

Course 107 Public Bid Law and Donations (Cabela)

Description

This course is intended to help participants understand the laws and how they can use these to become more accountable and transparent and what needs to be done to be in complete compliance with the Public Bid Law.

Objectives

After this class participants will be able to:

- Explain the different laws and acts that they may be subject to.
- Participants will be able to clearly identify what are the laws and duties that they must perform to be in compliance with the laws.

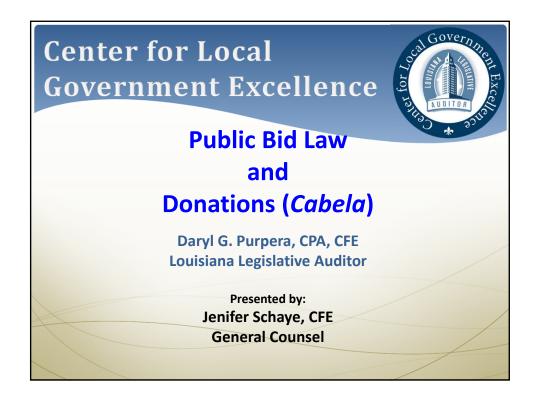
Who Will Benefit

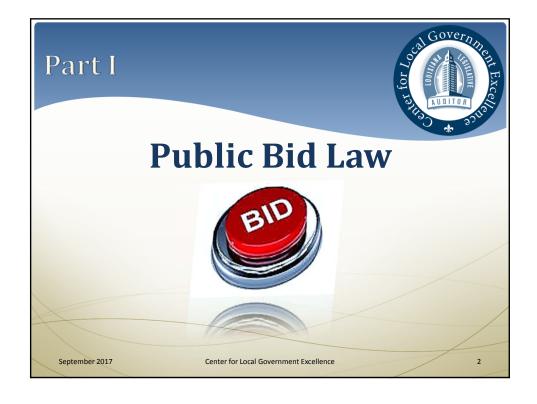
- Elected Officials/Appointed Officials
- Local Government Employees
- Local Government Auditors

About the Instructor

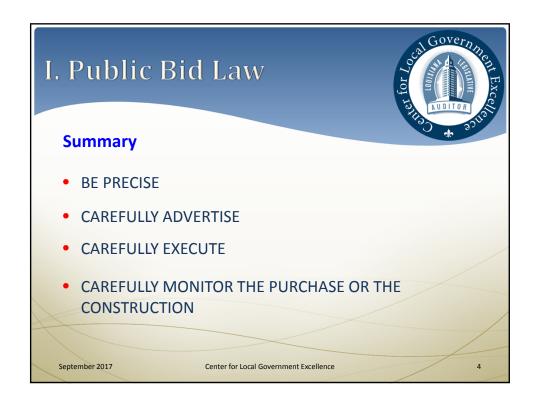
JENIFER SCHAYE, GENERAL COUNSEL

Jenifer Schaye is General Counsel for the Legislative Auditor of the State of Louisiana. She is a graduate of the University of Dallas and of St. Louis University Law School. She has practiced law continuously for the last forty years in Texas and Louisiana. Jenifer has substantial experience in the governmental arena. She has worked as a Legislative Aid to a State Representative in Texas. She was a Louisiana Assistant Attorney General for eleven years. As an Assistant Attorney General, she focused on tort, insurance law, and gaming law and all aspects of the Administrative Procedure Act. In her capacity as general counsel to the Legislative Auditor, Jenifer advises on public law issues and laws relating to fiscal matters, ethics issues, and all public laws which impact political subdivisions and the audits of political subdivisions on the local and state level. Jenifer also serves as a board member on the Louisiana Survivor's Benefit Board as the Legislative Auditor's designee. In addition, Jenifer represents the Legislative Auditor and staff in those matters where they are called to testify and/or to produce records for further inquiry by state and federal courts. She advises the Louisiana Legislative Audit Advisory Council on relevant audit law issues.







