

RS 38:2212

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

A.(1)(a) All public work exceeding the contract limit as defined in this Section, including labor and materials, to be done by a public entity shall be advertised and let by contract to the lowest responsible and responsive bidder who bid according to the bidding documents as advertised, and no such public work shall be done except as provided in this Part.

(b) Notwithstanding any provision of a home rule charter established subsequent to 1974 to the contrary, no municipality shall be required to advertise and let by contract to the lowest responsible and responsive bidder, who bid according to the bidding documents as advertised, any public work which is less than the contract limit established by this Section unless such municipality by affirmative act of its governing authority adopts a more restrictive contract limit than established in this Section. This Subparagraph shall apply only to municipalities with a population of not less than forty-five thousand persons and not more than forty-eight thousand eight hundred persons as of the most recent federal decennial census.

(2) The term "bidding documents" is defined in R.S. 38:2211(A).

B.(1) The provisions and requirements of this Section and those stated in the bidding documents shall not be waived by any entity.

(2) Any public entity advertising for public work shall use only the Louisiana Uniform Bid Form as promulgated in accordance with the Administrative Procedure Act by the division of administration, office of facility planning and control. The bidding documents shall require only the following information and documentation to be submitted by a bidder at the time designated in the advertisement for bid opening: 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 or written evidence of the authority of the person signing the bid, and Louisiana Contractors License Number, and on public works projects where unit prices are utilized, a section on the bid form where the unit price utilized in the bid shall be set forth including a description for each unit; however, unit prices shall not be utilized for the construction of building projects, unless the unit prices and their extensions are incorporated into the base bid or alternates.

(3)(a) The bidding documents shall not require any bidder, other than the apparent low bidder, to furnish any other information or documentation, including the Attestation Affidavit and the E-Verification Form, any sooner than ten days after the date bids are opened; however, the apparent low bidder may submit such information or documentation at any time prior to the expiration of the ten-day period. If the apparent low bidder does not submit the proper information or documentation as required by the bidding documents within the ten-day period, such bidder shall be declared non-responsive, and the public entity may award the bid to the next lowest bidder, and afford the next lowest bidder not less than ten days from the date the apparent low bidder is declared non-responsive, to submit the proper information and documentation as required by the bidding documents, and may continue such process until the public entity either determines the low bidder or rejects all bids. The ten-day period shall not be altered or waived by any public entity except 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, who shall require that the other documentation and information referred to in this Subparagraph be furnished by the two apparent low bidders no sooner than three days after the bid opening. The two apparent low bidders may submit such information or documentation at any time prior to the expiration of the three day period. If the two apparent low bidders do not submit the proper information or documentation as required by the bidding documents within the three day period, such bidders shall be declared non-responsive, and from that date, award may be made to the next lowest bidder, and afford that bidder not less than three days to submit the required information or documentation, and the process may continue until either a low bidder is determined or all bids are rejected.

(b) Notwithstanding the provisions of this Paragraph, all bidders bidding on public works for East Baton Rouge Parish or Jefferson Parish shall submit all bid forms required by statute or by the Louisiana Administrative Code to the governing authority of East Baton Rouge Parish or Jefferson Parish prior to the opening of all bids relative to a contract for public works.

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

(5) Written evidence of the authority of the person signing the bid for public works shall be submitted at the time of bidding. The authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the following conditions are met:

(a) The signature on the bid is that of any corporate officer listed on the most current annual report on file with the secretary of state, or the signature on the bid is that of any member of a partnership, limited liability company, limited liability partnership, or other legal entity listed in the most current business records on file with the secretary of state.

(b) The signature on the bid is that of an authorized representative as documented by the legal entity certifying the authority of the person.

(c) The legal entity has filed in the appropriate records of the secretary of state of this state, an affidavit, resolution, or other acknowledged or authentic document indicating the names of all parties authorized to submit bids for public contracts. Such document on file with the secretary of state shall remain in effect and shall be binding upon the principal until specifically rescinded and canceled from the records of the office.

(6)(a) Each bid shall be either hand delivered by the bidder or his agent in which instance the deliverer shall be handed a written receipt, or such bid shall be sent by registered or certified mail with a return receipt requested, or shall be submitted electronically as provided in Subsection E of this Section. No public entity shall accept or take any bids, including receiving any hand delivered bids, on days which are recognized as holidays by the United States Postal Service.

