

Date

October 20, 2021

Time

8:45 am - 10:20 am

Instructor

Jenifer Schaye, CFE, General Counsel

Location

Virtual

Method of Delivery

Webinar

Learning Level

Basic

CPE Hours

1.0 Hours

CPA Subject Matter

Accounting and Auditing

Yellow Book Subject Matter

Governmental

Prerequisite

None

Public Bid Law and Cabela

Description

This course is intended to help participants understand the Constitution and statutes relating to public bid and public donations. The goal is accountability and transparency. Participants will be given an understanding of their fiduciary responsibilities.

Objectives

After this class participants will be able to:

- Better understand the basis and basics of Public Bid Law.
- Better understand how to draft cooperative endeavor agreements.

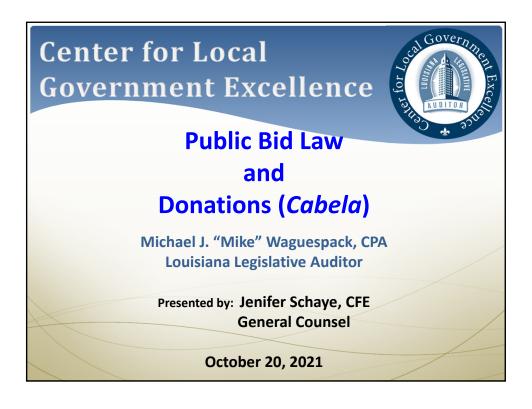
Who Will Benefit

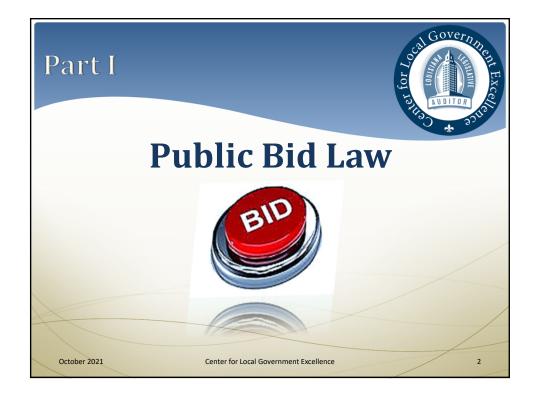
- Elected Officials/Appointed Officials
- Local Government Employees
- Local Government Auditors

About the Instructor

JENIFER SCHAYE, GENERAL COUNSEL

Jenifer Schaye is General Counsel for the Legislative Auditor of the State of Louisiana. She is a graduate of the University of Dallas and of St. Louis University Law School. She has practiced law continuously for the last forty-three years in Texas and Louisiana. Jenifer has substantial experience in the governmental arena. She has worked as a Legislative Aid to a State Representative in Texas. She was a Louisiana Assistant Attorney General for eleven years. As an Assistant Attorney General, she focused on tort, insurance law, and gaming law and all aspects of the Administrative Procedure Act. In her capacity as general counsel to the Legislative Auditor, Jenifer advises on public law issues and laws relating to fiscal matters, ethics issues, and all public laws which impact political subdivisions and the audits of political subdivisions on the local and state level. Jenifer also serves as a board member on the Louisiana Survivor's Benefit Board as the Legislative Auditor's designee. In addition, Jenifer represents the Legislative Auditor and staff in those matters where they are called to testify and/or to produce records for further inquiry by state and federal courts. She advises the Louisiana Legislative Audit Advisory Council on relevant audit law issues. Because of her governmental background, Jenifer has a broad knowledge of the processes of government and the relationships between the various branches of state and local government.

