

2017 Regular Session

HOUSE BILL NO. 554

BY REPRESENTATIVES SCHRODER, BERTHELOT, AND EDMONDS

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

PUBLIC CONTRACTS: Provides relative to public procurement methods

1 AN ACT

2 To amend and reenact R.S. 38:2212.1(A)(1)(b) and 2271(A)(1), (B)(introductory
3 paragraph), and (C) and R.S. 39:1600(D)(1), (2)(introductory paragraph), and (3) and
4 to enact R.S. 38:2212.1(O) and R.S. 39:1600(D)(4), relative to public contracts; to
5 provide for the advertisement and letting of bidders for certain purchases under the
6 Public Bid Law; to provide for certain requirements of certain group purchasing
7 organizations under the Public Bid Law; to provide for the requirements of reverse
8 auctions for certain purchases in the Procurement Code; and to provide for related
9 matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 38:2212.1(A)(1)(b) and 2271(A)(1), (B)(introductory paragraph), and
12 (C) are hereby amended and reenacted and R.S. 38:2212.1(O) is hereby enacted to read as
13 follows:

14 §2212.1. Advertisement and letting to lowest responsible bidder; materials and
15 supplies; exemptions

16 A.(1)

17 * * *

18 (b)(i) However, purchases of ten thousand dollars or more, but less than
19 thirty thousand dollars, shall be made by obtaining not less than three telephone, ~~or~~
20 facsimile, email, or online quotations. A written confirmation of the accepted offer

1 shall be obtained and made a part of the purchase file. If quotations lower than the
2 accepted quotation are received, the reasons for their rejection shall be recorded in
3 the purchase file. An email, facsimile, or online quotation from a bidder shall satisfy
4 the requirement to obtain a written confirmation of the accepted offer.

5 (ii) Receipt of not less than three quotations as required in this Subparagraph
6 may be exclusively online at a time and in a manner specified in a request for quotes
7 to qualified vendors. The purchaser shall provide written confirmation that other
8 methods of receiving quotations will not be accepted. The online process used, the
9 quotations received, and the accepted offer shall be recorded in the purchase file.

10 * * *

11 O.(1) Notwithstanding any other provision of this Part to the contrary, any
12 municipality or local government unit affiliate of the Louisiana Municipal
13 Association may enter into an agreement with the Louisiana Municipal Association
14 through or in conjunction with the Louisiana Municipal Advisory and Technical
15 Services Bureau, to act as its qualified group purchasing organization for the
16 purchase of materials, equipment, and supplies, including any installation thereof,
17 that have been solicited in compliance with Louisiana law. Any such agreement
18 shall require that the qualified group purchasing organization submit a price list for
19 those materials, equipment, and supplies offered by it and that the prices quoted on
20 the list remain in effect for a stated period of time of not less than three months. Any
21 such price list shall be considered, for all purposes, to be a valid and binding bid by
22 the qualified group purchasing organization during the effective period of the
23 agreement, and no additional bid by the qualified group purchasing organization is
24 necessary.

25 (2) Price lists submitted herein are not public record and shall not be
26 available for public inspection. The agreement setting forth the existence of the price
27 list and the effective date thereof is, however, a public record, and that portion of the
28 price list setting forth the price of the materials or supplies being purchased shall
29 become a public record at the time of opening of bids for those materials or supplies.

1 (3) As used in this Subsection, the "Louisiana Municipal Association" and
2 its wholly owned subsidiary "Louisiana Municipal Advisory and Technical Services
3 Bureau" is a group buying organization that solicits proposals or bids from vendors
4 of services, materials, equipment, or supplies of the type and nature as may be
5 purchased by a municipal member or local government unit affiliate of the Louisiana
6 Municipal Association.

7 (4) For purposes of this Subsection, a "municipality" shall mean any village,
8 town, city, or consolidated city-parish government member of the Louisiana
9 Municipal Association, or any subdivision, agency, or unit thereof, which voluntarily
10 participates in group purchasing activities. A "local government unit affiliate" shall
11 mean any water supply district, any gas distribution district, any park and recreation
12 district or equivalent, any airport district, any fire district, and any local police
13 department authorized by law to purchase materials, equipment, and supplies on its
14 own behalf and which voluntarily participates in group purchasing activities on their
15 own or through sponsorship by their respective statewide associations.

