



Date
November 2, 2022

Time
10:10 AM – 12:10 PM

Instructor
Jenifer Schaye, CFE
General Counsel

Location
Live-Streamed and
Onsite at Louisiana
Immersive Technologies
Enterprise (LITE)

Method of Delivery
Classroom instruction

Learning Level
Basic

CPE Hours
2.0 Hours

CPA Subject Matter
Specialized Knowledge and
Applications

Prerequisite
None

Requests for Proposals, Contracts, and Public Bid Law – Constitutional and Practical

Description

In this presentation, we will attempt to explain the proper use of public money beginning with the Constitution and ending with the delivery of the goods and /or the construction or renovation of a public space. Special topics covered will include statutory minimums as well as advertising and acceptance of bid requirements. The goal of this presentation will be to highlight the issues but also to provide guidance as to how public employees /officials can guarantee themselves and their constituents that they are in compliance with the Constitution and the Public Bid Law.

Objectives

After this class participants will be able to:

- Identify and properly address common potential compliance issues concerning the Public Bid Law, including but not limited to, recurring purchases, cooperative purchasing/piggy-backing, trade-ins, and Technology procurement through RFP.

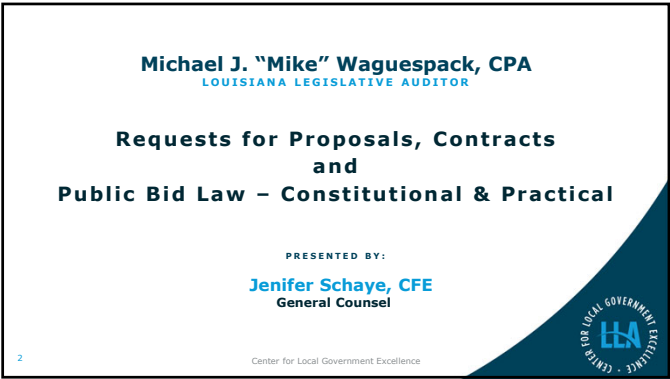
Who Will Benefit

- Elected Officials/Appointed Officials and their staff
- Local Government Employees/Local Government Auditors

About the Instructor

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.







Public Bid Law





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Public Bid Law

Summary

- ❖ BE **P**RECISE
- ❖ CAREFULLY **A**DVERTISE
- ❖ CAREFULLY **E**XECUTE
- ❖ CAREFULLY **M**ONITOR THE PURCHASE OR THE CONSTRUCTION



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Public Bid Law

Public Contracts

- ❖ **Two Types**
 - Public Works
 - Materials & Supplies



NOTE: Services are still subject to Constitution



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CONSTITUTIONAL

❑ **Article VII §14A of the Constitution**

Except as otherwise provided by this constitution, the funds, credit, property, or things of value of the state or of any political subdivision shall not be loaned, pledged, or donated to or for any person, association, or corporation, public or private.

My money vs. public money



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Public Bid Law / Contracts

❑ **Statutory References**

❖ **R.S. 38:2211 et seq.**

- Whenever a public entity purchases **materials** and **supplies** exceeding the sum of \$60,000 or desires to construct or alter a **public work**, such as a building, for a sum exceeding **\$250,000** there must be a public bid process which will give notice to potential vendors and contractors;
- Act 111 of the 2020 Regular Session amended the limit to \$250,000 and delayed any further CPI modifications until February 1, 2025.



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Public Bid Law / Contracts

❑ **Facts**

❖ **Materials and Supplies are undefined movables**

- Less than **\$30,000**: prudent person standard
- \$30,000 - \$60,000**: 3 quotes via Telephone, Fax, Email or other printable electronic form
- \$60,000 +**
 - Advertise 2 times
 - Electronic Bid
 - Advertise at least 15 days before opening of bids
 - Open bids or cancel all bids

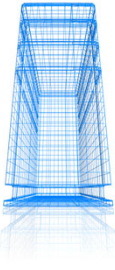




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Public Bid Law / Contracts



Materials & Supplies are not defined in the statutes; however, in this context, they are commonly understood to be the movable property necessary to conduct public business, from paper and pens to computers and printers.