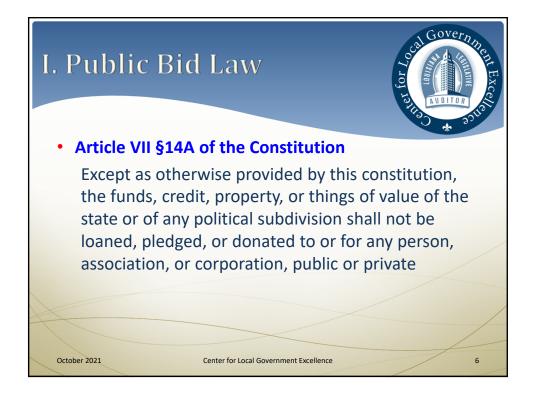


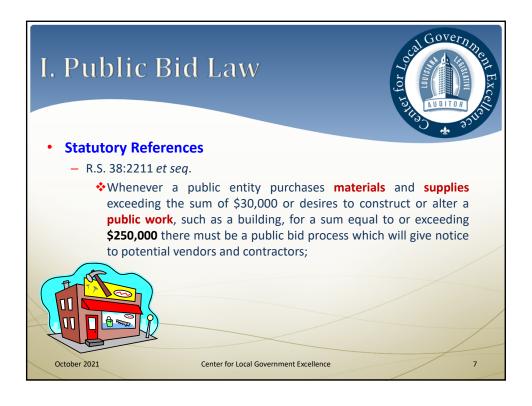




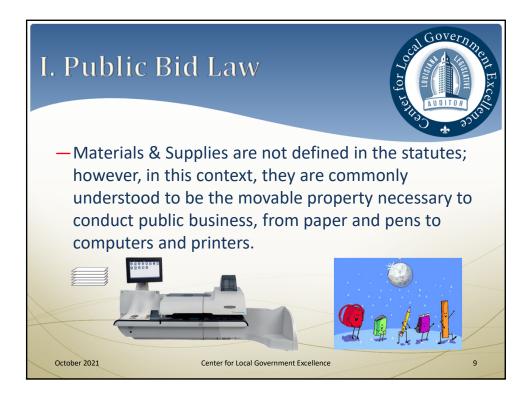




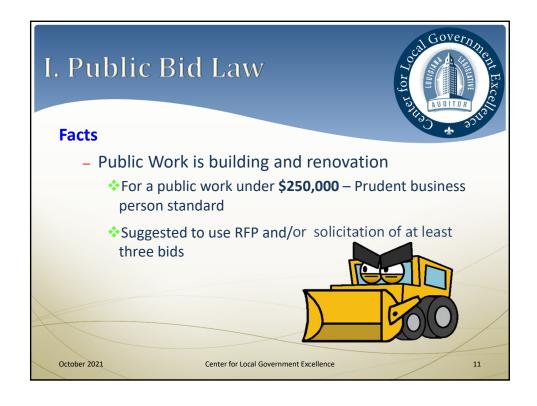


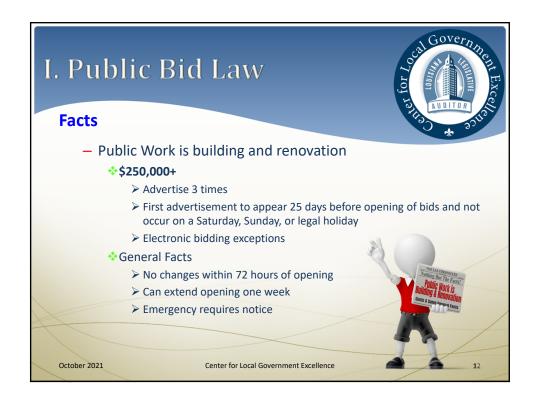
















I. Public Bid Law



Public Works - Change Order (cont'd)

- Outside the scope of the contract means a change order which alters the nature of the thing to be constructed or which is not an integral part of the project objective.
- Within the scope of the contract means a change order which does not alter the nature of the thing to be constructed and which is an integral part of the project objective.

