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

DIGEST

Adley (SB 468)

Present law (R.S. 38:2211) defines terms used in the public bid law.

Proposed law retains present law definition of the terms "Bidding documents", "Change order outside the scope of the contract", "Change order within the scope of the contract", "Contractor", "Emergency", "Licensed design professional", "Louisiana resident contractor", and "Negotiate"; adds definitions for the terms "Alternate" and "Probable construction costs"; amends the definition of "Change order"; and renumbers Paragraphs (1) through (9) of Subsection A.

Proposed law adds definition of "Alternate" to mean an item on the bid form that may increase or decrease either the quantity of work or change the type of work, materials, or equipment specified in the bidding documents, or both.

Proposed law amends definition of "Change order" to mean any contract modification that includes an alteration, deviation, addition, or omission as to a preexisting public work contract, which is mutually agreed upon by the contractor and public entity and authorizes an adjustment in the contract price, contract time, or an addition, deletion, or revision of work.

Proposed law adds definition of "Probable construction costs" to mean the estimate for the cost of the project as designed that is determined by the public entity, the designer, or the designer's third-party estimator.

Present law (R.S. 38:2212) requires that public work, including labor and materials, exceeding \$150,000 undertaken by a public entity to be advertised and let by written contract to the lowest responsible bidder who bids according to the contract, plans, and specifications.

Proposed law requires contract be let to the lowest responsible and responsive bidder.

Proposed law substitutes the term "bidding documents" for the phrase "contract, plans, and specifications" wherever it occurs in present law.

Present law requires the office of facility planning and control to develop a bid form necessary to obtain information and to implement use of such form to bid for public works projects through promulgation of rules and regulations in accord with the Administrative Procedure Act. Requires the bid form request only information necessary to determine the low bidder and certain listed information: Bid Security or Bid Bond, Acknowledgment of Addenda, Base Bid, Alternates, Signature of Bidder, Name, Title, and Address of Bidder, Name of Firm or Joint Venture, Corporate Resolution, and Louisiana Contractors License Number, and on public works projects that use unit prices, a section to set forth such prices, provided such unit prices shall not be used

to construct building projects, unless the unit is incorporated into the base bid.

Proposed law requires all public entities to use the Louisiana Uniform Bid Form promulgated by the office.

Present law requires the low bidder to furnish within 10 days of bid opening other documentation and information required including but not limited to the low bidder's attestations pursuant to R.S. 38:2212.10 (E-verify) and 2227 (certain criminal convictions).

Proposed law retains present law and authorizes the apparent low bidder to submit such information and documentation any time prior to expiration of the 10 day period.

Proposed law requires a public entity to declare non-responsive an apparent low bidder who fails to submit information required by bidding documents in 10 days; authorizes a public entity to award the bid to the next lowest bidder and to afford such bidder 10 days to furnish required information; and authorizes a public entity to continue such process until the public entity either determines the low bidder or rejects all bids.

Proposed law retains present law that requires the public entity shall not waive or alter the 10 day period except for the governing authority of any publicly owned commercial aviation airport, the Sewerage and Water Board of New Orleans, the Regional Transit Authority, and all agencies of the City of New Orleans, including but not limited to the New Orleans Aviation Board shall require information and documentation from the two lowest bidders three days after bid opening.

Proposed law retains present law that provides that, notwithstanding any other provision of law to the contrary, all bidders shall submit all bid forms required by statute or by the La. Administrative Code to the governing authority of East Baton Rouge Parish prior to the opening of all bids relative to a contract for public works.

Proposed law retains present law that excepts the Department of Transportation and Development from its requirements.

Proposed law reorganizes but retains present law that requires a bidder on a public works project conducted by the New Orleans Sewerage and Water Board to include Acknowledgment of Addenda to the bid form and to attach the addenda if pricing information is contained therein and the addenda specifies its attachment.

Present law requires a bidder who submits a bid to the division of administration or the state of Louisiana to submit evidence of authority of the person who signs the bid for public works.

Proposed law expands present law to apply to any public entity. Adds that such evidence shall be written.