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

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

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

C.(1) Except as provided in Paragraphs (2), (3), and (4) of this Subsection, the term "contract limit" as used in this Section shall be equal to the sum of one hundred fifty thousand dollars per project, including labor, materials, and equipment as per the rates in the latest edition of the Associated Equipment Dealers Rental Rate Book and administrative overhead not to exceed fifteen percent, provided that beginning February 1, 2015, and annually on February first of each subsequent year, the office of facility planning and control within the division of administration shall adjust the "contract limit" by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year. The office of facility planning and control within the division of administration shall publish the new contract limit for public works contracts in the Louisiana Register in January of each year.

(2) When the Department of Public Safety and Corrections intends to use inmates as labor in connection with projects which occur on the grounds or to the buildings, structures, or facilities located on the grounds of prisons or correctional institutions, the term contract limit shall be seventy-five thousand dollars per project.

NOTE: Paragraph (3) eff. until Dec. 31, 2022. See Subparagraph (b) of this Paragraph.

(3)(a) The annual limit by a public entity for any work to restore or rehabilitate a levee that is not maintained with federal funds, including mitigation on public lands owned by the state or a political subdivision, shall not exceed the sum of one million dollars, including labor, materials, and equipment, which is not publicly bid, as per the rates in the latest edition of the Associated Equipment Distributors Rental Rate Book, and administrative overhead not to exceed fifteen percent; provided that the work is undertaken by the public entity with its own resources and employees, or with the resources and employees of another public entity through a cooperative endeavor or other agreement with such entity.

(b) The provisions of this Paragraph shall remain effective until December 31, 2022.

NOTE: Paragraph (4) eff. until Dec. 31, 2020. See this Paragraph.

(4) For public work related to drainage projects to be done by the regular maintenance employees of the St. Charles Parish governing authority, the term "contract limit" shall be equal to the sum of two hundred fifty thousand dollars per project, including labor, materials, and equipment as per the rates in the latest edition of the Associated Equipment Dealers Rental Rate Book and administrative overhead not to exceed fifteen percent, provided that beginning February 1, 2021, and annually on February first of each subsequent year, the office of facility planning and control within the division of administration shall adjust the "contract limit" by an amount not to exceed the annual percentage increase in the Consumer Price Index in the preceding year. The office of facility planning and control within the division of administration shall publish the new contract limit for public works contracts let by the St. Charles Parish governing authority in the Louisiana Register in January of each year beginning in January 2021. The provisions of this Paragraph shall terminate on December 31, 2020.

D. Each public entity advertising and letting for bid a public works contract under the provisions of this Section shall furnish all prime bidders who request bidding documents and who are properly licensed by the Louisiana State Licensing Board for Contractors with at least one set of complete bidding documents. The public entity may require a deposit on the bidding documents; however, the total cost of the deposit, including handling fees and other costs shall not exceed twice the actual cost of reproduction. Deposits on the first set of documents furnished prime bidders shall be fully refunded upon return of the documents no later than ten days after receipt of bids. On other sets of documents furnished to bidders, the deposit less the actual cost of reproduction shall be refunded upon return of the documents no later than ten days after receipt of bids. Where the public entity, itself, prepares and distributes the bidding documents, the public entity may, in lieu of a deposit, charge a fee for the documents, which fee shall not exceed the actual cost of reproduction. Prime bidders shall obtain an original set of electronic or paper bidding documents either from the public entity or the design professional who prepared such documents. Either the public entity or the design professional may choose the method and service of plan distribution. When the public entity utilizes an electronic bid submittal system, bidding documents shall be distributed in the manner chosen by the public entity. At its sole discretion, the public entity may authorize its design professional of record to choose an electronic bid submittal system. The public entity or its design professional of record shall maintain a list of all prime bidders for the purpose of addenda distribution.

E.(1) Public entities shall provide, as an additional bidding option, a uniform and secure electronic interactive system for the submittal of bids for public works requiring competitive bidding. Any public entity providing such system shall follow the standards for the receipt of electronic bids adopted by the office of the governor, division of administration, and the office of technology services as provided for in LAC 4:XV.701. Any special condition or requirement for the submission shall be specified in the advertisement for bids required by this Section.

(2) Public entities that are currently without available high-speed Internet access shall be exempt from this requirement until such time that high-speed Internet access becomes available.

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

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

(5) Any other public entity which is unable to comply with the electronic bidding provisions of this Subsection without securing and expending additional funding shall be exempt from its requirements.

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

(7) Public entities shall include all "bidding documents" as defined in R.S. 38:2211(A), on the electronic website accepting the electronic bids.

