

Regular Session, 2014

SENATE BILL NO. 468

BY SENATOR ADLEY

PUBLIC WORKS. Provides relative to contracts for public works. (8/1/14)

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AN ACT

To amend and reenact 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, relative to contracts for public works; to provide for definitions; to provide for advertisement and letting of bids; to provide for prequalification of bidders; to provide for verification of employees involved in contracts for public works; to provide relative to the time period to hold bids and to commence work; to provide relative to preferences; to provide for acceptance of work; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. 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 are hereby amended and reenacted to read as follows:

§2211. Definitions

A. As used in this Chapter unless the context clearly indicates otherwise, the following terms shall mean:

(1) **"Alternate" means an item on the bid form that may either increase or decrease the quantity of work or change the type of work within the scope of**

1 **the project, material, or equipment specified in the bidding documents, or both.**

2 (2) "Bidding documents" means the bid notice, plans and specifications,
3 ~~bidding~~ **bid** form, bidding instructions, addenda, special provisions, and all other
4 written instruments prepared by or on behalf of a public entity for use by prospective
5 bidders on a public contract.

6 (2) ~~(3)~~ **(a)** "Change order" means **any contract modification that includes**
7 an alteration, deviation, addition, or omission as to a preexisting public work
8 contract, **which authorizes an adjustment in the contract price, contract time, or**
9 **an addition, deletion, or revision of work.**

10 (3) ~~(b)~~ "Change order outside the scope of the contract" means a change order
11 which alters the nature of the thing to be constructed or which is not an integral part
12 of the project objective.

13 (4) ~~(c)~~ "Change order within the scope of the contract" means a change order
14 which does not alter the nature of the thing to be constructed and which is an integral
15 part of the project objective.

16 (5) ~~(4)~~ "Contractor" means any person or other legal entity who enters into a
17 public contract.

18 (6) ~~(5)~~ (a) "Emergency" means an unforeseen mischance bringing with it
19 destruction or injury of life or property or the imminent threat of such destruction or
20 injury or as the result of an order from any judicial body to take any immediate
21 action which requires construction or repairs absent compliance with the formalities
22 of this Part, where the mischance or court order will not admit of the delay incident
23 to advertising as provided in this Part. In regard to a municipally owned public
24 utility, an emergency shall be deemed to exist and the public entity may negotiate as
25 provided by ~~R.S. 38:2212(D)~~ **R.S. 38:2212(P)** for the purchase of fuel for the
26 generation of its electric power where the public entity has first advertised for bids
27 as provided by this Part but has failed to receive more than one bid.

28 (b) An "extreme public emergency" means a catastrophic event which causes
29 the loss of ability to obtain a quorum of the members necessary to certify the

1 emergency prior to making the expenditure to acquire materials or supplies or to
2 make repairs necessary for the protection of life, property, or continued function of
3 the public entity.

4 ~~(7)~~(6) "Licensed design professional" means the architect, landscape
5 architect, or engineer who shall have the primary responsibility for the total design
6 services performed in connection with a public works project. Such professional
7 shall be licensed as appropriate and shall be registered under the laws of the state of
8 Louisiana.

9 ~~(8)~~(7)(a) "Louisiana resident contractor", for the purposes of this **Section**
10 **Part**, includes any person, partnership, association, corporation, or other legal entity
11 and is defined as one that either:

12 (i) Is an individual who has been a resident of Louisiana for two years or
13 more immediately prior to bidding on work,

14 (ii) Is any partnership, association, corporation, or other legal entity whose
15 majority interest is owned by and controlled by residents of Louisiana, or

16 (iii) For two years prior to bidding has maintained a valid Louisiana
17 contractor's license and has operated a permanent facility in the state of Louisiana
18 and has not had a change in ownership or control throughout those two years.

19 (b) For the purposes of Item ~~(7)~~(7)(a)(ii) **of this Section**, ownership percentages
20 shall be determined on the basis of:

21 (i) In the case of corporations, all common and preferred stock, whether
22 voting or nonvoting, and all bonds, debentures, warrants, or other instruments
23 convertible into common and/or preferred stock.

24 (ii) In the case of partnerships, capital accounts together with any and all
25 other capital advances, loans, bonds, debentures, whether or not convertible into
26 capital accounts.

27 ~~(9)~~(8) "Negotiate" means the process of making purchases and entering into
28 contracts without formal advertising and public bidding with the intention of
29 obtaining the best price and terms possible under the circumstances.

1 Contractors License Number, and on public works projects where unit prices are
 2 utilized, a section on the bid form where the unit price utilized in the bid shall be set
 3 forth **including a description for each unit**; however, unit prices shall not be
 4 utilized for the construction of building projects, unless the unit ~~price is~~ **prices and**
 5 **their extensions are** incorporated into the base bid **or alternates**.

6 ~~(3)(a) (bb)~~ Other documentation and information required including but not
 7 limited to the low bidder's attestation pursuant to R.S. 38:2212.10 and 2227 shall be
 8 furnished by the low bidder within ten days after the bid opening **The bidding**
 9 **documents shall not require any bidder, other than the apparent low bidder, to**
 10 **furnish any other information or documentation, including the Attestation**
 11 **Affidavit and the E-Verification Form, any sooner than ten days after the date**
 12 **bids are opened; however, the apparent low bidder may submit such**
 13 **information or documentation at any time prior to the expiration of the ten-day**
 14 **period. If the apparent low bidder does not submit the proper information or**
 15 **documentation as required by the bidding documents within the ten-day period,**
 16 **such bidder shall be declared non-responsive, and the public entity may award**
 17 **the bid to the next lowest bidder, and afford the next lowest bidder not less than**
 18 **ten days from the date the apparent low bidder is declared non-responsive, to**
 19 **submit the proper information and documentation as required by the bidding**
 20 **documents, and may continue such process until the public entity either**
 21 **determines the low bidder or rejects all bids**. The ten-day period shall not be
 22 altered or waived by any public entity except the governing authority of any publicly
 23 owned commercial aviation airport, the Sewerage and Water Board of New Orleans,
 24 **the Regional Transit Authority**, and all agencies of the City of New Orleans,
 25 including but not limited to the ~~Regional Transit Authority and the New Orleans~~
 26 Aviation Board, who shall require that the other documentation and information
 27 referred to in this ~~Subitem~~ **Subparagraph** be furnished by the two lowest bidders
 28 **no later than** three days after the bid opening.