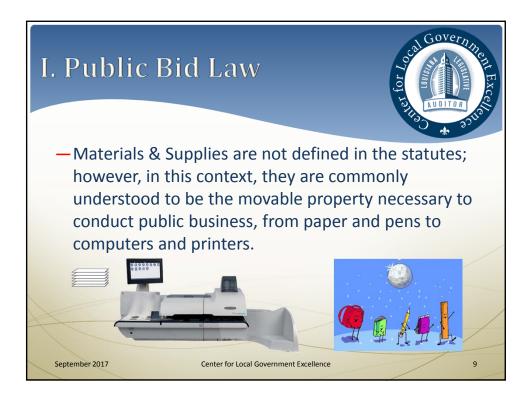




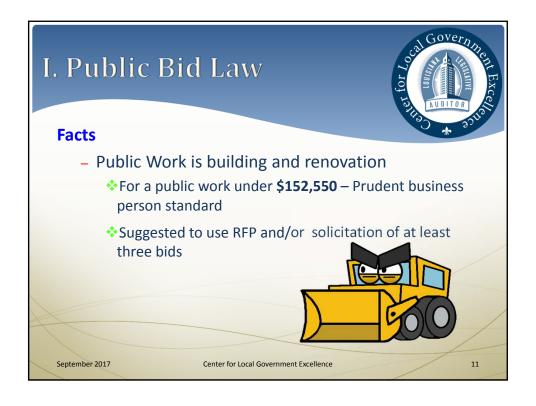


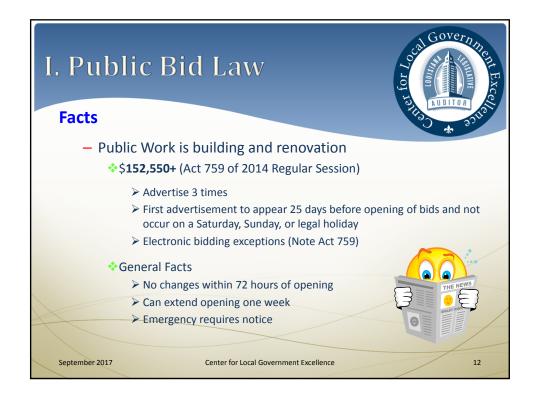




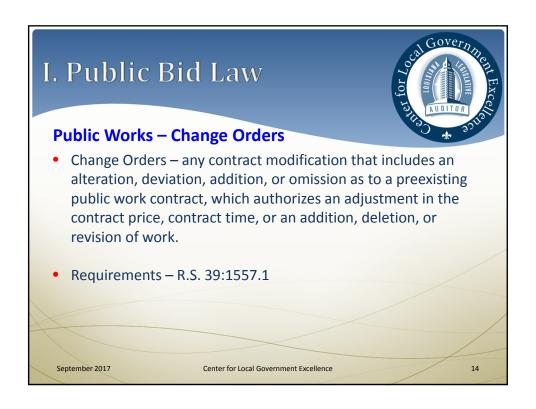












I. Public Bid Law



Public Works - Change Order (cont'd)