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Public Bid Law / Contracts

Materials & Supplies (cont'd)

Requirements for letting a contract for materials & supplies:

- Amount
- Advertisement for Bid
- Receiving & opening of Bids
- Selection of lowest responsible bidder
- Contract formation/Purchase Order



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Public Bid Law

Facts

Public Work is building and renovation

- For a public work under \$250,000 – Prudent business person standard – Art. VII, §14 of LA Constitution.
- Suggested to use RFP and/or solicitation of at least three bids.



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Public Bid Law

Official Journal – Criteria

- ❖ Shall have been published in an office physically located in the parish in which the body is located for a period of five years preceding the selection.
- ❖ Shall not have missed during that period as many as three consecutive issues unless caused by fire, flood, strike, or natural disaster.
- ❖ Shall have maintained a general paid circulation in the parish in which the body is located for five consecutive years prior to the selection.
- ❖ Shall have been entered in a U.S. post office in that parish under a periodical permit in that parish for a period of five consecutive years prior to the selection.

(R.S.43:142)

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Official Journal – Alternative

- ❖ "Where there is no newspaper published in an office physically located within the parish which meets the requirements of R.S. 43:140(3), a newspaper in an adjoining parish may be designated as the official journal."

(R.S.43:146)

- ❖ AG Opinion #92-448
- ❖ AG Opinion #90-114



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2022 State Library Director's Boot Camp

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Public Bid Law / RFP

Alternative Procurement Methods

- ❖ Purchasing Surplus Property from another Public Entity;
- ❖ Purchasing off State Contract (R.S. 39:1710 - may use local vendor);
- ❖ RFP for Telecommunications and Data Processing (R.S. 38:2236); and
- ❖ Cooperative Purchasing (Piggyback):
 - Local Services Law, R.S. 33:1324;
 - R.S. 38:321.1 – 1 yr. from bid opening;
 - AG Opinion #17-0152.

Entities seeking Federal reimbursement should determine if additional action is required.

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Public Bid Law / RFP

❑ **Essential Facts**

❖ Splitting

❖ Estimating

❖ Responsible Bidder

❖ Sole Source



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Public Bid Law / RFP

❑ **Facts**

❖ **Public Work is building and renovation**

• **\$250,000+**

➢ Advertise 3 times

➢ First advertisement to appear 25 days before opening of bids and not occur on a Saturday, Sunday, or legal holiday

➢ Electronic bidding exceptions

• **General Facts**

➢ No changes within 72 hours of opening, unless opening is extended

➢ Can extend opening one week

➢ Emergency requires notice

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Public Bid Law / RFP

❑ **Public Works**

❖ **Requirements for letting a contract for public works:**

➢ Amount

➢ Advertisement for Bid

➢ Receiving & Opening of Bids

➢ Selection of lowest responsive & responsible bidder

➢ Contract formation



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Public Bid Law / RFP

Public Works

Requirements for letting a contract for public works:

Selection of lowest responsive & responsible bidder

R.S. 38:2215(A) – public entity shall award the contract no later than 45 days from bid opening;

Entity & apparent low bidder may mutually agree to extend deadline in 30 day increments.

Contract formation

R.S. 38:2215 (B) – public entity and awarded bidder shall execute contract no later than 60 calendar days from awarding of contract;

Barring any injunction and timely submission of required documents by awarded bidder.

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Public Bid Law / Practical

Public Works – Change Orders

Change Orders – 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.

Written

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Public Bid Law / Practical

Public Works – Change Orders (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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Public Bid Law / Practical

Public Works – Change Orders/Recordation

Requirements

- Which adds 10% or more of the original contract amount, if the additional amount is at least \$10,000, or
- Which aggregates to an amount of 20% or more of the original contract amount, if the additional amount is at least \$10,000.
- Shall be recorded by the public entity in the office of the recorder of mortgages in the parish where the work is to be done.
(R.S.38:2222(A))

- The original contract, if not previously recorded, shall be recorded with the change order.

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Public Bid Law / Practical

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.)