29 ~~(cc) (b)~~ Notwithstanding any other provision of law to the contrary **the**

1 **provisions of this Paragraph**, all bidders, **bidding on public works for East Baton**
 2 **Rouge Parish**, shall submit all bid forms required by statute or by the Louisiana
 3 Administrative Code to the governing authority of East Baton Rouge Parish prior to
 4 the opening of all bids relative to a contract for public works.

5 ~~(iii) The provisions of this Subparagraph shall not apply to bid forms of the~~
 6 ~~Department of Transportation and Development pursuant to Title 48 of the Louisiana~~
 7 ~~Revised Statutes of 1950.~~

8 **(4) Notwithstanding any other provision of law to the contrary and in**
 9 **addition to any other requirements provided by this Subsection, the**
 10 **Acknowledgment of Addenda to the bid form provided for in this Section for**
 11 **the public bid of public works conducted by the New Orleans Sewerage and**
 12 **Water Board shall also include attachment of the addenda if pricing**
 13 **information is contained therein and the addenda specifies attachment.**

14 ~~(c)(i) (5) Evidence **Written evidence** of agency, corporate, or partnership **the**~~
 15 ~~authority **of the person signing the bid for public works** shall be required for~~
 16 ~~submission of a bid to the division of administration or the state of Louisiana~~
 17 **submitted at the time of bidding.** The authority of the signature of the person
 18 submitting the bid shall be deemed sufficient and acceptable if any of the following
 19 conditions are met:

20 ~~(aa) (a)~~ The signature on the bid is that of any corporate officer listed on the
 21 most current annual report on file with the secretary of state, or the signature on the
 22 bid is that of any member of a partnership ~~or partnership in commendam,~~ **limited**
 23 **liability company, limited liability partnership, or other legal entity** listed in the
 24 most current partnership records on file with the secretary of state .

25 ~~(bb) (b)~~ The signature on the bid is that of an authorized representative ~~of the~~
 26 ~~corporation, partnership, or other legal entity and the bid is accompanied by a~~
 27 ~~corporate resolution, certification as to the corporate principal, or other documents~~
 28 ~~indicating authority which are acceptable to the public entity **as documented by the**~~
 29 **legal entity certifying the authority of the person.**

1 (cc) ~~(c)~~ The corporation, partnership, or other legal entity has filed in the
2 appropriate records of the secretary of state of this state ~~in which the public entity~~
3 ~~is located~~, an affidavit, resolution, or other acknowledged or authentic document
4 indicating the names of all parties authorized to submit bids for public contracts.
5 Such document on file with the secretary of state shall remain in effect and shall be
6 binding upon the principal until specifically rescinded and canceled from the records
7 of the office.

8 (ii) ~~(6)(a)~~ ~~Except as provided in Subparagraph (f) of this Paragraph, each~~
9 **Each** bid shall be either hand delivered by the bidder or his agent in which instance
10 the deliverer shall be handed a written receipt, or such bid shall be sent by registered
11 or certified mail with a return receipt requested, **or shall be submitted**
12 **electronically as provided in Subsection E of this Section.** ~~However, the~~
13 ~~requirement that all bids be sent by registered or certified mail shall not apply to bids~~
14 ~~received by municipal and parochial governing authorities.~~ No public entity shall
15 accept or take any bids, including receiving any hand delivered bids, on days which
16 are recognized as holidays by the United States Postal Service. ~~The Department of~~
17 ~~Transportation and Development and facility planning and control section under the~~
18 ~~division of administration shall keep on file a list of all states which have passed a~~
19 ~~bid preference law.~~

20 **(b) Only for the purpose of interpretation of the base bid total, and**
21 **alternate bids, when applicable, written words shall govern if a conflict exists**
22 **between words and numerals.**

23 **(c) If the public works require unit price bids and there is a discrepancy**
24 **between the base bid total and the sum of the extended unit prices, the base bid**
25 **total shall govern.**

26 **(7) The provisions of this Subsection shall not apply to the Department**
27 **of Transportation and Development.**

28 (d) ~~C.~~ **Except as provided in Subparagraphs (1) and (2) of this**
29 **Section, the** term "contract limit" as used herein shall be equal to the sum of one

1 hundred fifty thousand dollars per project, including labor, materials, and equipment
 2 as per the rates in the latest edition of the Associated Equipment Dealers Rental Rate
 3 Book and administrative overhead not to exceed fifteen percent; ~~however,~~ **provided**
 4 **that beginning February 1, 2015, and annually on February first of each**
 5 **subsequent year, the office of facility planning and control within the division**
 6 **of administration shall adjust the "contract limit" by an amount not to exceed**
 7 **the annual percentage increase in the Consumer Price Index in the preceding**
 8 **year. The office of facility planning and control within the division of**
 9 **administration shall publish the new contract limit for public works contracts**
 10 **in the Louisiana Register in January of each year.**

11 (i) ~~(1)~~ When the Department of Public Safety and Corrections intends to use
 12 inmates as labor in connection with projects which occur on the grounds or to the
 13 buildings, structures, or facilities located on the grounds of prisons or correctional
 14 institutions, the term contract limit shall be ~~fifty~~ **seventy-five** thousand dollars per
 15 project; ~~for the calendar year 1982 and for each succeeding calendar year, shall be~~
 16 ~~increased by a factor equal to three percent per year for each of the next ten calendar~~
 17 ~~years.~~

18 (ii) ~~Repealed by Acts 2011, 1st Ex. Sess., No. 5, §2, eff. June 12, 2011.~~

19 (iii) ~~Beginning September 1, 2005, when the Bossier Parish Police Jury~~
 20 ~~intends to undertake a public works project with its own employees, the term~~
 21 ~~"contract limit" shall be equal to the sum of one hundred thirty thousand dollars.~~
 22 ~~Additionally, the police jury may adjust the contract limit provided for in this Item~~
 23 ~~each year by an amount not to exceed the annual percentage increase in the~~
 24 ~~Consumer Price Index in the preceding year. If the contract limit is increased, the~~
 25 ~~Bossier Parish Police Jury shall publish the new contract limit for public works~~
 26 ~~contracts in its official journal in February of each year.~~

