

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 an offeror shall  
4 satisfy 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 Advisory and  
14 Technical Services Bureau as identified in R.S. 22:834 to act as its group purchasing  
15 organization for the purchase of materials, equipment, and supplies, including any  
16 installation thereof, that have been solicited in compliance with Louisiana law. Any  
17 such agreement shall require that the group purchasing organization submit a price  
18 list for those materials, equipment, and supplies offered by it and that the prices  
19 quoted on the list remain in effect for a stated period of time of not less than three  
20 months. Any such price list shall be considered, for all purposes, to be a valid and  
21 binding bid by the group purchasing organization during the effective period of the  
22 agreement, and no additional bid by the group purchasing organization is necessary.

23 (2) Price lists submitted and agreements entered into pursuant to this  
24 Subsection shall be public records and shall be available for public inspection.

25 (3) For purposes of this Subsection, a "municipality" shall mean any village,  
26 town, city, or consolidated city-parish government member of the Louisiana  
27 Municipal Association, or any subdivision, agency, or unit thereof, which voluntarily  
28 participates in group purchasing activities. A "local government unit affiliate" shall  
29 mean any water supply district, any gas distribution district, any recreation and park

1 district or equivalent, any airport district, any fire district, and any local police  
2 department authorized by law to purchase materials, equipment, and supplies on its  
3 own behalf and which voluntarily participates in group purchasing activities on their  
4 own or through sponsorship by their respective statewide associations.

5 (4) Any parish may purchase materials, equipment, and supplies through the  
6 Louisiana Municipal Advisory and Technical Services Bureau as a group purchasing  
7 organization.

8 (5) The Louisiana Municipal Advisory and Technical Services Bureau shall  
9 be subject to the same standards, responsibilities, and duties as apply to political  
10 subdivisions of the state in the award, execution, or administration of any public  
11 contract. This includes but is not limited to compliance with all provisions of this  
12 Title.

13 \* \* \*

14 §2271. Purchase of materials, supplies, or equipment by certain political  
15 subdivisions using certain auction methods

16 A.(1) The bidding provisions of this Chapter shall not apply when a political  
17 subdivision purchases materials, supplies, or equipment using a reverse auction as  
18 authorized by, and in the manner provided in, this Part. A political subdivision may  
19 use reverse auction only with the determination by its procurement officer that the  
20 best interests of the political subdivision would be served ~~and that electronic online~~  
21 ~~bidding is more advantageous than other procurement methods provided in this~~  
22 ~~Chapter.~~

23 \* \* \*

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

26 \* \* \*

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

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

6           (2) For a purchase of less than thirty thousand dollars, the advertisement or  
 7           notice shall be published at least one time in a newspaper in the locality at least five  
 8           days before the opening date of the reverse auction, and the notice shall be published  
 9           in the Louisiana Procurement and Contract Network, or its successor, that is  
 10          administered by the division of administration, at least five days before the opening  
 11          date of the reverse auction. Solely for the purposes of newspaper publication  
 12          pursuant to this Paragraph, the advertisement or notice may contain a general  
 13          description of the materials, supplies, or equipment sought and may refer to the full  
 14          description of materials, supplies, or equipment sought, which shall be publicly  
 15          accessible via electronic means. In addition to these methods, a political subdivision  
 16          may also publish an advertisement by electronic media available to the general  
 17          public.

18           ~~(2)~~(3) The first publication of the advertisement shall not occur on a  
 19           Saturday, Sunday, or legal holiday.

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

22           §1600. Other procurement methods

23   \*           \*           \*

24           D. Reverse auction

25           (1) Notwithstanding the provisions of Subpart A of this Part, with the  
 26           approval of the state chief procurement officer ~~and the determination of the head of~~  
 27           ~~the using agency~~ that the best interests of the state would be served ~~and that~~  
 28           ~~electronic online bidding is more advantageous than other procurement methods~~  
 29           ~~provided in this Chapter~~, a reverse auction may be utilized for the acquisition of

1 materials, supplies, services of any type, products, or equipment of any monetary  
2 amount, including small purchases.

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

7 \* \* \*

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

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

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

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

26 \* \* \*

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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)]

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HB 554 Reengrossed

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 purchases for materials or supplies of more than \$30,000 to be advertised and let to the lowest responsible bidder.

Present law requires purchases of \$10,000 or more, but less than \$30,000, to be made by getting no less than three phone or fax quotations. 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 of getting the three required quotations.

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

Proposed law authorizes any municipality or local government unit affiliate of the La. Municipal Assoc. to enter into agreements with the La. Municipal Advisory and Technical Services Bureau, a wholly owned subsidiary of 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 is considered to be a valid and binding bid.

Proposed law provides that price lists submitted and agreements entered into pursuant to proposed law are public records available for public inspection.

Proposed law authorizes a parish to purchase materials, equipment, and supplies through the La. Municipal Advisory and Technical Services Bureau as a group purchasing organization.

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.

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 less than \$30,000 be published one time in a newspaper and in the La. Procurement and Contract Network. Provides that the newspaper advertisement or notice may contain a general description of the materials, supplies, or

equipment sought and may refer to the full description of materials, supplies, or equipment sought, which shall be publicly accessible via electronic means.

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 for 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 La. Municipal Assoc. or the La. 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.

The Committee Amendments Proposed by House Committee on House and Governmental Affairs to the engrossed bill:

1. Relative to purchases valued at \$10,000 or more but less than \$30,000, replace reference to a "bidder" with reference to an "offeror".

2. Remove provisions authorizing a municipality, local government affiliate of the La. Municipal Association, or a parish from purchasing materials, equipment, and supplies through the La. Municipal Association.
3. Remove the term "qualified" from description of the group purchasing organization.
4. Remove provisions providing that price lists submitted pursuant to proposed law are generally not public records and provide instead that price lists submitted and agreements entered into pursuant to proposed law are public records available for public inspection.
5. Remove definition of "La. Municipal Assoc." and "La. Municipal Advisory and Technical Services Bureau".
6. Remove the requirement that the La. Police Jury Assoc. endorse a cooperative agreement for a parish to purchase materials, equipment, and supplies through the La. Municipal Advisory and Technical Services Bureau.
7. Relative to purchases of materials, supplies, and equipment valued at less than \$30,000 by a political subdivision using a reverse auction, require advertisement in the newspaper and on the La. Procurement and Contract Network instead of advertisement in the newspaper or on the network.
8. Relative to such newspaper advertisement, add provisions providing that the advertisement may contain a general description of the materials, supplies, or equipment sought and may refer to a full description of materials, supplies, or equipment sought that is publicly accessible via electronic means.