & (2)
 - Emergency: Certification of emergency and notice within 10 days, published in official journal
 - Extreme emergency: Declaration and publication within 10 days or as soon as practicable **R.S. 38:2212(P)(1)(b)(ii)**
 - Written documentation required

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I. Public Bid Law



EMERGENCIES DEFINED

Emergency

- An unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury.
- May also be the result of an order from any judicial body to take any immediate action which requires construction or repairs absent compliance with the formalities of the Public Bid Law, because there is not sufficient time to follow the advertising requirements as provided in R.S. 38:2212.
- In regard to a municipally owned public utility, an emergency shall be deemed to exist and the public entity may negotiate as provided by R.S. 38:2212(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. R.S. 38:1211(A)(5)(a)

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I. Public Bid Law



EMERGENCIES DEFINED (cont'd)

Extreme Emergency

An extreme emergency is a catastrophic event which causes the loss of ability to obtain a quorum of the members necessary to certify the emergency prior to making the expenditure to acquire materials or supplies or to make repairs necessary for the protection of life, property, or continued function of the public entity. R.S. 38:1211(A)(5)(b)



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I. Public Bid Law



Alternative Procurement Methods

- Public Entities do not have to publicly bid their contracts when using the following methods:
 - Purchasing Surplus Property from another Public Entity;
 - Purchasing off State Contract;
 - Political Subdivisions Telecommunications and Data Processing Procurement Law – R.S. 38:2234, *et seq.*; and
 - Political Subdivisions Used Fire and Emergency Response Vehicle Procurement Law – R.S. 38:2238, *et seq.*

Entities seeking Federal reimbursement should determine if additional action is required.

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2014 Updates in the Law



- **Act 823 (Effective August 1, 2014)**
 - ❖ Authorizes public schools and school districts to participate in school district purchasing cooperatives.
 - ❖ Schools may purchase in accordance with vendor contracts established by the school district purchasing cooperatives without bidding.
 - ❖ Provides for the RFP process to be used by School District Purchasing Cooperatives.

R.S. 38:2212.1(N)

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2014 Updates in the Law



- **Act 759 (Effective August 1, 2014)**
 - ❖ Provides definition of “Alternate” and “Probable Construction Costs” and modifies the definition of “Change Order”.
 - ❖ Provides for modifications to the letting process for contracts for Public Works, including exceptions to electronic bid requirements.
 - ❖ Increases the contract award deadline to sixty days instead of forty-five days from acceptance of lowest responsive and responsible bid.
 - ❖ Provides for annual adjustment of “contract limit” by Office of Facility Planning and Control in accordance with Consumer Price Index beginning in February 1, 2015. Requires new annual contract limit to be published in Louisiana Register in January.

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I. Public Bid Law



Attorney General Opinions

- **Rejection of Bids**
 - **#13-0008** – Parish may reject a bid or bidder for lack of responsibility and/or lack of responsiveness, but may not “debar” a bidder to automatically disqualify them or prevent them from submitting a bid.
 - **#13-0050** – Bidders inclusion of annotation on bid form that price was subject to a 3.5% escalation per year, when bid documents clearly noted that bidders were to agree that all terms, conditions, and prices were to remain unchanged during the length of the contract, was proper grounds for rejecting bid as non-responsive.

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I. Public Bid Law



Attorney General Opinions (cont'd)

- **Piggy Backing/ Cooperative Purchasing**
 - **#12-0165** – A public entity may not “piggy-back” off of a contract, including those established by a national cooperative purchasing organization, that has not been competitively bid by another Louisiana public entity.

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I. Public Bid Law



Attorney General Opinions (cont'd)

- **Contracts for Services**
 - #11-0059 - Municipal and parish trash collection unless structured as an exclusive franchise may be negotiated rather than publically bid.
 - #10-0058 - Debris removal contract not subject to advertising and bidding requirements – Professional Services.
 - #10-0026 - Demolition contract not subject to advertising and bidding requirements Professional Services.

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I. Public Bid Law



Attorney General Opinions (cont'd)

- #09-0252 - City council has authority to establish stricter procurement policies for services under home rule charter.
- #09-0304 - **Uniform Bid Form**
 - Use of Uniform Bid Form is mandatory and may not be waived by a public entity.
 - Public entity must reject all bids if Uniform Bid Form is not utilized.

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WHAT THIS MEANS



- **Public Trust using public funds:**
 - ❖ PUBLIC SERVICE IS NO SECRET SOCIETY
 - ❖ PUBLIC MONEY IS NO TREASURE TROVE



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QUESTIONS



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**IN GOD WE TRUST
ALL OTHERS WE AUDIT**

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Part II

CABELA



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II. Cabela



- **Pre-Cabela***
 1. The expenditure or transfer of public funds or property must be based on a legal obligation or duty;
 2. The expenditure must be for a public purpose; and
 3. The expenditure must create a public benefit proportionate to its cost.

**City of Port Allen v. Louisiana Municipal Risk Management Agency, Inc. 439 so.2d 399 (La. 1983).*

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II. Cabela



- **New Requirements (2006*)**
 1. A public purpose for the expenditure or transfer;
 2. That the expenditure or transfer, taken as a whole, does not appear to be gratuitous;
 3. Evidence demonstrating that the public entity has a reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred.

**Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, et al. 938 So.2d 11 (La. 9/6/06).*

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II. Cabela



- **Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.**

LA Const. Art. VII, § 14(A)

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II. Cabela



- **Cooperative Endeavor Agreements (CEA)**
 - Introduction
 - Elements of a CEA
 - Explanation of Elements
 - Current AG Test
 - Legal Sources

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RESEARCH TOOLS

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Research Tools

- **Legislative Auditor's Office**
 - Audit Reports
 - Summaries of Law
 - Legal Assistance FAQs
 - Best Practices

www.la.la.gov

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QUESTIONS



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**Contact Information
Legal Section**



Jenifer Schaye, CFE
General Counsel
Louisiana Legislative Auditor
(225) 339-3871
jschaye@lla.la.gov

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