27 (iv) ~~Repealed by Acts 2007, No. 336, §2, eff. July 31, 2008.~~

28 (v) ~~(aa)~~ **(2)(a)** The annual limit by a public entity for any work to restore or
 29 rehabilitate a levee that is not maintained with federal funds, including mitigation on

1 public lands owned by the state or a political subdivision, shall not exceed the sum
 2 of one million dollars, including labor, materials, and equipment, which is not
 3 publicly bid, as per the rates in the latest edition of the Associated Equipment
 4 Distributors Rental Rate Book, and administrative overhead not to exceed fifteen
 5 percent; provided that the work is undertaken by the public entity with its own
 6 resources and employees, or with the resources and employees of another public
 7 entity through a cooperative endeavor or other agreement with such entity.

8 ~~(b)~~ **(b)** The provisions of this ~~Item~~ **Paragraph** shall remain effective until
 9 December 31, 2018.

10 ~~(c)~~ **(i) D.** Each public entity advertising and letting for bid a public works
 11 contract under the provisions of this Section shall furnish all prime bidders who
 12 request ~~bid~~ **bidding** documents and who are properly licensed by the Louisiana State
 13 Licensing Board for Contractors with at least one set of complete ~~bid~~ **bidding**
 14 documents. The public entity may require a deposit on the ~~bid~~ **bidding** documents;
 15 however, the total cost of the deposit, including handling fees and other costs shall
 16 not exceed twice the actual cost of reproduction. Deposits on the first set of
 17 documents furnished ~~bona fide~~ prime bidders ~~will~~ **shall** be fully refunded, upon
 18 return of the documents no later than ten days after receipt of bids. On other sets of
 19 documents furnished to bidders, the deposit less actual cost of reproduction, ~~will~~
 20 **shall** be refunded upon return of the documents no later than ten days after receipt
 21 of bids. Where the public entity, itself, prepares and distributes the ~~contract~~ **bidding**
 22 documents, the public entity may, in lieu of a deposit, charge a fee for the
 23 documents, which **fee** shall not exceed the actual cost of reproduction. **Prime**
 24 **bidders shall obtain an original set of electronic or paper bidding documents**
 25 **either from the public entity or the design professional who prepared such**
 26 **documents. When the public entity utilizes an electronic bid submittal system,**
 27 **bidding documents shall be distributed in the manner chosen by the public**
 28 **entity. At its sole discretion, the public entity may authorize its design**
 29 **professional of record to choose an electronic bid submittal system. The public**

1 entity or its design professional of record shall maintain a list of all prime
 2 bidders for the purpose of addenda distribution.

3 ~~(ii) Where the Sewerage and Water Board of New Orleans, itself, prepares~~
 4 ~~and distributes electronic contract documents, the Sewerage and Water Board of~~
 5 ~~New Orleans may, in lieu of a deposit, charge a fee for each paper document, which~~
 6 ~~shall not exceed the actual cost of reproduction.~~

7 ~~(f)(i) E. (1) Contractors shall be provided the option to submit bids for public~~
 8 ~~contracts through Public entities shall provide, as an additional bidding option,~~
 9 ~~a uniform and secure electronic interactive system for the submittal of bids for~~
 10 ~~public works requiring competitive bidding. Political subdivisions Any public~~
 11 ~~entity providing such system shall follow the standards for the receipt of electronic~~
 12 ~~bids adopted by the office of the governor, division of administration, and the office~~
 13 ~~of information technology as provided for in LAC 4:XV.701 , and shall make the~~
 14 ~~appropriate provisions necessary for the acceptance of electronic bids for all~~
 15 ~~purchases requiring competitive bidding as required by this Section. Any special~~
 16 ~~condition or requirement for the submission shall be specified in the advertisement~~
 17 ~~for bids required by this Section.~~

18 ~~(ii) (2) Public entities that are currently without available high speed Internet~~
 19 ~~access ~~will~~ shall be exempt from this requirement until such time that high speed~~
 20 ~~Internet access becomes available.~~

21 ~~(iii) (3) Any parish with a police jury form of government and a population~~
 22 ~~of less than twenty thousand shall be exempt from the provisions of this~~
 23 ~~Subparagraph Subsection.~~

24 ~~(iv) (4) Any city or municipality with a population of less than ten thousand~~
 25 ~~shall be exempt from the provisions of this Subparagraph Subsection.~~

26 ~~(v) (5) Any special service district created by a police jury form of~~
 27 ~~government and other public entity which is unable to comply with R.S.~~
 28 ~~38:2212(A)(1)(f)(i) the electronic bidding provisions of this Subsection without~~
 29 ~~securing and expending additional funding shall be exempt from its requirements.~~

1 ~~The special service district shall be exempted from any expenditures for high speed~~
 2 ~~Internet access, software, personnel costs, training, or other office equipment directly~~
 3 ~~relating to the receipt of bids via high speed Internet access.~~

4 ~~(vi)~~ **(6)** Public entities shall have the option to require that all bids be
 5 submitted electronically for any competitive bid let out for public bid.

6 ~~(vii)~~ **(7)** Public entities ~~must~~ **shall** include all bid **bidding** documents as
 7 defined in R.S. 38:2211(A)(1) ~~38:2211(A)(2)~~, on the electronic website accepting
 8 the electronic bids.

9 ~~(g) Repealed by Acts 1999, No. 768, §2.~~

10 ~~(2)~~ **F.** The bid specification may contemplate a fixed escalation or de-
 11 escalation in accordance with the United States Bureau of Labor Statistic's Consumer
 12 Price Index ~~and/or Wholesale~~ **or the Producer** Price Index. Bids based on
 13 specifications which are subject to a recognized escalation index shall be legal and
 14 valid **for any item of a public work, at the discretion of the public entity.**

15 ~~(3)(a)~~ **G. (1)** The advertisement required by this Section for any contract for
 16 public works shall be published once a week for three different weeks in a newspaper
 17 in the locality, and the first advertisement shall appear at least twenty-five days
 18 before the opening of bids. In addition to the newspaper advertisement, a public
 19 entity may also publish an advertisement by electronic media available to the general
 20 public.

