

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)

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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 change orders**, 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 prior to submission of the**  
 20 **bid shall be scratched through and initialed by the bidder or the person who**  
 21 **submits the 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. However, the public entity and the lowest  
3 responsible and responsive bidder, by mutually written consent, may agree to extend  
4 the deadline for award by one or more extensions of thirty calendar days.

5 \* \* \*

6 §2222. Change orders; recordation

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

19 **B. Change orders shall be processed and issued by the public entity no**  
20 **later than forty days following final execution of the change order.**

21 \* \* \*

22 §2241.1. Acceptance of governing authority

23 \* \* \*

24 C. Any public entity that does not file for recordation an acceptance of public  
25 work, shall require the contractor to have recorded in the office of the recorder of  
26 mortgages, in the parish where the work has been done, an acceptance of such work  
27 or of any specified area of such work, not later than forty-five calendar days after the  
28 date of completion or substantial completion of the work. This acceptance shall not  
29 be executed except upon the recommendation of the design professional hired by the

1 public entity whose recommendation ~~may~~ **shall** be made not later than thirty calendar  
 2 days after the date of completion or substantial completion of such public work. A  
 3 **public entity shall not take, use, or occupy the public work or use or occupy the**  
 4 **specified area of the public work for which it was intended until the substantial**  
 5 **completion has been filed pursuant to this Section, unless an approved**  
 6 **agreement of partial occupancy is executed between the public entity, the design**  
 7 **professional of record, and the contractor.**

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

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The original instrument was prepared by Thomas L. Tyler. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

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## DIGEST

SB 111 Reengrossed

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 change orders.

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 prior to its submission be scratched through and initialed by the bidder or 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.

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 processed and issued by the public entity no later than 40 days following final execution of 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 unless an approved agreement of partial occupancy is executed between the public entity, the design professional of record, and the contractor. 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))

#### Summary of Amendments Adopted by Senate

##### Senate Floor Amendments to engrossed bill

1. Changes "plan changes" to the correct term "change orders".
2. Specifies that any changes to a bid shall be initialed by the bidder or the person submitting the bid.
3. Removes proposed language that provided 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. Provided that the district court judgment mandating the award is not subject to a suspensive appeal.
4. Changes the term "executed and approved" to "processed and issued" regarding change orders.
5. Adds additional time for the processing and issuing of change orders from 30 days to 40 days following final execution of the change order.
6. Removes proposed language that provided 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.
7. Adds proposed language that provides for partial occupancy of a specified area of public work if there is an approved agreement between the public entity, the design professional of record, and the contractor.
8. Makes technical changes.