Present law requires delivery of each bid by the bidder or his agent either by hand delivery, electronic delivery, or registered or certified mail with return receipt requested, except that

registered or certified mail with return receipt requested delivery do not apply to municipal and parochial governing authorities. Requires written receipt of hand delivered bids to the deliverer. Prohibits a public entity from accepting a bid on days recognized as holidays by the U.S. Postal Service.

Proposed law removes exception applicable to municipal and parochial governing authorities in present law for delivery of bids by registered and certified mail.

Proposed law retains but moves present law [R.S. 38:2212(A)(1)(c)(ii)] to proposed law [R.S. 38:2225(C)] that requires the Department of Transportation and the office of facility planning and control to keep on file a list of all states with a bid preference.

Proposed law provides that for the purpose of interpretation of the base bid total, written words govern if a conflict exists between words and numerals. Provides that extension of the number of units multiplied by the price per unit governs if a discrepancy exists between the sum of the extended prices and the base bid total on public works projects that require unit price bids.

Present law defines the term "contract limit" as equal to the sum of \$150,000, including labor, materials, and equipment as per the rates in the latest edition of the Associated Equipments Dealers Rate Book and administrative overhead not to exceed 15% except that the contract limit is \$50,0000 per project for the Department of Public Safety and Corrections (DPSC) when it intends to use inmates as labor for projects on the grounds of prisons and correctional institutions for the calendar year 1982, and provides that such contract limit increases for each succeeding calendar year, increases such contract limit by a factor equal to 3% per year for each of the next 10 calendar years (1983-1993).

Proposed law increases the contract limit for such DPSC projects to \$75,000 and removes provision for 3% per year increases.

Proposed law deletes present law that authorizes the Bossier Parish Police Jury to undertake a public works project with its own employees; sets its contract limit at \$130,000; authorizes the police jury to adjust the contract limit annually by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year; and requires the police jury to publish the new contract limit for public works contracts in its official journal in February of each year.

Proposed law retains present law that provides an annual limit of \$1,000,000, including labor, materials, and equipment, per the latest edition of the Associated Equipment Distributors Rental Rate Book, and administrative overhead not to exceed 15%, for public work, which is not publicly bid, to restore or rehabilitate a non-federally maintained levee, including mitigation on public lands owned by the state or a political subdivision provided such work is undertaken by the public entity with its own resources and employees, or the resources and employees of another public entity through a cooperative endeavor or other agreement. Provides that these provisions expire December 31, 2018.

Proposed law retain present law that requires public entities to furnish at least one complete set of bid documents to prime bidders who request bid documents and who are properly licensed by the Louisiana State Licensing Board for Contractors. Authorizes public entities to require a deposit for bid documents but requires the total deposit, including handling fees and other costs, not to exceed twice the actual cost of reproduction. Provides that a deposit on the first set of documents is fully refundable upon return of the documents no later than 10 days after receipt of bids. Provides for refund of deposit less actual reproduction cost on other sets of documents upon return no later than 10 days after receipt of bids. Authorizes public entities that itself prepares and distributes contract documents to charge a fee not to exceed its actual reproduction cost in lieu of a deposit.

Proposed law changes present law to authorize either electronic or paper bidding documents.

Proposed law requires prime bidders to obtain an original set of bidding documents from the public entity, the design professional who prepared such documents, or a third party designated by such design professional. Requires distribution of bidding documents as the designer of record chooses if an electronic bid submittal is used. Requires the public entity or its design professional to maintain a list of all prime bidders for addenda distribution.

Proposed law deletes present law that authorized the Sewerage and Water Board of New Orleans to charge a fee, in lieu of a deposit, for paper documents when it prepares and distributes electronic contract documents itself.

Proposed law retains present law that requires public entities to provide contractors a uniform and secure electronic interactive system for submittal of bids as an additional bidding option. Requires public entities that provide such system to follow the standards for receipt of electronic bids adopted by the office of the governor, division of administration, and the office of information technology as provided in LAC 4:XV.701.

Proposed law deletes provision in present law requiring acceptance of electronic bids for all purchases requiring competitive bidding.

Proposed law retains present law that exempts public entities currently without available high speed Internet access from providing for electronic bidding until such time such access becomes available.