21 ~~(b)~~ **(2)** The first publication of the advertisement shall not occur on a
 22 Saturday, Sunday, or legal holiday. ~~Plans and specifications~~ **All bidding documents**
 23 shall be available to bidders on the day of the first advertisement and shall be
 24 available until twenty-four hours before the bid opening date.

25 ~~(c)(i) If at the end of the contract document phase, it is determined that the~~
 26 ~~designer's estimate is more than the funds budgeted by the public entity for the~~
 27 ~~project, the project shall not be advertised for bid. The designer's estimate shall be~~
 28 ~~read aloud upon opening bids.~~

29 ~~(ii) The bid form shall contain Bid Security or Bid Bond, Acknowledgment~~

1 ~~of Addenda, Base Bid, Alternates, Signature of Bidder, Name, Title, and Address of~~
2 ~~Bidder, Name of Firm or Joint Venture Corporate Resolution, and Louisiana~~
3 ~~Contractors License Number, and on public works projects where unit prices are~~
4 ~~utilized, their inclusion in the bid form; however, unit prices shall not be utilized for~~
5 ~~the construction of building projects, unless the unit price is incorporated into the~~
6 ~~base bid. Other documentation required shall be furnished by the low bidder within~~
7 ~~ten days after the bid opening. The governing authority of any publicly owned~~
8 ~~commercial aviation airport, the Sewerage and Water Board of New Orleans, and all~~
9 ~~agencies of the City of New Orleans, including but not limited to the Regional~~
10 ~~Transit Authority and the New Orleans Aviation Board shall require that the other~~
11 ~~documentation referred to above shall be furnished by the two lowest bidders three~~
12 ~~days after the bid opening. The division of administration, office of facility planning~~
13 ~~and control, shall develop and prescribe the necessary bid form for public works~~
14 ~~projects for public bid purposes and implement the provisions of this Section of the~~
15 ~~bid form in accordance with the Administrative Procedure Act.~~

16 (iii) ~~The provisions of this Subparagraph shall not apply to bid forms of the~~
17 ~~Department of Transportation and Development pursuant to Title 48 of the Louisiana~~
18 ~~Revised Statutes of 1950.~~

19 **H. Every public entity intending to advertise a public work for bids shall**
20 **obtain an estimate of the probable construction costs of such public work from**
21 **the public entity or the project designer prior to advertising such public work**
22 **for bids. No public entity shall advertise a public work for bids unless funds**
23 **that meet or exceed the estimate of the probable construction costs have been**
24 **budgeted by the public entity for the project. The estimate of probable**
25 **construction costs for the project shall be made available at the time of bid**
26 **opening, either by posting such estimate electronically or announcing aloud**
27 **such estimate at the bid opening. All other bid information shall be available**
28 **upon request seventy-two hours following the opening of bids by the public**
29 **entity, and the requester shall pay reasonable reproduction costs. The**

1 provisions of this Subsection shall not apply to the Department of
2 Transportation and Development.

3 ~~(d)(i)~~ **I.** When a design professional or public entity mandates attendance by
4 prospective bidders at pre-bid conferences as a prerequisite to bid on a public
5 works project, the date, place, and time of the pre-bid conference shall be stated in
6 ~~the first~~ each advertisement notice.

7 (ii) All prospective bidders ~~in the orphan well plug and abandonment~~
8 ~~program within the Louisiana Department of Natural Resources~~ shall be present at
9 the beginning of the pre-bid conference and shall remain in attendance for the
10 duration of the conference. Any prospective bidder who fails to attend the conference
11 or remain for the duration shall be prohibited from submitting a bid for the project.

12 ~~(e)~~ **J.** ~~Any proposal~~ Bidding documents shall include no more than three
13 alternates. An alternate bid by any name is still an alternate. Alternates, if accepted,
14 shall be accepted in the order in which they are listed on the bid form. Determination
15 of the low bidder shall be on the basis of the sum of the base bid and any alternates
16 accepted. However, the public entity shall reserve the right to accept alternates in any
17 order which does not affect determination of the low bidder.

18 ~~(f)~~ **K.** Use of allowances in ~~proposals~~ bidding documents shall be restricted
19 to minor items and shall be limited to hardware, face brick, landscaping, electric
20 light fixtures, miscellaneous steel, tile, wallpaper and other exterior finishes,
21 fixtures and furnishings, and carpeting. Allowances may not be utilized by the
22 design professional or public entity to control the selection of a subcontractor or
23 supplier.

24 ~~(g)(i)~~ **L.(1)** No construction manager or any other third-party consultant
25 employed by a public entity may manage a construction project as a general
26 contractor or act in the role of the general contractor to oversee, direct, or coordinate
27 individual trade contractors on behalf of the public entity, or accept bids or itself bid
28 on the public work or components of the public work with respect to which the
29 manager or consultant is employed or contracted to manage or consult.

1 (ii) ~~(2)~~ The provisions of ~~Item (i)~~ **Paragraph (1)** of this ~~Subparagraph~~
2 **Subsection** shall not apply to the initial construction of a hospital, medical facility,
3 or a combination of both, constructed by the Orleans Hospital Service District, but
4 shall apply to the construction of any additions or modifications of a hospital,
5 medical facility, or a combination of both, constructed by the Orleans Hospital
6 Service District following the completion of the initial construction. The provisions
7 of this ~~Item~~ **Paragraph** shall not relieve the Orleans Hospital Service District from
8 complying with all other applicable provisions of this Title.

9 ~~(iii) All construction contracts on public works shall be opened in a public~~
10 ~~meeting. All subcontractors bidding on the project shall be invited to the meeting and~~
11 ~~the general contractor shall list in the bid documents who the subcontractors will be~~
12 ~~on the project.~~

13 ~~(4)~~ **M. (1)** All public work contracts shall contain provisions authorizing the
14 issuance of change orders within the scope of the contract.