- 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

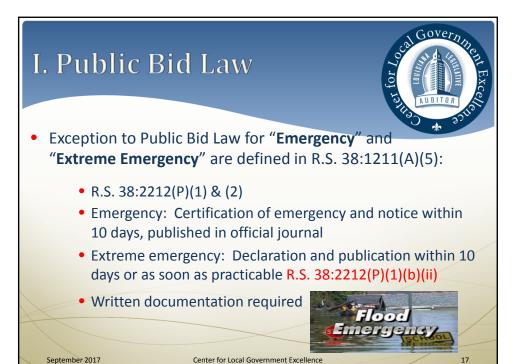


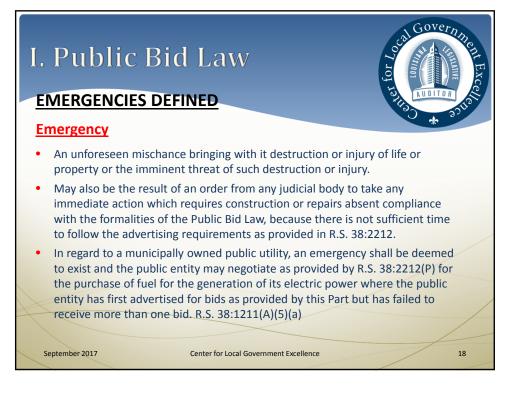
- No out of hand disqualification
- Contract drafting must follow bid specs
- Change orders must be within contract scope and may require recordation.
- Procedure & Practice: precise and monitored
- Mandatory to use standard bid form provided by DOA
- Demolition considered public works (Concrete Busters of Louisiana, Inc. v. Board of Commissioners of the Port of N.O.)

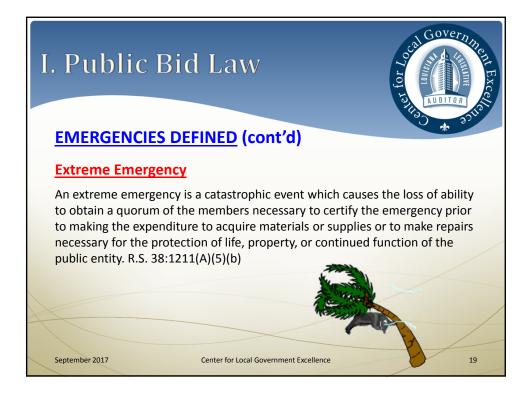
http://www.doa.louisiana.gov/osr/lac/34v01/34.doc

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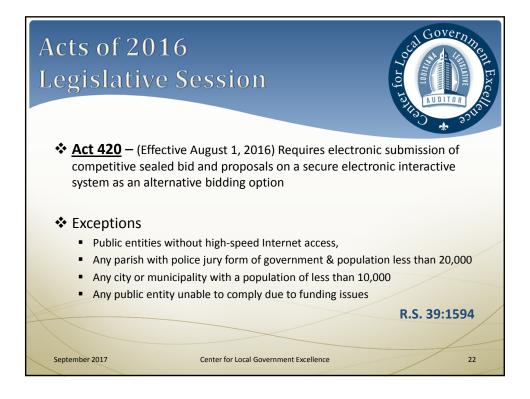












Acts of 2016 Legislative Session



- Act 510 (Effective August 1, 2016) Authorizes political subdivisions, governmental entities or state agencies to purchase items through existing public contract of another political subdivision within 1 year of opening of bids (R.S. 38:321.1)
 - ➤ May rely on certificate of the political subdivision that the contract was bid in compliance with state law
- Act 548 (Effective August 1, 2016) Amends the group purchasing organization method of procurement for schools and school districts to include installation with the materials, equipment and supplies.

R.S. 38:2212.1

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Acts of 2016 Legislative Session



- Act 566 (Effective August 1, 2016) Municipalities with not less than 45,000 and not more than 48,000 persons are not required to let out for bid public works less than contract limit of R.S. 38:2212 unless such municipality by affirmative act of its governing authority adopts a more restrictive contract limit.
- Act 408 (Effective June 6, 2016) Reporting, review and approval by JLCB of certain professional, personal, and consulting service contracts

R.S. 39:1590

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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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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 fortyfive 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.

R.S. 38:2211, 2212 & 2215

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I. Public Bid Law



Attorney General Opinions

- Home Rule Charters
 - #16-0051 The parish president of a home rule charter parish does not have the discretion to forestall the expenditure of property appropriated funds for legislatively-directed ends aside from obligations to comply with public bidding processes and any other legal requirements.
 - #09-0252 City council has authority to establish stricter procurement policies for services under home rule charter.