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I. Public Bid Law

Issues

- No splitting of jobs
- No out of hand disqualification
- Contract drafting must follow bid specs
- Change orders must be within contract scope and may require recordation.
- Procedure & Practice: precise and monitored
- Mandatory to use standard bid form provided by DOA
- Demolition considered public works (Concrete Busters of Louisiana, Inc. v. Board of Commissioners of the Port of N.O.)

http://www.doa.louisiana.gov/osr/lac/34v01/34.doc

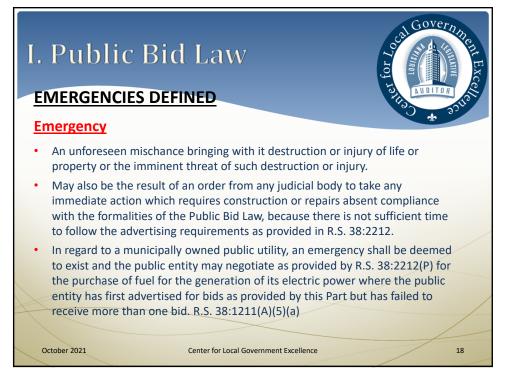
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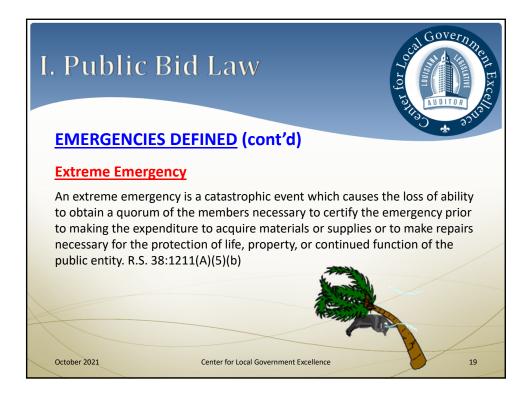
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- Act 92 (Effective August 1, 2020) Address and authorize the withholding
 of liquidated damages by public entities for public works contracts for
 flood protection projects or integrated coastal protection projects, not
 withstanding any other law to the contrary (R.S. 38:2248(C)).
- Act 111 (Effective July 1, 2020) Amended the contract limit to \$250,000 and delayed any further CPI modifications until February 1, 2025 for public works contracts (R.S. 38:2212(C)).
- Act 265 (Effective August 1, 2020) Provides with respect to purchasing by school boards (R.S. 38:2212.1(N)(4)).

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Acts of 2021 Legislative Session

- Act 102 (Effective August 1, 2021) Provides relative to state procurement of certain services (<u>consulting services</u>) by use of reverse auction technology (R.S. 38:2271(A)(1), (2)(b), and (C)).
- Act 260 (Effective August 1, 2021) Provides relative to public works contracts to require awarding of a contract within a specified time.
- Act 205 (Effective August 1, 2021) Provides for timely execution and approval of change orders.

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I. Public Bid Law



Attorney General Opinions

- Home Rule Charters
 - #16-0051 The parish president of a home rule charter parish does not have the discretion to forestall the expenditure of property appropriated funds for legislatively-directed ends aside from obligations to comply with public bidding processes and any other legal requirements.
 - #09-0252 City council has authority to establish stricter procurement policies for services under home rule charter.

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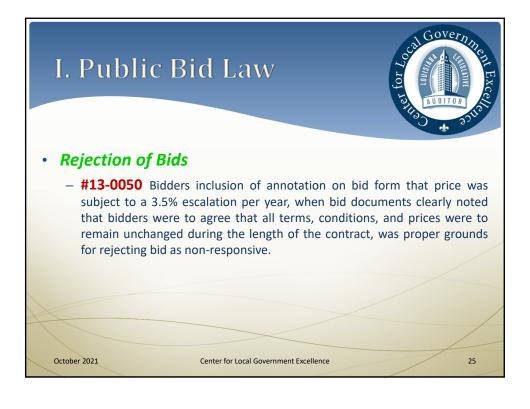
I. Public Bid Law



- Hiring Preferences
 - **#16-0020**
 - Absent legal authority to establish local hiring preference or otherwise require contractors to hire local workers, the inclusion of such a requirement would be impermissible and against Louisiana Public Bid Law.
 - Similarly, inclusion and evaluation of a contractor's efforts to hire local workers as part of the Public Bid Law solicitation process would be impermissible and against Louisiana Public Bid Law.