Proposed law retains present law that exempts any parish with a police jury form of government and a population less than 20,000 from electronic bidding.

Proposed law retains present law that exempts any other public entity from electronic bidding without securing and expending additional funding.

Proposed law retains present law that gives public entities the option to require submittal of electronic bids on any competitive bid let out for public bid.

Proposed law retains present law that requires public entities to include all bidding documents on the electronic website accepting electronic bids.

Proposed law retains present law that authorizes a bid specification to contemplate a fixed escalation or de-escalation according to the U.S. Bureau of Labor Statistic's Consumer Price Index or the Wholesale Price Index. Provides that bids based on specifications that are subject to such escalation index are legal and valid. Proposed law adds that such escalation index is valid for any item of a public work at the public entity's discretion.

Proposed law retains present law that requires the advertisement for public work to be published once a week for three different weeks in a newspaper in the locality, requires the first advertisement to appear at least 25 days before opening of bids, and authorizes advertisement by electronic media available to the general public in addition to such newspaper advertisement.

Proposed law retains present law that prohibits the first publication of the advertisement on a Saturday, Sunday, or legal holiday, and requires all bidding documents to be available on the day of first advertisement and until 24 hours before the bid opening date.

Proposed law revises present law that prohibits advertisement of the project if the designer's estimate is more than the funds budgeted by the public entity for the projects and requires the designer's estimate to be read aloud upon opening bids. Proposed law requires the public entity to obtain an estimate of probable construction costs from its designer or the designer's third party estimator prior to advertisement for bids. Prohibits advertisement of a public work unless the funds have been budgeted for the project by the public entity. Requires the estimate of probable construction to be made available either by electronic posting or by announcing it aloud at bid opening. Requires all bid information to be available upon request 48 hours following opening of bids.

Proposed law retains present law that requires the date, place, and time of a required pre-bid conference to be advertised in the advertisement notice. Proposed law requires pre-bid conference information to be contained in all three advertisements for bid.

Proposed law requires all prospective bidders to be present at the beginning of the pre-bid conference and to remain in attendance for the duration of the conference and prohibits any prospective bidder who fails to attend the conference or remain for the duration from submitting a bid for the project. Proposed law removes limited application to the orphan well plug and abandonment program within the Louisiana Department of Natural Resources.

Proposed law retains present law that prohibits no more than three alternates in bidding documents and requires acceptance of alternates in the order listed on the bid form. Requires determination of the low bidder on the basis of the sum of the base bid and any alternates accepted but gives the public entity the right to accept alternates in any order that does affect determination of the low bidder.

Proposed law retains present law that restricts the use of allowances to minor items and limits

them to hardware, face brick, landscaping, electric light fixtures, and carpeting. Adds miscellaneous steel, tile, wallpaper and other exterior finishes, fixtures and furnishings to list of allowances. Prohibits use of allowances to control selection of a subcontractor or supplier.

Proposed law retains present law that prohibits a construction manager or any other third-party consultant employed by a public entity to manage a construction project as a general contractor or to act in the role of the general contractor to oversee, direct, or coordinate individual trade contractors on behalf of the public entity, or to accept bids or itself bid on the public work or components of the public work with respect to which the manager or consultant is employed or contracted to manage or consult. Proposed law retains exception in present law for initial construction of a hospital, medical facility, or both, constructed by the Orleans Hospital Service District.

Proposed law deletes present law that requires construction contracts to be opened in a public meeting, that all subcontractors bidding the project be invited to the meeting, and that the general contractor list subcontractors in the bid documents.

Proposed law retains present law that requires public works contracts to contain provisions for "change orders within the scope" of the contract and for change order to be in writing.

Proposed law provides option for change orders in electronic format and requires execution of the change order by the contractor and the public entity or its design representative.

Proposed law requires the public entity to pay the contractor for work performed by change order not later than 45 days after completion of such work.

Proposed law retains present law that requires any "change order outside the scope" of the contract in excess of the contract limit to be let for public bid as provided by law.

