

2021 Regular Session

SENATE BILL NO. 111

BY SENATOR WOMACK

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

PUBLIC WORKS. Provides for bids, claims, and payments involving public contracts.
(8/1/21)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17

AN ACT

To amend and reenact R.S. 38:2191(A), 2212(B)(2), 2215(A), 2222, and 2241.1(C) and to enact R.S. 38:2212(E)(8) and 2241.1(D), relative to public contracts; to provide for timely execution and approval of change orders; to provide for filing injunctions or mandamus suits involving bids; to provide awarding bids after judicial determinations of the lowest responsive and responsible bidder; to provide for payments under a contract; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 38:2191(A), 2212(B)(2), 2215(A), 2222, and 2241.1(C) are hereby amended and reenacted and R.S. 38:2212(E)(8) and 2241.1(D) are hereby enacted to read as follows:

§2191. Payments under contract

A. All public entities shall promptly pay all obligations **including approved plan changes**, arising under public contracts when the obligations become due and payable under the contract. All progressive stage payments and final payments shall be paid when they respectively become due and payable under the contract.

* * *

1 §2212. Advertisement and letting to lowest responsible and responsive bidder;
2 public work; electronic bidding; participation in mentor-protégé
3 program; exemptions

4 * * *

5 B. * * *

6 (2) Any public entity advertising for public work shall use only the Louisiana
7 Uniform Bid Form as promulgated in accordance with the Administrative Procedure
8 Act by the division of administration, office of facility planning and control. The
9 bidding documents shall require only the following information and documentation
10 to be submitted by a bidder at the time designated in the advertisement for bid
11 opening: Bid Security or Bid Bond, Acknowledgment of Addenda, Base Bid,
12 Alternates, Signature of Bidder, Name, Title, and Address of Bidder, Name of Firm
13 or Joint Venture, Corporate Resolution or written evidence of the authority of the
14 person signing the bid, and Louisiana Contractors License Number, and on public
15 works projects where unit prices are utilized, a section on the bid form where the unit
16 price utilized in the bid shall be set forth including a description for each unit;
17 however, unit prices shall not be utilized for the construction of building projects,
18 unless the unit prices and their extensions are incorporated into the base bid or
19 alternates. **Any timely change by a bidder to the bid form prior to submission of**
20 **the bid shall be scratched through and initialed by the person who submits the**
21 **bid. The change as initialed shall be binding.**

22 * * *

23 E. (1) * * *

24 **(8) For the purpose of bids submitted electronically, the last timely bid**
25 **submission by each and any bidder shall be binding.**

26 * * *

27 §2215. Time period for holding bids; issuance of work orders to commence work;
28 exceptions

29 A. A public entity shall act not later than forty-five calendar days after the

1 date of opening bids to award such public works contract to the lowest responsible
2 and responsive bidder or to reject all bids. If an interested party or bidder files for
3 injunction or mandamus, a public entity shall act not later than forty-five days
4 after the date of a judgment by a Louisiana district court determining the
5 lowest responsible and responsive bidder to award the public works contract in
6 accordance with the judgment. Any judgment issued by a Louisiana district
7 court mandating the award of a public works contract is not subject to
8 suspensive appeal. However, the public entity and the lowest responsible and
9 responsive bidder, by mutually written consent, may agree to extend the deadline for
10 award by one or more extensions of thirty calendar days.

11 * * *

12 §2222. Change orders; recordation

13 A. Each change order to a public works contract or to a contract for materials
14 and supplies which adds an amount of ten percent or more of the original contract
15 amount and which additional amount is at least ten thousand dollars or all change
16 orders to a contract aggregating to an amount of twenty percent or more of the
17 original contract amount and which additional amount is at least ten thousand dollars
18 shall be recorded by the public entity which entered into the contract in the office of
19 the recorder of mortgages in the parish where the work is to be done or, if not a
20 public work, where the entity is domiciled not later than thirty days after the date of
21 the change order which requires that the recordation take place. In addition, the
22 original contract shall be recorded together with the change orders if not previously
23 recorded. The provisions of this Section shall not apply to the office of facility
24 planning and control, and the office of state procurement.