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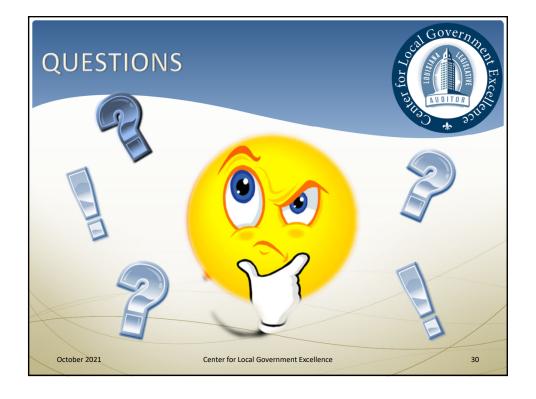


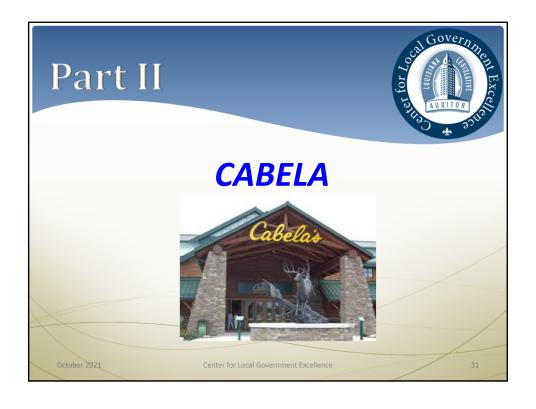


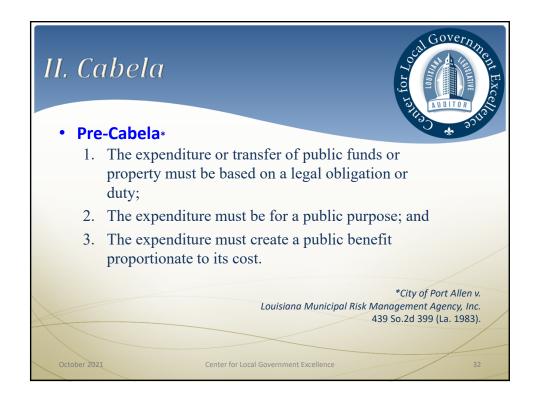




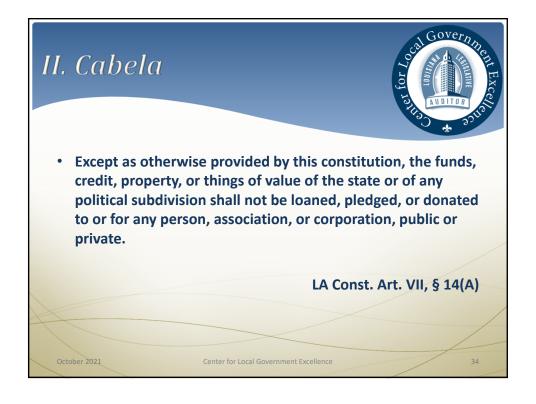


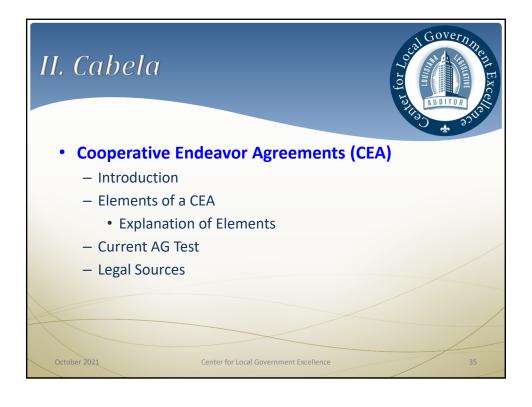


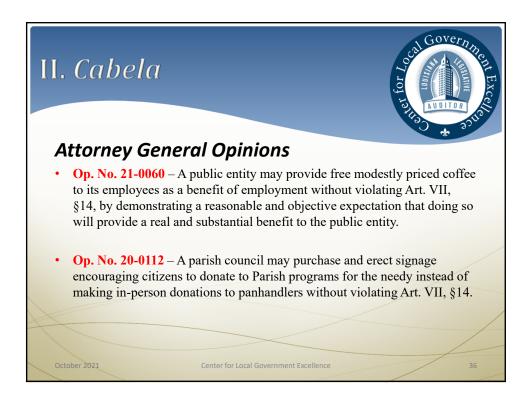




New Requirements (2006*) 1. A public purpose for the expenditure or transfer; 2. That the expenditure or transfer, taken as a whole, does not appear to be gratuitous; 3. Evidence demonstrating that the public entity has a reasonable expectation of receiving a benefit or value at least equivalent to the amount expended or transferred. *Board of Directors of Indus. Development Bd. of City of Gonzales, Louisiana, Inc. v. All Taxpayers, Property Owners, Citizens of City of Gonzales, et al. 938 So.2d 11 (La. 9/6/06).







II. Cabela



Attorney General Opinions

- Op. No. 20-0099 Discusses the exception provided in Art. VII, §14(B) concerning the donation of the "use" of equipment and personnel between political subdivisions.
- Op. No. 20-0095 A museum board can transfer ownership of museum owned items to the parish's historical association through a cooperative endeavor agreement where the museum retains custody and control of the items in return for the association undertaking the costs associated with insuring the items and obtaining collections maintenance software and storage space for when the items are not placed on exhibit.

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II. Cabela



Attorney General Opinions

- Op. No. 17-0022 Authority of a public entity to reduce or waive abnormally high sewer usage fees that were caused by the 2016 Flood, pursuant to the public policy of providing for the general welfare of the public following a natural disaster.
- Op. No. 17-0060 Hospital service district may contribute funds to a capital project by a local community college under a cooperative endeavor agreement for the purpose of construction of facilities to house a nursing and medical training program from which the hospital service district will gain an additional trained local employment pool.

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II. Cabela



Attorney General Opinions