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

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

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

H. Every public entity intending to advertise a public work for bids shall estimate the probable construction costs of such public work or obtain such estimate from the project designer prior to advertising such public work for bids. No public entity shall advertise a public work for bids unless funds that meet or exceed the estimate of the probable construction costs have been budgeted by the public entity for the project. The estimate of probable construction costs for the project shall be made available at the time of bid opening, either by posting such estimate electronically or announcing aloud such estimate at the bid opening. Any and all bidders' information shall be available upon request, either no sooner than fourteen days following the bid opening or after the recommendation of award by the public entity or the design professional, whichever occurs first, and the requester shall pay reasonable reproduction costs. The provisions of this Subsection shall not apply to the Department of Transportation and Development.

I. When a design professional or public entity mandates attendance by prospective bidders at pre-bid conferences as a prerequisite to bid on a public works project, the date, place, and time of the pre-bid conference shall be stated in each advertisement notice.

All prospective bidders shall be present at the beginning of the pre-bid conference and shall remain in attendance for the duration of the conference. Any prospective bidder who fails to attend the conference or remain for the duration shall be prohibited from submitting a bid for the project.

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

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

L.(1) No construction manager or any other third-party consultant employed by a public entity may manage a construction project as a general contractor or act in the role of the general contractor to oversee, direct, or coordinate individual trade contractors on behalf of the public entity, or 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.

(2) The provisions of Paragraph (1) of this Subsection shall not apply to the initial construction of a hospital, medical facility, or a combination of both, constructed by the Orleans Hospital Service District, but shall apply to the construction of any additions or modifications of a hospital, medical facility, or a combination of both, constructed by the Orleans Hospital Service District following the completion of the initial construction. The provisions of this Paragraph shall not relieve the Orleans Hospital Service District from complying with all other applicable provisions of this Title.

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

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

(3) The public entity shall pay the contractor for work performed by change order not later than sixty days after the date the public entity approves the application for payment for completion of the work performed in the change order.

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

(5) Any change order pertaining to public work, not required by this Part to be let out for public bid, shall either be negotiated in the best interest of the public entity or let out for public bid as provided by this Part. Where the change order is negotiated, the public entity shall require that such change order be fully documented and itemized as to costs, including material quantities, material costs, taxes, insurance, employee benefits, other related costs, profit, and overhead. Where certain unit prices are contained in the initial contract, no deviations shall be allowed in computing negotiated change order costs.

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

O.(1) Except as provided by Paragraph (2) of this Subsection, the public entity may, through the issuance of an addendum, extend the bid period for up to thirty days, without the requirement of re-advertising as provided by Subsection A of this Section.

(2)(a) If a public entity issues or causes to be issued on a public work exceeding the contract limit any addendum modifying the bidding documents within a period of seven days prior to the advertised time, or the time extended as provided for in this Section, for the opening of bids, excluding Saturdays, Sundays, and any other legal holidays, then the public entity shall transmit a copy of the addendum to all prime bidders who have requested bidding documents pursuant to Subsection D of this Section. This shall be completed within twenty-four hours of the issuance of the addendum and may be delivered by either facsimile transmission, e-mail, other electronic means, by hand, or by overnight delivery using a nationally recognized carrier provided the prime bidder has supplied the facsimile transmission number or e-mail address to the public entity. If the addendum cannot be transmitted by facsimile transmission, e-mail, other electronic means, overnight delivery using a nationally recognized carrier, or otherwise effected by hand delivery, the public entity shall postpone the bid opening by at least seven days.

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

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

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

(ii) The president of the police jury, the president of the parish council, the mayor of the municipality, or a person designated to act on behalf of the governing authority of any other political subdivision, shall declare that an extreme emergency exists and shall cause such declaration to be published in the official journal within ten days or as soon as practicable thereafter.

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

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

(b) When contract action under this authority is taken pursuant to telephone or other oral offers, a written confirmation of the accepted offer shall be obtained and made a part of the contract case file. In addition, whenever contract action is taken as authorized by this Subsection, a record shall be established by the public entity which shall contain, at a minimum, the following information with respect to 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. If quotations lower than the accepted quotation are received, the reasons for their rejection shall be recorded and made a part of the contract case file. Such records shall be retained for a minimum of six years following the purchase or completion of the public work.

Q. A publicly owned utility, as recognized by the Louisiana Public Service Commission, may undertake a public works project, other than construction of a building, for the contract limit or less by either of the following methods:

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

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

R. Public entities are herein prohibited from owning or operating manufacturing facilities or plants that produce or manufacture construction materials.

