

# Chapter 12

## THE PUBLIC BID LAW

Revised January 2, 2008

The Public Bid Law is found in R.S. 38:2211-2233.2. These provisions, which pertain to municipal public works projects and municipal purchases of materials and supplies, should be studied in great detail. The following is a digest of the Public Bid Law. The 1999 Regular Session of the Louisiana Legislature brought a major change to the Public Bid Law in order to clarify the existing law. Act 768 reorganized the Public Bid Law, placing provisions relating to the purchase of materials and supplies by public entities in a separate section.

The requirement to publicly bid a contract depends on the object of the contract and its estimated value. Generally, contracts for the purchase of materials and supplies (including everything from office supplies to gravel and trucks and backhoes) and the construction of public works projects (including construction or major repair of buildings, roads, sewers, and the like) are to be publicly bid when they exceed certain dollar values. Generally, contracts for services, including insurance, trash collection, and professional services are not required to be publicly bid.

### MATERIALS AND SUPPLIES

R.S. 38:2212.1, Session, pertains to the purchase of materials and supplies. Act 575 of the 2003 Regular Session of the Louisiana Legislature changed the monetary threshold for purchases of materials and supplies – such as equipment, vehicles, and so on – which exceed the sum of \$20,000.00, shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised.

It further provides that purchases of materials or supplies exceeding the sum of \$10,000.00, but less than \$20,000.00, shall be made by obtaining not less than three telephone or facsimile (FAX) quotations. In such case, a written confirmation of the accepted offer must be obtained and made a part of the purchase file, and the reasons for rejection shall be recorded in the file if quotations lower than the accepted quotation are received. Lastly, purchases under \$10,000.00 are not required to be publicly bid, but should be purchased in accordance with existing purchasing policies and procedures.

Further, Act 84 of the 2003 Regular Session of the Louisiana Legislature increased the threshold for the purchase of a used or new motor vehicle for conversion into a law enforcement vehicle from \$15,000 to \$20,000. It also authorizes the purchase of any road maintenance or improvement equipment up to \$25,000 without being advertised and let out for bids.

R.S. 38:2234 et seq. authorizes political subdivisions to lease, rent, or purchase telecommunications or data processing systems and equipment through a request for proposals (RFP) instead of through the public bid process.

According to the decisions in various cases, items that are not considered as "materials and supplies" and, therefore, are not required to be bid include services (professional and otherwise), insurance, and leases of equipment. It should be noted that a "pure" lease of equipment is not required to be bid; however, a lease with an option to purchase is subject to the Public Bid Law, according to Attorney General's opinions.

## **PUBLIC WORKS**

R.S. 38:2212, requires that all **public works** – such as the construction of roads, buildings, and so on – which exceed \$100,000.00, including labor, materials, equipment, and administrative overhead not to exceed 15 percent, shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised. In addition to labor and materials, administrative overhead (not to exceed 15 percent) and equipment as per the rates in the latest addition of the *Associated Equipment Dealers Rental Rate Book* (a/k/a "The Green Book"), must be included in determining the estimated value of the contract.

Projects that do not exceed the contract limit of \$100,000.00 after this calculation need not be publicly bid. Generally, a municipality has two options in letting public works contracts that do not exceed the threshold. The first option is to enter into a private negotiated contract with a qualified contractor. The second option is to undertake the project with municipal employees. There is a general limitation on the use of public employees – municipal employees may not be utilized in the construction of buildings. As such, all contracts for the construction of buildings must be let to a private contractor.

Act 726 of the 2008 Regular Session provides that if at the end of the contract document phase, it is determined that the designer's estimate is more than the funds budgeted by the public entity for the project, the project shall not be advertised for bid.

Act 727 of the 2008 Regular Session provides the division of administration, office of facility planning and control develop and prescribe through the Administrative Procedure Act the bid form necessary to obtain the information and to implement the sections of the bid form to be utilized for the public bid of public works projects.