15 ~~(5)~~ **(2)** All change orders shall be in writing **or in electronic format if the**
16 **public entity has the capability to receive change orders electronically. All**
17 **change orders shall be signed by the contractor and the public entity or its**
18 **design representative.**

19 **(3) The public entity shall pay the contractor for work performed by**
20 **change order not later than sixty days after the date the public entity receives**
21 **an approved application for payment for completion of the work performed in**
22 **the change order.**

23 ~~(6)~~ **(4)** Any change order outside the scope of the contract in excess of the
24 contract limit as defined herein shall be let out for public bid as provided by this Part.

25 ~~(7)~~ **(5)** Any change order pertaining to public work, not required by this Part
26 to be ~~put~~ **let** out for public bid, shall either be negotiated in the best interest of the
27 public entity or let out for public bid as provided by this Part. Where the change
28 order is negotiated, the public entity shall require that ~~said~~ **such** change order be
29 fully documented and itemized as to costs, including material quantities, material

1 costs, taxes, insurance, employee benefits, other related costs, profit, and overhead.

2 Where certain unit prices are contained in the initial contract, no deviations shall be
3 allowed in computing negotiated change order costs.

4 ~~(8)(a) Notwithstanding any other law to the contrary and in addition to any~~
5 ~~other requirements provided for in this Subsection, the Acknowledgment of Addenda~~
6 ~~of the bid form provided for in R.S. 38:2212(A)(1)(b)(ii) for the public bid of public~~
7 ~~works projects conducted by the New Orleans Sewerage and Water Board shall also~~
8 ~~include attachment of the addenda if pricing information is contained therein and the~~
9 ~~addenda specifies attachment.~~

10 ~~(b) Notwithstanding any other law to the contrary and in addition to any other~~
11 ~~requirements provided for in this Subsection, the Acknowledgment of Addenda of~~
12 ~~the bid form for public works projects conducted by the New Orleans Sewerage and~~
13 ~~Water Board shall also include attachment of the addenda if pricing information is~~
14 ~~contained therein and the addenda specifies attachment.~~

15 ~~B. N.~~ Those contracts let by any public entity for public works estimated to
16 cost in excess of the contract limit shall be advertised and let by contract to the
17 lowest responsible **and responsive** bidder. Public works which are estimated to cost
18 less than the contract limit, may be undertaken by the public entity with its own
19 employees.

20 ~~E. O.~~ (1) Except as provided by Paragraph (2) of this Subsection, the public
21 entity may, through the issuance of an addendum, extend the bid period for up to
22 thirty days, without the requirement of readvertising as provided by Subsection A of
23 this Section.

24 (2)(a) If a public entity issues or causes to be issued on a public work
25 exceeding the contract limit any addendum modifying ~~plans and specifications~~ **the**
26 **bidding documents** within a period of seven days prior to the advertised time, or the
27 time extended as provided for in this Section, for the opening of bids, excluding
28 Saturdays, Sundays, and any other legal holidays, then the public entity shall
29 transmit a copy of the addendum to all prime bidders who have requested bid

1 **bidding** documents pursuant to ~~Subparagraph (A)(1)(e)~~ **Subsection D of this**
 2 **Section**. This shall be completed within twenty-four hours of the issuance of the
 3 addendum and may be delivered by either facsimile transmission, e-mail, other
 4 electronic means, ~~or~~ by hand, **or by special delivery mail** provided the prime bidder
 5 has supplied the facsimile transmission number or e-mail address to the public entity.
 6 ~~In addition to the transmission required in this Paragraph, a copy of the addendum~~
 7 ~~shall be sent by regular mail to all prime bidders who have requested bid documents~~
 8 ~~pursuant to Subparagraph (A)(1)(e) of this Section.~~ If the addendum cannot be
 9 transmitted by facsimile transmission, e-mail, ~~or~~ other electronic means, **special**
 10 **delivery mail**, or otherwise effected by hand delivery, the public entity shall
 11 postpone the bid opening by at least seven days.

12 (b) No public entity shall issue or cause to be issued any addenda modifying
 13 ~~plans and specifications~~ **the bidding documents** within a period of seventy-two
 14 hours prior to the advertised time for the opening of bids, excluding Saturdays,
 15 Sundays, and any other legal holidays; however, if the necessity arises to issue an
 16 addendum modifying ~~plans and specifications~~ **the bidding documents** within the
 17 seventy-two-hour period prior to the advertised time for the opening of bids, then the
 18 opening of bids shall be extended for at least seven but not more than twenty-one
 19 working days, without the requirement of readvertising as provided by Subsection
 20 A of this Section. The addendum shall state the revised time and date for the opening
 21 of bids.

22 ~~D. P.~~ (1)(a) This Section shall not apply in cases of public emergency where
 23 such emergency has been certified to by the public entity and notice of such public
 24 emergency shall, within ten days thereof, be published in the official journal of the
 25 public entity proposing or declaring such public emergency.

26 (b)(i) This Section shall not apply in the event that an extreme public
 27 emergency occurs.

28 (ii) The president of the police jury, the president of the parish council, the
 29 mayor of the municipality, or a person designated to act on behalf of the governing

1 authority of any other political subdivision, shall declare that an extreme emergency
2 exists and shall cause such declaration to be published in the official journal within
3 ten days or as soon as practicable thereafter.

4 (c) This Section shall not apply with respect to repairs administered by the
5 office of facility planning and control for addressing damage caused by Hurricanes
6 Katrina and Rita. However, the office of facility planning and control shall not be
7 allowed to negotiate such projects, but shall be required to publicly advertise such
8 projects in the official journal of the locality of the project and in the state's official
9 journal. Public bids may be taken in a minimum of ten days after advertisement of
10 such projects. However, if there are no bidders for such projects, the office of facility
11 planning and control may enter into competitive bidding negotiations with no fewer
12 than two contractors.

13 (2) Limitations. (a) Every contract negotiated by a public entity under the
14 authority of this Subsection shall be supported by a written determination and
15 findings by the public entity justifying use of the authority.

