

2020 Regular Session

SENATE BILL NO. 402

BY SENATOR FOIL

PUBLIC CONTRACTS. Provides relative to submission of certain bids in public contracts.
(8/1/20)

1 AN ACT

2 To amend and reenact R.S. 38:2212.1(C)(2) and 2295(A)(2) and (C)(1), and to enact R.S.
3 38:2295(D), relative to public contracts; to provide for bidders to submit bids with
4 alternative and equivalent products; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 38:2212.1(C) and 2295(A)(2) and (C)(1) are hereby amended and
7 reenacted and R.S. 38:2295(D) is hereby enacted to read as follows:

8 §2212.1. Advertisement and letting to lowest responsible bidder; materials and
9 supplies; exemptions

10 * * *

11 C.(1) * * *

12 (2) Wherever in specifications the name of a certain brand, make,
13 manufacturer, or definite specification is utilized, the specifications shall state clearly
14 that they are used only to denote the quality standard of product desired and that they
15 do not restrict bidders to the specific brand, make, manufacturer, or specification
16 named; that they are used only to set forth and convey to prospective bidders the
17 general style, type, character, and quality of product desired; ~~and~~ that equivalent

1 products will be acceptable; **and that bidders are not required to seek prior**
2 **approval of an equivalent product.**

3 * * *

4 §2295. Plans and specifications; required provisions

5 A. All plans and specifications for public works submitted by an architect or
6 engineer shall include the following provisions relating to equal brand products other
7 than those specified:

8 (1) * * *

9 (2) When in specifications or contract documents a particular brand, make of
10 material, device, or equipment is shown or specified, such brand, make of material,
11 device, or equipment shall be regarded merely as a standard. **A bidder may submit**
12 **bids that utilize a product of equal quality and utility.**

13 * * *

14 C.(1) **A potential supplier or bidder is not required to submit a particular**
15 **product for prior approval. The bidder may submit the bid with an alternative**
16 **product of equal quality and utility.** If a potential supplier **or bidder, in their sole**
17 **discretion,** wishes to submit for prior approval a particular product other than a
18 product specified in the contract documents, he ~~shall~~ **may** do so no later than seven
19 working days prior to the opening of bids. Within three days **of submission of a**
20 **product for prior approval,** exclusive of holidays and weekends, ~~after such~~
21 ~~submission,~~ the prime design professional shall furnish to both the public entity and
22 the potential supplier **or bidder** written approval or denial of the product submitted.

23 * * *

24 **D.(1) If the low bidder submits a bid that includes a product that is not**
25 **the specific band, make, manufacturer, or definite specification in the**
26 **specifications or contract documents, the public entity may require the low**
27 **bidder to submit, no earlier than ten days after the opening of the bids,**
28 **additional information for review by the public entity to determine if the**
29 **alternative product is of equal quality and utility to the specified product.**

1 **(2) If the public entity letting the contract proposes to disqualify a low**
2 **bidder on the grounds that a product submitted is not the product specified in**
3 **the contract documents and that the alternative product submitted is not of**
4 **equal quality and utility, or that the low bidder, after the opening of bids, failed**
5 **to provide the public entity with satisfactory information for the approval of an**
6 **alternative product, the public entity shall do all of the following:**

7 **(a) Give written notice of the proposed action to the low bidder that**
8 **includes all of the reasons for the proposed disqualification.**

9 **(b) Afford the low bidder an opportunity to respond and to present**
10 **evidence on issues of fact to refute the reasons for the proposed disqualification**
11 **at an informal hearing.**

12 **(c) A statement that failure to request a hearing and to participate in the**
13 **hearing shall waive any further administrative remedies.**

14 **(3) The public entity shall conduct the informal hearing prior to award**
15 **of the contract and no later than five business days following the date of written**
16 **notice of disqualification to the bidder.**

17 **(4) The public entity shall issue and deliver to the bidder a written ruling**
18 **no later than five business days after the date of the informal hearing.**

19 **(5) No award of the contract shall be made by the public entity until the**
20 **expiration of at least five business days following the date of issuance of the**
21 **decision by the hearing official.**

22 **(6) A low bidder who is disqualified following an informal hearing shall**
23 **bring any action adverse to the public entity, its representatives, employees, and**
24 **designers to contest the disqualification or requirements in the bid specifications**
25 **to use a particular brand, make of material, device, or equipment no later than**
26 **ten business days from receipt of the written decision of the hearing official.**