Proposed law retains present law that authorizes a public entity to either negotiate or let for public bid a change order less than the contract limit. Provides for negotiated change orders to be fully documented and itemized as to costs. Prohibits deviation in unit prices contained in an initial contract in a negotiated change order.

Proposed law retains present law that requires public works estimated to cost in excess of \$150,000 to be advertised and let by contract to the lowest responsible bidder. Proposed law requires public works to be let to the lowest responsible and responsive bidder.

Proposed law retains present law that authorizes public works estimated to cost less than \$150,000 to be undertaken by the public entity with its own employees.

Proposed law retains present law that authorizes a public entity to issue a bid addendum and to extend the bid period for up to 30 days without readvertising. Requires completion of transmittal of a copy of any addendum issued within 24 hours of its issuance and delivery by either facsimile transmission, email, other electronic means, or by hand provided the prime bidder has

supplied the facsimile transmission number or email address to the public entity by the public entity to all prime bidders who have requested bidding documents. Requires postponement of the bid opening by at least seven days if an addendum cannot be transmitted by facsimile transmission, email, or other electronic means, or otherwise effected by hand delivery.

Proposed law adds authority to issue addendum by special delivery mail.

Proposed law retains present law that prohibits issuance of any addenda modifying the bidding document within 72 hours prior to the advertised time for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays, but authorizes issuance of an addendum due to necessity with such period and requires extension of the time to open bids for at least seven days but not more than 21 working days without the requirement to readvertise. Requires the addendum to state the revised time and date to open bids.

Proposed law retains present law that provides competitive bidding requirements do not apply in cases of public emergency where the public entity certifies such emergency and publishes notice of such public emergency within 10 days in its official journal or in cases of extreme public emergency. Requires the president of the police jury, the president of the parish council, the mayor of the municipality, or a person to act on behalf of the governing authority of any other political subdivision to declare the existence of an extreme public emergency and to publish same in the official journal within 10 days or as soon as practicable thereafter.

Proposed law retains present law that authorizes the office of facility planning and control to address damage caused by hurricanes Katrina and Rita by public advertisement in the official journal of the locality of the project and the state's official journal and to take public bids in a minimum of 10 days after advertisement. Prohibits negotiation of such projects except when no bids are received. Requires competitive bidding negotiations with no fewer than two contractors. Requires written determination and findings to support decision for every negotiated contract under present law. Requires the public entity to take telephone or other oral offers, to obtain written confirmation of an accepted offer and to include such confirmation in the contract case file. Requires the public entity to establish a record that contains, as a minimum, the following information for each offer: a description of the work to be performed, the name and address of each offeror quoting, and the performance time and terms of each offer. Requires to record and include in the contract file the rejection of any quotations that are lower than the accepted quotation. Requires retention of such records for a minimum of six years after the purchase or completion of the public work.

Proposed law deletes present law that authorized East Baton Rouge Parish to assist Louisiana State University through use of the parish's own employees to undertake a project to enclose approximately 500 feet of Corporation Canal that runs adjacent to the University Laboratory School on the Baton Rouge campus, which project has been funded as an emergency through appropriation of funds by the Interim Emergency Board to Louisiana State University.

Proposed law retains present law that authorizes a publicly owned utility to undertake a public works project, other than construction of a building, for the contract limit (\$150, 000) or less by

either of the following methods: entry into contracts with or without public bid; use of the employees of the public entity owning the utility. Proposed law provides that such publicly owned utility be recognized by the Louisiana Public Service Commission.

Proposed law retains present law that prohibits ownership or operation of a manufacturing plant for construction materials by a public entity. Proposed law adds manufacturing facilities and production of construction materials to such prohibition. Proposed law deletes provisions that excluded any such facilities owned or operated prior to September 11, 1981, from such prohibition.

Proposed law retains present law that authorizes a public entity to use its regular maintenance employees for labor necessary in the maintenance, construction, or extension of publicly owned and operated electric public utilities. Authorizes public entities to use their regular maintenance employees to construct or extend all other public utilities when the cost of the work per project does not exceed \$100,000, including labor and materials. Proposed law increases the contract limit for such projects to \$150,000.