16 (5) Any parish may purchase materials, equipment, and supplies through the
17 Louisiana Municipal Association or the Louisiana Municipal Advisory and
18 Technical Services Bureau as a group purchasing organization upon endorsement of
19 a cooperative agreement by the Louisiana Police Jury Association.

20 (6) The Louisiana Municipal Association or the Louisiana Municipal
21 Advisory and Technical Services Bureau shall be subject to the same standards,
22 responsibilities, and duties as apply to political subdivisions of the state in the award,
23 execution, or administration of any public contract. This includes but is not limited
24 to compliance with all provisions of this Title.

25 * * *

26 §2271. Purchase of materials, supplies, or equipment by certain political
27 subdivisions using certain auction methods

28 A.(1) The bidding provisions of this Chapter shall not apply when a political
29 subdivision purchases materials, supplies, or equipment using a reverse auction as

1 authorized by, and in the manner provided in, this Part. A political subdivision may
2 use reverse auction only with the determination by its procurement officer that the
3 best interests of the political subdivision would be served ~~and that electronic online~~
4 ~~bidding is more advantageous than other procurement methods provided in this~~
5 ~~Chapter.~~

6 * * *

7 B. ~~Prior to the use of~~ A reverse auction solicitation authorized by this Part;
8 ~~the political subdivision shall develop policies and procedures that may require that:~~

9 * * *

10 C. Adequate public notice for the purchases of materials, supplies, or
11 equipment by a political subdivision using a reverse auction shall be given as
12 follows:

13 (1) ~~The~~ For a purchase of thirty thousand dollars or more, the advertisement
14 or notice shall be published two times in a newspaper in the locality, the first
15 advertisement to appear at least fifteen days before the opening date of the reverse
16 auction. In addition to the newspaper advertisement, a political subdivision may also
17 publish an advertisement by electronic media available to the general public.

18 (2) For a purchase of less than thirty thousand dollars, the advertisement or
19 notice shall be published at least one time in a newspaper in the locality at least five
20 days before the opening date of the reverse auction, or the notice shall be published
21 in the Louisiana Procurement and Contract Network, or its successor, that is
22 administered by the division of administration, at least five days before the opening
23 date of the reverse auction. In addition to these methods, a political subdivision may
24 also publish an advertisement by electronic media available to the general public.

25 ~~(2)~~(3) The first publication of the advertisement shall not occur on a
26 Saturday, Sunday, or legal holiday.

27 Section 2. R.S. 39:1600(D)(1), (2)(introductory paragraph), and (3) are hereby
28 amended and reenacted to read as follows and R.S. 39:1600(D)(4) is hereby enacted to read
29 as follows:

1 §1600. Other procurement methods

2 * * *

3 D. Reverse auction

4 (1) Notwithstanding the provisions of Subpart A of this Part, with the
5 approval of the state chief procurement officer ~~and the determination of the head of~~
6 ~~the using agency~~ that the best interests of the state would be served ~~and that~~
7 ~~electronic online bidding is more advantageous than other procurement methods~~
8 ~~provided in this Chapter~~, a reverse auction may be utilized for the acquisition of
9 materials, supplies, services of any type, products, or equipment of any monetary
10 amount, including small purchases.

11 (2) Prior to the ~~implementation of this Subsection~~, use of any reverse
12 auction, the state chief procurement officer ~~shall develop policies, procedures, and~~
13 ~~promulgate regulations, in accordance with the Administrative Procedure Act. Such~~
14 ~~policies and procedures~~ may require in the solicitation language that:

15 * * *

16 (3) Adequate public notice for the purchase of materials, supplies, services,
17 or equipment using a reverse auction shall be given, ~~as follows:~~

18 (a) The advertisement or notice shall ~~be published one time in the official~~
19 ~~journal of the state at least twenty days before the opening date of the reverse~~
20 ~~auction.~~ conform to the requirements for public notice of sealed bidding or small
21 purchases as applicable, pursuant respectively to R.S 39:1594 or 1596, such that the
22 extent, timing, location, form, and duration of public notice activities for the reverse
23 auction process shall be fully consistent with the public notice activities required for
24 a sealed bid or small purchase of equivalent value.

