


Center for Local Government Excellence 

PUBLIC BID LAW

Recurring Issues and Legal Solutions


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February 8, 2022

Center for Local Government Excellence

Course Objectives




Public Bid Law

- * Understand the underlying principles behind the Public Bid Law;
- * Recognize Complex Public Bid Issues; and
- * Properly apply these principles to resolve the issue.

Topics

- * Disaster/Emergency Procurement
- * Technology Procurement
- * Piggybacking
- * Recurring Purchases
- * Trade-Ins
- * Contracts for Goods & Services
- * National Co-Ops



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Disaster/Emergency Procurement

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Public Emergency/ Extreme Public Emergency



Scenario





A hurricane passed through causing significant damage to several local government buildings, including damages to the roofs.

The agency head wants to know if there are provisions in the Public Bid Law to take care of these roof repairs without following the advertising and bidding process.

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Public Emergency/ Extreme Public Emergency






Yes. There are exceptions provided to following the general Public Bid Law requirements when responding to a Public Emergency/ Extreme Public Emergency.

NOTE **Emergency** – “unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury...”

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Public Emergency/ Extreme Public Emergency






Requirements (R.S. 38:2212 P):

1. Declaration of Disaster;
2. Publication of Notice of Disaster in Official Journal within 10 days. (10 days or as soon as practicable in Extreme Emergency);
3. Contracts negotiated under the Emergency/Extreme Emergency disaster shall be supported by written determination and findings of the public entity to justify use of the emergency procurement authority; and

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Public Emergency/ Extreme Public Emergency

Requirements (R.S. 38:2212(P) Continued:

4. If contract action is taken pursuant to telephone or other oral offers, written confirmation of the accepted offer must be included in the file. The file of the public entity must contain:
 - A minimum of the description of the work to be performed;
 - The name and address of each offeror quoting; and
 - The performance time and terms of each offer.
5. If quotes lower than the accepted quote are not accepted, reasons for rejection must be in the file.
6. Records must be kept a minimum of 6 years.

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Increases in Material Costs for Contractors







Contractor states that following hurricanes, they can no longer get building materials needed for a public works project at the costs included in their winning bid.

Can the political subdivision execute a change order to provide for the increase in material costs?

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Increases in Material Costs for Contractors

No.

The Attorney General has opined that situations such as adverse weather conditions do not in and of itself provide cause for the issuance of a change order or amendment to a public works contract to increase the contract price to account for actual cost increases of materials and supplies necessary to complete the contract.

AG Op. No. 06-0304, also cited in AG Op. No. 21-0059

The Public Bid Law prohibits the change in unit prices through change order. See R.S. 38:2212(M)(5)

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

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Technology Procurement

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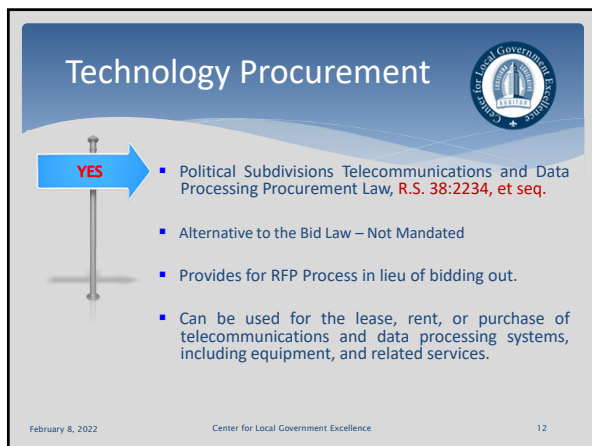
Technology Procurement

Scenario

A political subdivision has an existing security camera system and is looking to add additional cameras to the system.

The agency head wants to know if there are alternatives to bidding out the purchase to ensure that the political subdivision gets fully compatible cameras and related equipment.

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Technology Procurement

YES

- Political Subdivisions Telecommunications and Data Processing Procurement Law, [R.S. 38:2234, et seq.](#)
- Alternative to the Bid Law – Not Mandated
- Provides for RFP Process in lieu of bidding out.
- Can be used for the lease, rent, or purchase of telecommunications and data processing systems, including equipment, and related services.