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I. Public Bid Law

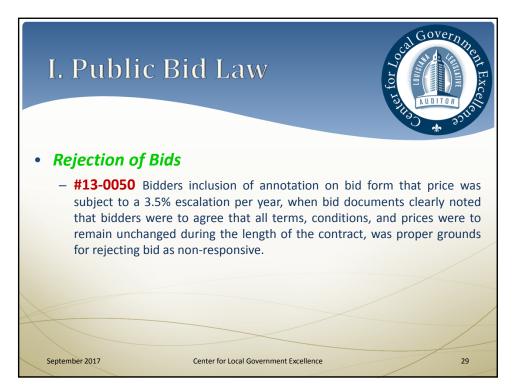


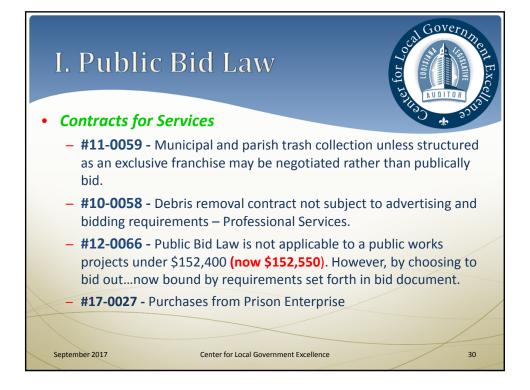
Hiring Preferences

- #16-0020
 - Absent legal authority to establish local hiring preference or otherwise require contractors to hire local workers, the inclusion of such a requirement would be impermissible and against Louisiana Public Bid Law.
 - Similarly, inclusion and evaluation of a contractor's efforts to hire local workers as part of the Public Bid Law solicitation process would be impermissible and against Louisiana Public Bid Law.

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I. Public Bid Law



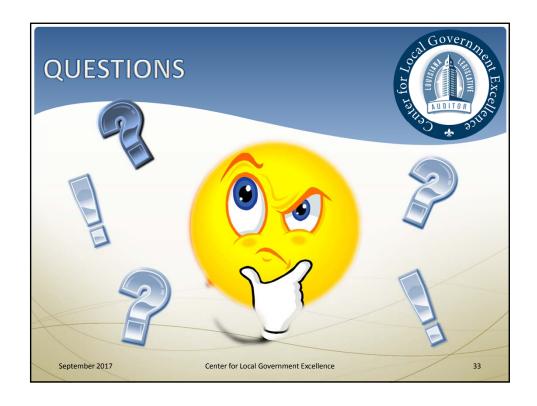
- Uniform Bid Form
 - #09-0304
 - ➤ Use of Uniform Bid Form is mandatory and may not be waived by a public entity.
 - Public entity must reject all bids if Uniform Bid Form is not utilized.
- Piggy Backing/ Cooperative Purchasing
 - #12-0165 A public entity may not "piggy-back" off of a contract, including those established by a national cooperative purchasing organization, that has not been competitively bid by another Louisiana public entity.

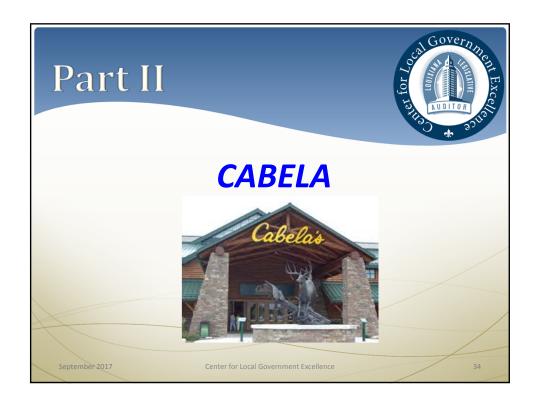
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WHAT THIS MEANS ■ Public Trust Using Public Funds: → PUBLIC SERVICE IS NO SECRET SOCIETY → PUBLIC MONEY IS NO TREASURE TROVE September 2017 Center for Local Government Excellence 32





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.

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II. Cabela



Louisiana Municipal Risk Management Agency, Inc.

439 So.2d 399 (La. 1983).

- 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.