S. The provisions of this Section shall not prevent public entities from using their regular maintenance employees for labor necessary in the maintenance, construction, or extension of publicly owned and operated electric public utilities. With respect to the construction or extension of all other public utilities, the provisions of this Section shall not prevent public entities from using their regular maintenance employees when the cost of

the work per project does not exceed one hundred fifty thousand dollars, including labor and materials. All purchases of materials or supplies exceeding the contract limit provided for in this Section shall be let by public bid as provided in this Part.

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

(2) Wherever a public entity specifies the name of a certain brand, make, manufacturer, or uses a definite specification, the bidding documents shall state clearly that they are used only to denote the quality standard of product desired and that they do not restrict bidders to the specific brand, make, manufacturer, or specification named; that they are used only to set forth and convey to prospective bidders the general style, type, character, and quality of product desired; and that equivalent products may be acceptable. It shall be the responsibility of the 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.

U. Public entities may enter into maintenance contracts for the repair and maintenance of public facilities owned, controlled, or operated by a public entity for a fixed annual fee. Such contracts shall extend for a duration of not less than two years. Any such contract entered into by a public entity shall include a nonappropriation clause and shall not be considered a debt of the public entity. Such maintenance contract shall not be considered a public works contract.

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

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

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

X.(1) If the public entity letting the contract proposes to disqualify any bidder, either as a potential bidder or as the low bidder, on grounds that such bidder is not a "responsible bidder" such public entity shall do all of the following:

(a) Give written notice of the proposed action to such bidder and include in the written notice all reasons for the proposed action.

(b) Give the bidder who is proposed to be disqualified the opportunity to be heard at an informal hearing at which such bidder is afforded the opportunity to refute the reasons for the proposed action.

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

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

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

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

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

Y. No public entity shall enter into a contract for the purpose of public works with a contractor who then finances the project. 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 and responsive bidder as provided in this Section.

Z. The provisions of this Section 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.

Acts 2001, No. 346, §1; Acts 2001, No. 1106, §1, eff. June 28, 2001; Acts 2001, No. 1114, §1, eff. June 28, 2001; Acts 2002, 1st Ex. Sess., No. 120, §1; Acts 2003, No. 348, §1, eff. July 1, 2003; Acts 2003, No. 524, §1, eff. June 22, 2003; Acts 2003, No. 828, §1; Acts 2003, No. 831, §1; Acts 2003, No. 958, §1; Acts 2004, No. 445, §1; Acts 2004, No. 458, §1, eff. June 24, 2004; Acts 2004, No. 522, §1, eff. June 25, 2004; Acts 2005, No. 44, §1; Acts 2006, No. 102, §1, eff. May 31, 2006; Acts 2006, No. 203, §1, eff. June 2, 2006; Acts 2006, No. 362, §1, eff. June 13, 2006, and §2, eff. July 31, 2007; Acts 2006, No. 652, §1, eff. June 29, 2006; Acts 2007, No. 336, §1, eff. July 31, 2007; Acts 2007, No. 336, §2, eff. July 31, 2008; Acts 2007, No. 373, §1, eff. July 10, 2007; Acts 2008, No. 117, §2; Acts 2008, No. 220, §11, eff. June 14, 2008; Acts 2008, No. 230, §1, eff. June 17, 2008; Acts 2008, No. 590, §1, eff. Jan. 1, 2009; Acts 2008, No. 726, §1; Acts 2008, No. 727, §1; Acts 2009, No. 161, §1; Acts 2009, No. 174, §1, eff. June 29, 2009; Acts 2009, No. 227, §1; Acts 2010, No. 1011, §1, eff. July 8, 2010; Acts 2011, 1st Ex. Sess., No. 5, §2; Acts 2011, No. 81, §1; Acts 2011, No. 281, §1; Acts 2011, No. 338, §1, eff. June 29, 2011; Acts 2012, No. 493, §1; Acts 2012, No. 823, §1; Acts 2013, No. 63, §1, eff. Jan. 1, 2014; Acts 2013, No. 125, §1, eff. June 5, 2013; Acts 2013, No. 364, §1, eff. June 17, 2013; Acts 2014, No. 759, §1; Acts 2014, No. 791, §12; Acts 2016, No. 406, §1; Acts 2016, No. 566, §1; Acts 2018, No. 295, §1; Acts 2019, No. 201, §1.