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Public Bid Law

Exception to Public Bid Law for “Emergency” and “Extreme Emergency” are defined in R.S. 38:1211(A)(5):

- R.S. 38:2212(P)(1) & (2);
- Emergency: Certification of emergency and notice within 10 days, published in official journal;
- Extreme emergency: Declaration and publication within 10 days or as soon as practicable; R.S. 38:2212(P)(1)(b)(ii)
- Written documentation required.

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Public Bid Law

❑ **Emergencies Defined:**

❖ **Emergency**

- An unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury.
- May also be the result of an order from any judicial body to take any immediate action which requires construction or repairs absent compliance with the formalities of the Public Bid Law, because there is not sufficient time to follow the advertising requirements as provided in R.S. 38:2212.



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Public Bid Law

❑ **Emergencies Defined (cont'd):**

❖ **Extreme Emergency**

- In regard to a municipally owned public utility, an emergency shall be deemed to exist and the public entity may negotiate as provided by R.S. 38:2212(P) for the purchase of fuel for the generation of its electric power where the public entity has first advertised for bids as provided by this Part but has failed to receive more than one bid. **R.S. 38:2211(A)(5)(a).**
- An extreme emergency is a catastrophic event which causes the loss of ability to obtain a quorum of the members necessary to certify the emergency prior to making the expenditure to acquire materials or supplies or to make repairs necessary for the protection of life, property or continued function of the public entity. **R.S. 38:2211(A)(5)(b).**



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Attorney General Opinions

❑ **Attorney General Opinions**

❖ **Rejection of Bids**

#17-0175

- Public entity's requirement that bidders acknowledge receipt of Addenda by inserting addendum number and date went beyond the scope of what is required of bidders under the Public Bid Law.
- Therefore, the failure of the lowest apparent bidder to include the date of each addendum on the Uniform Bid Form does not render their bid as non-responsive.

Process for disqualification – R.S. 38:2212(X)



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Attorney General Opinions

Attorney General Opinions (cont'd)

Contracts for Services

#17-0027 - Purchases from Prison Enterprise.

#16-0082 - Contracts for maintenance services, such as silt removal and dredging, are not public works pursuant to R.S. 38:2212(U) and are therefore not subject to advertising and bidding requirements.

#12-0066 - Public Bid Law is not applicable to a public works projects under \$152,400 (now \$250,000). However, by choosing to bid out...now bound by requirements set forth in bid document.

#11-0059 - Municipal and parish trash collection unless structured as an exclusive franchise may be negotiated rather than publicly bid.

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Attorney General Opinions

Attorney General Opinions (cont'd)

Uniform Bid Form

#09-0304 -

- Use of Uniform Bid Form is mandatory and may not be waived by a public entity;
- Public entity must reject all bids if Uniform Bid Form is not utilized.

Piggy Backing/Cooperative Purchasing

#17-0152 -

- Local government political subdivisions may utilize either the Local Services Law, R.S. 33:1324, or the provisions of R.S. 38:321.1 as an alternative procurement method to the Public Bid Law in order to piggyback off of a previously bid contract for materials and supplies.

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What this Means?

Public Trust Using Public Funds

PUBLIC SERVICE IS NO SECRET SOCIETY

PUBLIC MONEY IS NO TREASURE TROVE

TRANSPARENT EQUALS ACCOUNTABLE

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QUESTIONS



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Cabela



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Cabela

 **Cabela 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)

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Cabela

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Louisiana Constitution Article VII, §14(A)

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Cabela

Cooperative Endeavor Agreements (CEA)

❖ Introduction

❖ Elements of a CEA

- Explanation of Elements

❖ Current AG Test

❖ Legal Sources

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Cabela

Attorney General Opinions

❖ Op. #21-0060

❖ Op. #20-0112

❖ Op. #20-0123

❖ Op. #20-0062

❖ Op. #20-0095

❖ Op. #20-0099

❖ Op. #20-0074

❖ Op. #20-0078

❖ Op. #19-0001

❖ Op. #17-0022

❖ Op. #17-0005

❖ Op. #16-0198

❖ Op. #16-0046

❖ Op. #16-0057

❖ Op. #16-0002

❖ Op. #16-0001

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Cabela

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ASK QUESTIONS

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Read More

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