25 B. Change orders shall be executed and approved by the public entity no
26 later than thirty days following the date of the proposed change order. The date
27 of the proposed change order is the day the public entity, design professional of
28 record, and the contractor agree to the extra work to be performed under the
29 change order.

1 * * *

2 §2241.1. Acceptance of governing authority

3 * * *

4 C. Any public entity that does not file for recordation an acceptance of public
5 work, shall require the contractor to have recorded in the office of the recorder of
6 mortgages, in the parish where the work has been done, an acceptance of such work
7 or of any specified area of such work, not later than forty-five calendar days after the
8 date of completion or substantial completion of the work. This acceptance shall not
9 be executed except upon the recommendation of the design professional hired by the
10 public entity whose recommendation ~~may~~ **shall** be made not later than thirty calendar
11 days after the date of completion or substantial completion of such public work. **A**
12 **public entity shall not take, use, or occupy the public work or use or occupy the**
13 **specified area of the public work for which it was intended until the substantial**
14 **completion has been filed pursuant to this Section.**

15 **D. The public entity's failure to comply with the provisions of this**
16 **Section shall be subject to a writ of mandamus.**

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Thomas L. Tyler.

SB 111 Engrossed DIGEST 2021 Regular Session Womack

Present law requires public entities to promptly pay all obligations arising under a public contract when they become due and payable.

Proposed law retains this provision but includes payment of approved plan changes.

Present law requires public work contracts exceeding contract limit as provided in present law be advertised and let by contract to the lowest responsible and responsive bidder who bids according to the bidding documents as advertised. Requires public entities advertising for public work use only the Louisiana Uniform Bid Form and that the bidding documents include specific information.

Proposed law retains these provisions but requires that any change by a bidder to the bid form prior to its submission be scratched through and initialed by the person submitting the bid and that the change as initialed is binding.

Proposed law provides that as to electronic bid submissions, the last timely submission by each and any bidder is binding.

Present law requires that an entity not act later than 45 days after the opening of bids to

award the contract or reject all bids.

Proposed law retains these provisions and provides that if an interested party or bidder files for an injunction or mandamus, the public entity shall not act later than 45 days after the date of a district court judgment determining the lowest responsible and responsive bidder to award the contract in accordance with the judgment. Provides that the district court judgment mandating the award is not subject to a suspensive appeal.

Present law provides for recordation of certain change orders with the recorder of mortgages in the parish where the public work is to be done or if not a public work, then where the entity is domiciled. Requires recordation of the original contract with the change order if not previously recorded.

Proposed law retains these provisions but requires that change orders be executed and approved by the public entity no later than 30 days following the date of the proposed change order. Provides that the date of the change order is the day the public entity, design professional of record, and the contractor agree to the extra work to be performed under the change order.

Present law provides for acceptance of work by a governing authority not later than 30 calendar days after its completion or substantial completion of the work. Provides that if the public entity does not file an acceptance, then the contractor is to record an acceptance of the work not later than 45 calendar days after completion or substantial completion.

Proposed law retains this provision.

Present law provides the acceptance not be executed except upon recommendation of the design professional hired by the public entity whose recommendation may not be later than 30 calendar days after completion or substantial compliance.

Proposed law retains this provision but requires that the acceptance as recommended by the design professional be made not later than 30 calendar days and requires that the public entity not take, use, or occupy the public work or use or occupy the specified area of the public work until substantial completion is filed. Provides that failure to comply is subject to a writ of mandamus.

Effective August 1, 2021.

(Amends R.S. 38:2191(A), 2212(B)(2), 2215(A), 2222, and 2241.1(C); adds R.S. 38:2212(E)(8) and 2241.1(D))