16 (b) When contract action under this authority is taken pursuant to telephone
17 or other oral offers, a written confirmation of the accepted offer shall be obtained and
18 made a part of the contract case file. In addition, whenever contract action is taken
19 as authorized by this Subsection, a record shall be established by the public entity
20 which shall contain, as a minimum, the following information with respect to each
21 offer: a description of the work to be performed, the name and address of each
22 offeror quoting, and the performance time and terms of each offer. If quotations
23 lower than the accepted quotation are received, the reasons for their rejection shall
24 be recorded and made a part of the contract case file. Such records shall be retained
25 for a minimum of six years following the purchase or completion of the public work.

26 ~~(3) Notwithstanding any other law to the contrary, for the project to enclose~~
27 ~~approximately five hundred feet of Corporation Canal that runs adjacent to the~~
28 ~~University Laboratory School on the Baton Rouge campus, which has been funded~~
29 ~~as an emergency through appropriation of funds by the Interim Emergency Board to~~

1 Louisiana State University, East Baton Rouge Parish shall be authorized to assist in
2 the project through use of its own employees to undertake such project.

3 E. **Q.** ~~(1)~~ A publicly owned utility, **as recognized by the Louisiana Public**
4 **Service Commission**, may undertake a public works project, other than construction
5 of a building, for the contract limit or less by either of the following methods:

6 (a) **(1)** Entry into contracts with or without public bid.

7 (b) **(2)** Use of the employees of the public entity owning the utility.

8 ~~R.~~**(2)** Such ~~public~~ **Public** entities are herein prohibited from owning or
9 operating manufacturing **facilities or** plants ~~whereby such public entities that~~
10 **produce or** manufacture construction materials. ~~Any such facilities owned or~~
11 ~~operated prior to September 11, 1981, are excluded from these provisions.~~

12 **S.** ~~(3)~~ The provisions of this Section shall not prevent public entities from
13 using their regular maintenance employees for labor necessary in the maintenance,
14 construction, or extension of publicly owned and operated electric public utilities.
15 With respect to the construction or extension of all other public utilities, the
16 provisions of this Section shall not prevent public entities from using their regular
17 maintenance employees when the cost of the work per project does not exceed one
18 hundred **fifty** thousand dollars, including labor and materials. All purchases of
19 materials or supplies exceeding the ~~sum~~ **contract limit** provided for in ~~Subsection~~
20 ~~A~~ of this Section shall be let by public bid as provided in this Part.

21 F. **T.** (1) Whenever a public entity desires to purchase technical equipment,
22 apparatus, machinery, materials, or supplies of a certain type and such purchases are
23 clearly in the public interest, the public entity may specify a particular brand, make,
24 or manufacturer in the ~~specifications~~ **bidding documents** let out for public bid as
25 provided by this Part. If a particular brand, make, or manufacturer is specified, the
26 model or catalog number also shall be specified.

27 (2) Wherever ~~in specifications~~ **a public entity specifies** the name of a certain
28 brand, make, manufacturer, or **uses a** definite specification ~~is utilized~~, the
29 ~~specifications~~ **bidding documents** shall state clearly that they are used only to

1 denote the quality standard of product desired and that they do not restrict bidders
 2 to the specific brand, make, manufacturer, or specification named; that they are used
 3 only to set forth and convey to prospective bidders the general style, type, character,
 4 and quality of product desired; and that equivalent products ~~will~~ **shall** be acceptable.
 5 It shall be the responsibility of the professionally employed architect or engineer to
 6 determine what is considered an equivalent product on any and all projects in which
 7 he has been legally employed to perform his professional services.

8 ~~U. G. Notwithstanding the provisions of Subsection M of this Section relative~~
 9 ~~to the financing of public works contracts by a contractor, public~~ **Public** entities ~~are~~
 10 ~~hereby authorized to~~ **may** enter into ~~professional~~ maintenance contracts for the repair
 11 and maintenance of ~~water storage tanks~~ **public facilities** owned, controlled, or
 12 operated by a public entity for a fixed annual fee. Such contracts shall extend for a
 13 duration of not less than two years. Any such contract entered into by a public entity
 14 shall include a nonappropriation clause and shall not be considered a debt of the
 15 public entity. Such a ~~professional~~ maintenance contract shall not be considered a
 16 public works contract.

17 ~~H. V.~~ Under no circumstances shall there be a division or separation of any
 18 public work project into smaller projects which division or separation would have
 19 the effect of avoiding the requirement that public work be advertised and let by
 20 contract to the lowest responsible **and responsive** bidder as provided in this Section.

21 ~~F. W.~~ (1) This Section shall not apply to labor necessary for the maintenance
 22 of public works built and completed.

23 (2) Volunteer citizen labor used for the construction of a project which is
 24 funded by the Louisiana Community Development Block Grant Louisiana Small
 25 Town Environment Program shall not be subject to the requirements of this Section.
 26 However, the value of the donated volunteer service shall not be used as a
 27 component of any bid if the public work has to be bid or to determine which is the
 28 lowest responsible **and responsive** bid.

29 ~~J. X.(1)~~ If the public entity letting the contract proposes to disqualify any

1 bidder, **either as a potential bidder or as the low bidder**, on grounds that such
2 bidder is not a "responsible bidder" such public entity shall:

3 ~~(1)~~ **(a)** Give written notice of the proposed ~~disqualification~~ **action** to such
4 bidder and include in the written notice all reasons for the proposed ~~disqualification~~
5 **action**; and

6 ~~(2)~~ **(b)** Give such bidder, who is proposed to be disqualified the opportunity
7 to be heard at an informal hearing at which such bidder is afforded the opportunity
8 to refute the reasons for the ~~disqualification~~ **proposed action**.

9 **(2) The informal hearing shall be conducted prior to award of the public**
10 **work.**

11 **(3) The informal hearing shall be a condition precedent to any action by**
12 **the bidder adverse to the public entity, its representatives, employees, and**
13 **designers.**

14 **(4) The informal hearing shall be conducted by the public entity not later**
15 **than five business days after the date of the notice of disqualification of such**
16 **bidder. The public entity shall issue a ruling in writing and deliver same to the**
17 **affected bidder not later than five business days after the date of the informal**
18 **hearing.**

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

22 **(6) The provisions of this Subsection shall not apply to such actions of the**
23 **Department of Transportation and Development.**

24 K. ~~Repealed by Acts 1999, No. 768, §2.~~

25 L. ~~Repealed by Acts 1999, No. 768, §2.~~

26 **M Y.** No public entity shall enter into a contract for the purpose of public
27 works with a contractor who then finances the project. Under no circumstances shall
28 the agreement of a contractor to finance a public works project be used in any way
29 to avoid the requirement that public work be advertised and let by contract to the

1 lowest responsible **and responsive** bidder as provided in this Section.