## **PUBLICLY-OWNED UTILITIES**

Act 346 of the 2001 Regular Legislative Session amended R.S. 38:2212(E) regarding contracts for public works let by publicly-owned utilities. Municipalities which own their own utilities may now undertake a public works project, other than the construction of a building, for the contract limit (\$100,000.00) or less by entering into a contract with or without public bid or by using the employees of the public entity owning the utility. These provisions do not prevent public entities from using their regular maintenance employees for labor necessary in the maintenance, construction, or extension of a publicly owned and operated

**electric public utility.** With regards to the construction or extension of all other public utilities, public bodies shall not be prevented from using their regular maintenance employees when the cost of the project does not exceed \$100,000.00, including labor and materials.

## **ADVERTISING REQUIREMENTS**

Advertising requirements are established in R.S. 38:2212, which provides that any contract for public works shall be published once a week for three different weeks in a newspaper in the locality, the first advertisement to appear at least 25 days before the opening of bids. Any contract for materials or supplies shall be published two times in a newspaper in the locality, the first advertisement to appear at least 15 days before the opening of bids. The first publication can not occur on a Saturday, Sunday, or legal holiday, and plans must be available to bidders on the day of the first advertisement and be available until 24 hours before the bid opening date.

The requirements for advertising and letting to the lowest responsible bidder do not apply in cases of "extreme public emergency." It should be noted that the definition of "emergency" [R.S. 38:2211(A)(6)] is very limited, being defined as 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 public bid requisites. In the case of an "emergency," such emergency must be certified by the public entity and notice of the emergency must be published in the official journal of the public entity within 10 days thereof. Every contract negotiated by a public entity in the event of an emergency must be supported by a written determination and findings by the public entity justifying the use of the emergency authority. When contract action is taken pursuant to telephone or other oral offers, a written confirmation of the accepted offer must be obtained and made a part of the contract file. Also, a record must be established by the public entity which shall contain:

- A description of the work to be performed
- The name and address of each offeror quoting
- The performance time and terms of each offer

Act 120 of the 2002 First Extraordinary Legislative Session provides that in addition to the newspaper advertising requirements, a public body may also publish an advertisement for public works projects and materials and supplies by electronic media available to the general public.

The law further requires the reasons for rejection to be recorded and made part of the contract file, if quotations lower than the accepted quotation are received, and requires all records to be retained for at least six years following the purchase or completion of the work.

Other important additional points about the Public Bid Law are as follows:

- The Public Bid Law does not apply to a public entity purchasing surplus materials and supplies from another public entity [R.S. 38:2212(L)]. However, in such cases, there must be an ordinance declaring the property as surplus and establishing the minimum price [R.S. 33:4712].
- A municipality may purchase materials and supplies through existing state contracts [R.S. 39:1702(A)] and through contracts entered into by other political subdivisions [R.S. 33:1324]. In such cases, there is no requirement that such purchases be bid. A reading of Attorney General Opinion No. 90-582 would be prudent in such cases.
- The Public Bid Law does not prevent municipalities from using their own regular maintenance employees for labor necessary in the maintenance, construction, or extension of municipally-owned and -operated electric public utilities; however, this does not include the construction of buildings. With regard to the construction or extension of all other public utilities, municipalities may use their own regular maintenance employees when the cost of the work (per project) does not exceed \$100,000.00, including labor, materials, equipment and administrative overhead not to exceed 15 percent.

However, projects of less than \$100,000.00 but exceeding \$10,000.00 must comply with certain requirements, as follows:

- (i) The public entity shall send out written invitations for quotations to at least five bona fide, qualified bidders.
  - (ii) Written invitations for quotations shall contain complete specifications and the quantity required, and any other information, including the delivery point, which is necessary for a supplier to make an acceptable bid.
  - (iii) Quotations shall be publicly opened and read at a specific date, time, and location. Each bidder shall be notified of the date, time, and location.
- Regarding the sale of surplus municipal property, Act 604 of the 2006 Regular Legislative Session enacted RS 33:4711.1 authorizing political subdivisions to sell surplus movable property on the internet by using sites such as E-Bay, etc.
  - Act 203 of the 2006 Regular Legislative Session provides the Louisiana Advisory Commission on Intergovernmental Relations to develop standards for uniform and secure electronic bid receipts by political subdivisions. Those standards can be found in the Louisiana Register at LA. Register, Vol. 32, No. 11, November 20, 2006.

Additional information regarding the award of contracts can be found in the Public Bid Law.