SLS 20RS-454

ORIGINAL

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

Page 1 of 4 Coding: Words which are struck through are deletions from existing law; words in **boldface type and underscored** are additions.

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) <u>A potential supplier or bidder is not required to submit a particular</u>
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.

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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	<u>at an informal hearing.</u>
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	<u>to use a particular brand, make of material, device, or equipment no later than</u>
26	ten business days from receipt of the written decision of the hearing official.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Sharon F. Lyles.

SB 402 Original

DIGEST 2020 Regular Session

Foil

<u>Present law</u> authorizes bidders on public contracts to submit equivalent products to definite or named brands, makes, or manufacturers specified by public entities for contracts for materials and supplies.

<u>Proposed law</u> retains <u>present law</u> and adds that bidders are not required to seek prior approval for equivalent products.

<u>Present law</u> requires plans and specifications for public works to include provisions for use of equal brand products other than those specified.

<u>Proposed law</u> retains <u>present law</u> and adds that bidders may submit bids that utilize products of equal quality and utility and are not required to submit alternative products for prior approval.

<u>Proposed law</u> authorizes a public entity to require a low bidder to submit no earlier than 10 days after the opening of bids additional information for the public entity to determine if the alternative product is of equal quality and utility.

<u>Proposed law</u> requires a public entity to provide written notice to the low bidder when it proposes to disqualify the bidder on the basis that the alternative product is not of equal quality and utility or that the low bidder failed to provide the public entity satisfactory information for approval of the alternative product.

<u>Proposed law</u> requires a public entity to provide an opportunity for an informal hearing including written notice of grounds for disqualification within time limitations and prior to award of the contract.

Effective August 1, 2020.

(Amends R.S. 38:2212.1(C)(2) and 2295(A)(2) and (C)(1); adds R.S. 38:2295(D))