2 ~~N. Repealed by Acts 1999, No. 768, §2.~~

3 ~~Ø. Whenever evidence of agency, corporate, or partnership authority is~~
4 ~~required for submission of a bid to a public entity, such fact shall be contained in the~~
5 ~~bid documents and such proof shall be provided in accordance with the provisions~~
6 ~~of this Section. The authority of the signature of the person submitting the bid shall~~
7 ~~be deemed sufficient and acceptable if any of the following conditions are met:~~

8 ~~(1) The signature on the bid is that of any corporate officer listed on the most~~
9 ~~current annual report on file with the secretary of state, or the signature on the bid~~
10 ~~is that of any member of a partnership or partnership in commendam listed in the~~
11 ~~most current partnership records on file with the secretary of state.~~

12 ~~(2) The signature on the bid is that of an authorized representative of the~~
13 ~~corporation, partnership, or other legal entity and the bid is accompanied by a~~
14 ~~corporate resolution, certification as to the corporate principal, or other documents~~
15 ~~indicating authority which are acceptable to the public entity.~~

16 ~~(3) The corporation, partnership, or other legal entity has filed in the~~
17 ~~appropriate records of the secretary of state or the clerk of court of the parish in~~
18 ~~which the public entity is located, an affidavit, resolution, or other acknowledged or~~
19 ~~authentic document indicating the names of all parties authorized to submit bids for~~
20 ~~public contracts. Such document on file with the secretary of state or the clerk of~~
21 ~~court shall remain in effect and shall be binding upon the principal until specifically~~
22 ~~rescinded and canceled from the records of the respective offices.~~

23 ~~P. Repealed by Acts 1999, No. 768, §2.~~

24 ~~Q. Repealed by Acts 1999, No. 768, §2.~~

25 ~~R.(1) In the bid selection process for any contract for a public work or for all~~
26 ~~purchases of materials and supplies exceeding the sum of fifteen thousand dollars to~~
27 ~~be paid out of public funds under the provisions of this Chapter, any public entity~~
28 ~~may include bid selection provisions in bid documents relative to participation in a~~
29 ~~mentor-protégé program as provided by R.S. 51:1753.1.~~

1 A. ~~The state or any state agency upon receipt of bids for the undertaking of~~
2 ~~any public works contract~~ **A public entity** shall act ~~within thirty~~ **not later than**
3 **forty-five** calendar days ~~of such receipt~~ **after the date of opening bids** to award said
4 **such public works** contract to the lowest responsible **and responsive** bidder or ~~to~~
5 reject all bids. ~~A political subdivision upon receipt of bids for the undertaking of any~~
6 ~~public works contract shall act within forty-five calendar days of such receipt to~~
7 ~~award said contract to the lowest responsible bidder or reject all bids.~~ However, the
8 public entity and the lowest responsible **and responsive** bidder, by mutually written
9 consent, may agree to extend the deadline for award by one or more extensions of
10 thirty calendar days.

11 **B. If the lowest responsible and responsive bidder has timely provided**
12 **all documents required by R.S. 38:2212, and no injunction or temporary**
13 **restraining order is in effect, the lowest responsible and responsive bidder and**
14 **the public entity shall execute the contract not later than sixty calendar days**
15 **after the date of the public entity's award of the contract to the lowest**
16 **responsible and responsive bidder.**

17 **C. The public entity shall issue to the contractor a notice to proceed with**
18 **the project or work order not later than thirty calendar day following the date**
19 **of execution of the contract by both parties, whichever execution date is later.**
20 **However, the public entity and the contractor, upon mutual written consent of**
21 **both parties, may agree to extend the deadline to issue the notice to proceed.**

22 **D.** The provisions of this Section shall not be applicable when the contract
23 is to be financed by bonds which are required to be sold after ~~receipt~~ **opening** of bids
24 on the contract, or when the contract is to be financed in whole or in part by federal
25 or other funds which will not be readily available at the time bids are ~~received~~
26 **opened**, or on contracts which require a poll of the legislature of Louisiana before
27 funds are available to fund the contract. ~~In the event the~~ **If any** time limit stipulated
28 ~~herein~~ **in this Section** is not applicable because of one of the exceptions outlined
29 ~~above~~ **in this Subsection**, this fact shall be mentioned in the specifications **bidding**

1 **documents** for the project and in the official advertisement for bids required in
2 accordance with R.S. 38:2212.

3 ~~C. If the contractor has provided all necessary documents to the public entity
4 within ten days of the opening of bids and no bid challenge has been submitted to the
5 public entity, the contractor and public entity shall execute the contract not later than
6 forty-five days from the public entity's acceptance of the lowest responsible bid.~~

7 ~~D. Upon the execution of the contract, the public entity, within thirty days
8 thereafter, shall issue to the contractor a notice to proceed with the project. However,
9 upon mutual consent by both parties, the notice to proceed may be extended.~~

10 E. These provisions shall not be subject to waiver.

11 * * *

12 §2225. Preference in letting contracts for public work

13 A. ~~Repealed by Acts 1984, No. 894, §3, eff. July 1, 1987.~~

14 ~~B. If a nonresident contractor bidding on public work in the state of Louisiana
15 is domiciled in a state that provides a percentage preference in favor of contractors
16 domiciled in that state over Louisiana resident contractors for the same type of work,
17 then every Louisiana resident contractor shall be granted the same preference over
18 contractors domiciled in the other state favoring contractors domiciled therein
19 whenever the nonresident contractor bids on public work in Louisiana.~~

20 ~~C. **B.** Any local law, either by legislative act or otherwise, ordinance, or
21 executive order enacted prior to the effective date of this Act, or enacted hereinafter
22 in conflict with this Section, or granting any local contractor or subcontractor
23 preference over other Louisiana resident contractors shall be contrary to the
24 provision of this Section.~~