25 (b) ~~In the case of any purchase to meet the needs of a single budget unit, the~~
26 ~~advertisement shall be published also in a newspaper of general circulation printed~~
27 ~~in the parish in which the budget unit is situated, or, if there is not a newspaper~~
28 ~~printed in the parish, in a newspaper printed in the nearest parish that has a general~~
29 ~~circulation in the parish in which the budget unit is situated.~~

1 (4) For Fiscal Years 2017-2018 through 2019-2020, the office of state
 2 procurement shall use reverse auctions a minimum of twenty-four times per fiscal
 3 year and shall report annually to the legislature by September 1, on the use of reverse
 4 auctions and any savings achieved.

5 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 554 Engrossed 2017 Regular Session Schroder

Abstract: Provides for the methods of obtaining online quotes and bids and reverse auctions for purchases made under the Public Bid Law and the Procurement Code.

Present law provides for the advertisement and letting to the lowest responsible bidder for purchases made under the Public Bid Law.

Present law requires that purchases for materials or supplies of more than \$30,000 are advertised and let to the lowest responsible bidder.

Present law requires that purchases of \$10,000 or more, but less than \$30,000, are made by getting no less than three phone or fax quotations and further requires the purchaser to obtain a written confirmation of the accepted offer.

Proposed law authorizes the purchaser to also use email or online quotations as a means to getting the three required quotations.

Proposed law further allows the purchasers to get the three required quotations exclusively from online in a time and manner specified in the request if they provide written confirmation that no other methods of quotations will be accepted.

Proposed law authorizes any municipality or local government unit affiliate of the Louisiana Municipal Association to enter into agreements with the association to act as its qualified group purchasing organization for the purchase of materials, equipment, and supplies.

Proposed law requires the group purchasing organization to submit a price list for the material, equipment, and supplies that are considered to be a valid and binding bid.

Proposed law provides that price lists are not public record and shall not be available for public inspection, but further provides 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.

Present law provides for certain purchases under the Public Bid Law using reverse auctions when the determination by a political subdivision procurement officer is made that the best interests of the political subdivision would be served and that online bidding is more advantageous than other procurement methods.

Proposed law repeals the qualification that to use revenue auctions political subdivisions must determine that online bidding is more advantageous than other procurement methods.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

Present law requires adequate public notice for purchases made by a political subdivision using a reverse auction, including that the notice be published two times in a newspaper.

Proposed law retains present law for adequate public notice on purchases of \$30,000 or more. Further requires that purchases of \$30,000 or less be published one time in a newspaper or in the La. Procurement and Contract Network.

Present law provides for the methods of procurement that a state entity can use for contracts and purchases under the Procurement Code.

Present law authorizes the use of reverse auctions for purchases made under the Procurement Code with the approval of the state chief procurement officer and the determination of the head of the agency making the procurement that the method would be more advantageous than other procurement methods.

Proposed law deletes the requirement that the head of the agency making the purchase make a determination that the reverse auction method is more advantageous than other procurement methods.

Proposed law further authorizes the use of reverse auctions for any monetary amount, including small purchases, which are currently purchases not exceeding \$25,000.

Present law requires the advertisement or notice of the purchase be published in the official journal of the state at least 20 days before the opening date of the reverse auction.

Proposed law changes the requirement regarding the advertisement or notice from 20 days before the opening of the reverse auction to conform with the requirement of public notice of sealed bidding or small purchases pursuant to present law in the Procurement Code.

Proposed law requires that for Fiscal Years 2017-2018 through 2019-2020, the office of state procurement shall use reverse auctions a minimum of 24 times per year and shall report annually on the use of the auctions and any savings achieved.

(Amends R.S. 38:2212.1(A)(1)(b) and 2271(A)(1), (B)(intro. para.), and (C) and R.S. 39:1600(D)(1), (2)(intro. para.), and (3); Adds R.S. 38:2212.1(O) and R.S. 39:1600(D)(4))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Appropriations to the original bill:

1. Add requirement that the Louisiana Municipal Association or the Louisiana Municipal Advisory and Technical Services Bureau is subject to the same standards, responsibilities, and duties as apply to political subdivisions of the state in the award, execution, or administration of any public contract.
2. Delete change to the definition of "reverse auction" adding that the definition include public works that do not exceed the contract limit in present law.
3. Change the public notice requirement for purchases of political subdivisions using a reverse auction to provide separate requirements for purchases under \$30,000 and over \$30,000.
4. Change the public notice requirement for purchases of state agencies using a reverse auction to conform with requirements of sealed bidding or small purchases in present law.