Proposed law retains present law that requires all purchases of materials or supplies exceeding the contract limit (\$150,000) to be let by public bid as provided by law.

Proposed law retains present law that authorizes a public entity to specify a particular brand, make, or manufacturer for a project let to public bid and requires specification to include the model or catalog number.

Proposed law retains present law that requires bidding documents to state clearly that the specification of the name of a certain brand, make, manufacturer, or definite specification is used only to denote the quality standard of product desired, to convey to prospective bidders the general style, type, character, and quality of product desired, does not restrict bidders to the specific brand, make, manufacturer, or specification named, and that equivalent products are acceptable. Requires a professionally employed architect or engineer to determine what is considered an equivalent product on any and all projects in which he has been legally employed to perform his professional services.

Proposed law retains present law that authorizes a public entity to enter into maintenance contracts for the repair and maintenance of water storage tanks owned, controlled, or operated by a public entity for a fixed annual fee provided such contracts extend for a duration of not less than two years, include a nonappropriation clause, and are not considered a debt of the public entity. Proposed law changes present law from water storage tanks to public facilities. Proposed law retains present law that provides that such maintenance contracts are not considered a public works contract.

Proposed law retains present law that prohibits division or separation of any public work project into smaller projects to avoid the requirement that public work be advertised and let by contract to the lowest responsible bidder. Proposed law changes phrase lowest responsible bidder to lowest responsible and responsive bidder.

Proposed law retains present law that makes it inapplicable to labor necessary for the maintenance of public works built and completed.

Proposed law retains present law that makes it inapplicable to volunteer citizen labor used for the construction of a project funded by the Louisiana Community Development Block Grant Louisiana Small Town Environment Program and provides that the value of donated volunteer service shall not be used as a component of any bid if such public work is bid to determine the lowest responsible bid. Proposed law changes phrase lowest responsible bidder to lowest responsible and responsive bidder.

Proposed law retains present law that requires a public entity to give written notice that includes all reasons and an opportunity for a hearing to any bidder who it proposes to disqualify on the grounds that such bidder is not a responsible bidder prior to such disqualification. Proposed law requires the informal hearing to be conducted prior to award of the public work. Proposed law further provides that such hearing is a condition precedent to any action by the bidder adverse to the public entity, its representatives, employees, and designers and shall be conducted before the highest ranking official of the public entity or his designee who has no previous involvement with the proposed disqualification. Proposed law prohibits award of the contract for the public work by the public entity prior to the expiration of at least five working days after the date of issuance of the decision by the hearing official and requires the hearing official to issue a ruling in writing and deliver same to the affected bidder in the manner agreed upon by such official and the bidder.

Proposed law retains present law that prohibits a public entity from entering into a contract for the purpose of public works with a contractor who then finances the project. Provides that under no circumstances shall the agreement of a contractor to finance a public works project be used in any way to avoid the requirement that public work be advertised and let by contract to the lowest responsible bidder as provided in this Section.

Proposed law deletes provisions of present law that authorized a public entity to include bid selection provisions in bid documents relative to participation in a mentor-protégé program.

Proposed law retains present law that provides that it shall not apply to purchases of materials and supplies by contractors awarded public works contracts by a public entity; or to subcontractors of such contractors, who have been appointed or designated agents for the purchase of materials and supplies to be incorporated into a public work pursuant to a contract properly bid in accordance with this Chapter when acting pursuant to said appointment or designation. Proposed law changes phrase lowest responsible bidder to lowest responsible and responsive bidder.

Present law (R.S. 38:2212.5) authorizes the division of administration to prequalify bidders for historic restoration projects funded by the state except for construction or repair of roads and bridges and contractors providing materials and supplies for such construction. Requires the division to promulgate rules and regulations. Defines historic restoration projects to mean repairs, renovations, or reconstruction of state-owned structures included or eligible for inclusion

on the National Register of Historic Places. Further provides for renovation of the Louisiana State University Student Union on the Baton Rouge campus. Requires that only prequalified bidders may submit bids on designated historic projects. Requires award of contracts for historic projects to the prequalified bidder submitting the lowest responsible bid. Requires contract for renovation of the LSU Student Union may be for overhead and profit or lump sum. Requires submission of such contract to the Joint Legislative Committee on the Budget for review and approval.