- Op. No. 17-0005 Communications district may purchase radios for use by emergency responders within the district so long as the radios remain property of the district and use of the radios is restricted to emergency response activities.
- Op. No. 16-0198 Public entity will violate Article VII, §14 if it failed or
 declined to pursue all amounts owed by a judgment debtor, unless the
 public entity determines that the benefit or value of recovery of the full
 amount would not equal or exceed the costs of pursuing collection.

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II. Cabela



Attorney General Opinions

- Op. No. 16-0046 Placement of municipal law enforcement equipment in personal vehicle of a chief of police or law enforcement officer may be allowed so long as the equipment is only used in accordance to the official duties of the police chief or officer and no policy is in place prohibiting the placement of municipal equipment on or in private vehicles.
- Op. No. 16-0057 Public entity may weigh the costs in disposing of surplus waste dirt from dredging compared to the potential value the entity might obtain in any sale of the waste dirt, and thereby dispose of the waste dirt to private parties in order to realize substantial cost savings.

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II. Cabela



Attorney General Opinions

- Op. No. 16-0022 Reciprocal obligations will ordinarily render a payment or transfer onerous and thus sufficient to satisfy the second prong of the *Cabela* analysis. However, the AG cautions public entities against the use of language which might fail to impose a real obligation on the other party, such as "use its best efforts," as this would create a possibility for a public entity to provide payment or services with no reciprocal return and thus lead to an impermissibly gratuitous payment or transfer in violation of Article VII, §14.
- Op. No. 16-0001 Parish Governing Authority may transfer funds to municipalities and sheriff's office under the local services law, R.S. 33:1321, et seq., to assist in purchases of law enforcement vehicles and other equipment related to law enforcement without violating Article VII, §14.

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