25 **C. The Department of Transportation and Development and the office**
26 **of facility planning and control within the division of administration shall keep**
27 **on file a list of all states with a bid preference.**

28 D. The provisions and requirements of this Section shall not be waived by
29 any public entity.

* * *

§2241.1. Acceptance of governing authority

~~A. Whenever the~~ **When any** public entity enters into a **written** contract for the construction, alteration, or repair of any public works, in accordance with the provisions of R.S. 38:2241, the official representative of the public entity shall have recorded in the office of the recorder of mortgages, in the parish where the work has been done, an acceptance of ~~said~~ **such** work or of any specified area ~~thereof~~ **of such work, upon not later than thirty calendar day after the date of completion or** substantial completion of ~~the~~ **such** work. ~~Those public entities which do not file said recordation, shall require the contractor to have recorded in the office of the recorder of mortgages, in the parish where the work has been done, an acceptance of said work or of any specified area thereof upon substantial completion of the work. This acceptance shall not be executed except upon the recommendation of the architect or engineer of the public entity whose recommendation may be made upon completion or substantial completion of said public works within thirty days of completion of the project.~~

B. "Substantial completion" is defined for the purpose of this Chapter, as the finishing of construction, in accordance with the contract documents as modified by any change orders agreed to by the parties, to the extent that 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. The recordation of an acceptance in accordance with the provisions of this Section upon substantial completion shall be effective as an acceptance for all purposes under this Chapter.

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

1 **recommendation of the designer of the public entity whose recommendation**
 2 **may be made not later than thirty calendar days after the date of completion or**
 3 **substantial completion of such public work.**

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 within the scope of the project, 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 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 or the designer.

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 APA. 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 retains present law but allows written evidence of authority for the person signing the bid, requires a description of each unit on bid forms that use unit prices, and prohibits use of unit prices on building projects unless the unit prices and their extensions are incorporated into the base bid or alternates.

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 clarifies the exception in present law for EBR Parish public works projects that requires all bidders on public works to submit all bid documents required by statute or by the La. Administrative Code to the governing authority of EBR Parish prior to the opening of all bids relative to a contract for public works.

Proposed law deletes present law that excepts DOTD 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 DOTD 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 and alternates, when applicable, written words govern if a conflict exists between words and

numerals. Provides that if public works require unit prices and if a discrepancy exists between the base bid total and the sum of the extended prices, the base bid total governs.

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 \$50,000 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 requires, beginning Feb. 1, 2015, and annually on Feb. 1 of each subsequent year, the office of facility planning and control within the division of administration to adjust the "contract limit" by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year and to publish the new contract limit for public works contracts in the Louisiana Register in January of each year.

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 requires prime bidders to obtain an original set of bidding documents from the public entity or the design professional who prepared such documents. Authorizes the public entity to distribute bidding documents in the manner it chooses when the public entity utilizes an electronic bid submittal system. Provides public entity has sole discretion to authorize its design professional of record to choose an electronic bid submittal system. 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 allows a public entity at its sole discretion to authorize its design professional of record to choose an electronic bid system.

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 but substitutes the Producer Price Index for the Wholesale Price Index. Provides that bids based on specifications that are subject to such an escalation index are legal and valid. Proposed law adds that such an 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 provide or to obtain from the project designer an estimate of probable construction costs prior to advertisement for bids. Prohibits advertisement of a public work unless funds that meet or exceed the estimate of probable construction costs have been budgeted by the public entity for the project. Requires the estimate of probable construction costs 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 72 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 60 days after the date the public entity receives an approved application for payment for completion of the work performed in the change order.

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 EBR Parish to assist LSU 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 LSU.

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 Sept. 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 requires the hearing to be conducted by the public entity not later than five business days after the date of the notice of disqualification of such bidder and requires the public entity to issue a ruling in writing and deliver same to the affected bidder not later than five business days after the date of the informal hearing.

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 excepts DOTD from its provisions on disqualification of bidders.

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.

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 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 LSU 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 LWC 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 execute a contract not later than 60 days after the date of the public entity's award of a public works contract to the lowest responsible and responsive bidder or to reject all bids, if the lowest responsible and responsive bidder has timely provided all documents required by R.S. 38:2212, and no injunction or temporary restraining order is in effect.

Proposed law requires the public entity to issue the contractor a notice to proceed with the project or work order not later than 30 calendar days following the date of execution of the contract by both parties, whichever is execution date is later, provided that the parties may agree to extend the time to issue a notice to proceed upon mutual written consent of both contractor and public entity.

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)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Transportation, Highways, and Public Works to the original bill

1. Revised definitions of "Alternate", "Change order", and "Probable construction costs".
2. Requires, beginning Feb. 1, 2015, and annually on Feb. 1 of each subsequent year, the office of facility planning and control within the division of administration to adjust the "contract limit" by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year and to publish the new contract limit for public works contracts in the Louisiana Register in January of each year.
3. Clarifies present law exception applicable to time for submission of bid documents on public works projects let by East Baton Rouge Parish.
4. Removes present law exception applicable to time for submission of bid documents on projects let by DOTD.
5. Changed time period bid information must be available after opening of bids from 48 to 72 hours.
6. Changed time period that payment for change order work must be paid from 45 days after completion of work to 60 days after receipt of an approved application for payment for completion of work performed in the change order.
7. Requires the public entity to conduct an informal hearing not later than five business days after the date of a notice proposing to disqualify a bidder and to issue a ruling in writing and deliver same to the affected bidder not later than five business days after the hearing date. Excepts DOTD from provisions on disqualification of bidders.
8. Requires a public entity to execute a contract not later than 60 days after the date of the public entity's award of a public works contract to the lowest responsible and responsive bidder or to reject all bids, if the lowest responsible and responsive bidder has timely provided all documents required by R.S. 38:2212, and no injunction or temporary restraining order is in effect.
9. Authorizes extension of time for issuance of a notice to proceed upon mutual written consent of the contractor and public entity.
10. Generally, substitutes the term "designer" or "design professional" in place of "architect or engineer"