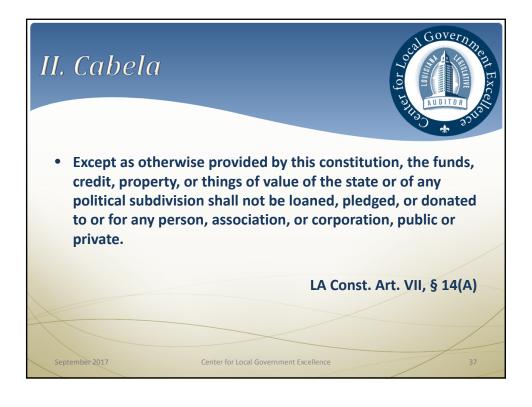
*Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v.

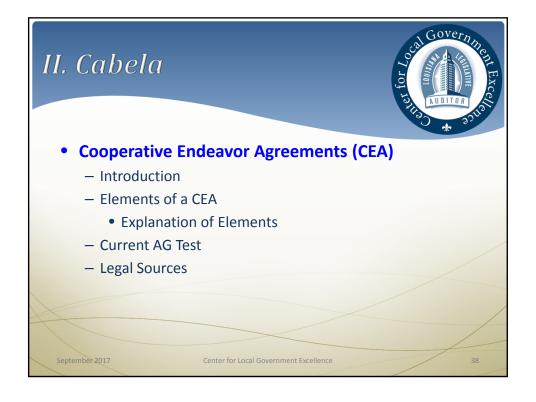
All Taxpayers, Property Owners, Citizens of City of Gonzales, et al,

938 So.2d 11 (La. 9/6/06):

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II. Cabela



Attorney General Opinions

- Op. No. 17-0022 Authority of a public entity to reduce or waive abnormally high sewer usage fees that were caused by the 2016 Flood, pursuant to the public policy of providing for the general welfare of the public following a natural disaster.
- Op. No. 17-0060 Hospital service district may contribute funds to a capital project by a local community college under a cooperative endeavor agreement for the purpose of construction of facilities to house a nursing and medical training program from which the hospital service district will gain an additional trained local employment pool.

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II. Cabela



Attorney General Opinions

- Op. No. 17-0005 Communications district may purchase radios for use by emergency responders within the district so long as the radios remain property of the district and use of the radios is restricted to emergency response activities.
- Op. No. 16-0198 Public entity will violate Article VII, §14 if it failed or
 declined to pursue all amounts owed by a judgment debtor, unless the
 public entity determines that the benefit or value of recovery of the full
 amount would not equal or exceed the costs of pursuing collection.

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II. Cabela



Attorney General Opinions

- Op. No. 16-0046 Placement of municipal law enforcement equipment in
 personal vehicle of a chief of police or law enforcement officer may be
 allowed so long as the equipment is only used in accordance to the official
 duties of the police chief or officer and no policy is in place prohibiting the
 placement of municipal equipment on or in private vehicles.
- Op. No. 16-0057 Public entity may weigh the costs in disposing of surplus waste dirt from dredging compared to the potential value the entity might obtain in any sale of the waste dirt, and thereby dispose of the waste dirt to private parties in order to realize substantial cost savings.

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II. Cabela



Attorney General Opinions

- Op. No. 16-0022 Reciprocal obligations will ordinarily render a payment or transfer onerous and thus sufficient to satisfy the second prong of the Cabela analysis. However, the AG cautions public entities against the use of language which might fail to impose a real obligation on the other party, such as "use its best efforts", as this would create a possibility for a public entity to provide payment or services with no reciprocal return and thus lead to an impermissibly gratuitous payment or transfer in violation of Article VII, §14.
- Op. No. 16-0001 Parish Governing Authority may transfer funds to
 municipalities and sheriff's office under the local services law, R.S. 33:1321, et
 seq., to assist in purchases of law enforcement vehicles and other equipment
 related to law enforcement without violating Article VII, §14.

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