Proposed law requires award of a historic restoration project to the prequalified bidder who submits the lowest responsible and responsive bid.

Proposed law removes provisions in present law applicable to the LSU Student Union.

Present law (R.S. 38:2212.10) provides, generally, that a private employer shall not bid on or otherwise contract with a public entity for a contract for public work unless the private employer verifies in a sworn affidavit attesting to both of the following:

- (1) The private employer is registered and participates in a status verification system to verify that all employees are legal citizens of the U.S. or are legal aliens.
- (2) The private employer must continue, during the term of the contract, to utilize a status verification system to verify the legal status of all new employees.

Proposed law changes present law to require that private employers verify new employees.

Present law provides that its provisions shall no longer apply if the status verification system expires and extensions are no longer approved by the federal government.

Proposed law retains present law and requires the executive director of the Louisiana Workforce Commission to provide written notice to Louisiana State Law Institute if the status verification expires and is not extended.

Present law (R.S. 38:2215) provides for the time period to hold bids and to issue a work order to commence work on a public works project. Requires the state or any state agency upon receipt of bids to award a public works contract to the lowest responsible bidder or to reject all bids within 30 calendar days of receipt of bids. Requires a political subdivision to award a contract within 45 calendar days of receipt of bids. Requires the contractor and the public entity to execute the public works contract not later than 45 days from the public entity's acceptance of the lowest responsible bid if the low bidder has timely provided all necessary documents within 10 days of the opening of bids and no bid challenge has been submitted to the public entity. Requires issuance of a notice to proceed within 30 days of execution of the contract. Authorizes an extension of time to issue the notice to proceed upon mutual consent of both parties. Provides that these provisions do not apply to contracts financed by bonds that must be sold after opening of bids, to contracts financed in whole or in part by federal or other funds not readily available at the time of bid opening, or to contracts that require a poll of the legislature before funds are

available. Requires such time exceptions to be mentioned in the bidding documents and the advertisement for bids.

Proposed law changes present law to uniformly require any public entity, which includes the state, a state agency, and a political subdivision, to award a public works contract to the lowest responsible and responsive bidder or to reject all bids within 45 calendar days of the date of bid opening.

Present law (R.S. 38:2225) requires granting the same percentage preference the state of domicile of a nonresident contractor provides to a Louisiana resident contractor over such nonresident contractor bidding on a Louisiana public work. Prohibits local preference laws. Prohibits granting a preference to any local contractor or subcontractor over other Louisiana resident contractors. Prohibits waiver of provisions by any public entity.

Proposed law retains but relocates present law [R.S. 38:2212(A)(1)(c)(ii)] that requires the Department of Transportation and the office of facility planning and control to keep on file a list of all states with a bid preference.

Present law (R.S. 38:2241.1) requires a public entity to record acceptance of a written contract for public works in the office of the recorder of mortgages in the parish where the work has been done upon substantial completion. Authorizes a public entity that does not record such acceptance to require the contractor to record such acceptance upon written recommendation of the public entity's architect or engineer. Authorizes the architect or engineer to make such recommendation within 30 days of completion of the project. Defines "substantial completion" to mean the finishing of construction, in accordance with the contract documents as modified by any change orders agreed to by the parties, when the public entity can use or occupy the public works or use or occupy the specified area of the public works for the use for which it was intended. Provides that such recordation of acceptance upon substantial completion shall be effective as an acceptance for all purposes under law.

Proposed law requires the public entity to record project acceptance not later than 30 days after completion or substantial completion of the project. Requires the contractor to file acceptance within 45 calendar days after completion or substantial completion of the project for those public entities that do not record an acceptance only upon written recommendation of the architect or engineer of the public entity made not later than 30 calendar days after the date of completion or substantial completion of the project.

Effective August 1, 2014.

(Amends R.S. 38:2211(A)(1), (2), (3), (4), (5), (6), (7), (8), and (9), 2212, 2212.5, 2212.10(C)(1) and (G), 2215, 2225, and 2241.1)