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Technology Procurement
R.S. 38:2237




Procedures:

- Public notice of the RFP shall be given at least thirty days prior to the date scheduled for opening the RFP.
- Written notice of the RFP shall be mailed to persons and corporations who are known to be in a position to furnish the equipment, systems, and related services.
- This public notice may also be given by electronic media available to the general public.
- The RFP will indicate the relative importance of price and other evaluation factors, shall clearly define the tasks to be performed under the contract, the functional specifications, the criteria to be used in evaluating the proposals, and the time frames within which the work must be completed.

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Technology Procurement
R.S. 38:2237



Procedures (Cont'd):

- An award shall be made to the responsible offeror whose proposal is determined in writing by the governing authority of the political subdivision to be the most advantageous, considering price and other evaluation factors set forth in the RFP. This is different from when the public entity is letting the contract through sealed bidding as the public entity is required to award the contract to the lowest responsive and responsible bidder.
- The governing authority of the political subdivision may reject all proposals when the action is deemed in the best interest of the political subdivision.
- If vendors submit written proposals, the proposals of the successful vendor shall be incorporated into the final contract consummated with that vendor.

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Technology Procurement



For additional guidance, please see the LLA's Legal Blog
Video on:

Purchasing Computers and Software

**Purchasing Computers
and Software**

<https://www.la.la.gov/legal-faqs/blog/>

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Piggybacking

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Piggybacking

Scenario

A political subdivision knows that a neighboring political subdivision recently bid out the purchase for some equipment and wants to know if they can piggyback on that purchase in lieu of bidding the purchase out itself.

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Piggybacking

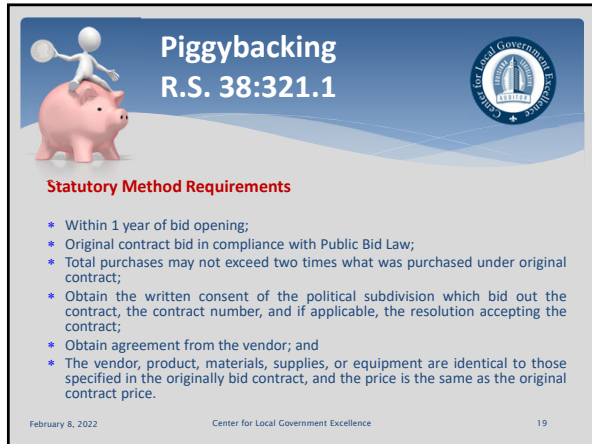
There are two methods that would allow the political subdivision to piggyback off of the neighboring political subdivision's bid process.
AG Op. No. 21-0005

R.S. 38:321.1 – Statutory Method; or

R.S. 33:1324 – Local Services Law

NOTE If you are planning to seek Federal Reimbursement, piggybacking will likely not be considered competitive under 2 CFR Part 200.

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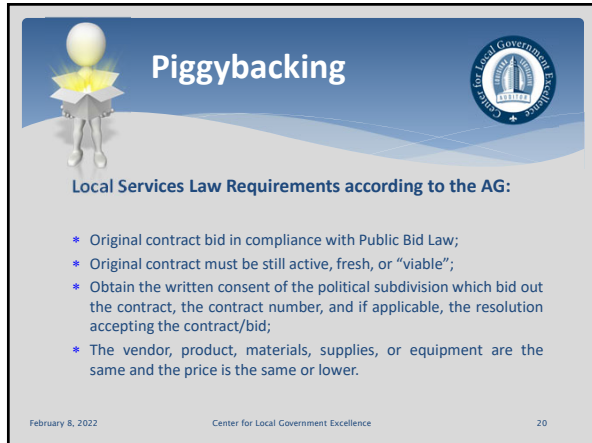


Piggybacking
R.S. 38:321.1

Statutory Method Requirements

- * Within 1 year of bid opening;
- * Original contract bid in compliance with Public Bid Law;
- * Total purchases may not exceed two times what was purchased under original contract;
- * Obtain the written consent of the political subdivision which bid out the contract, the contract number, and if applicable, the resolution accepting the contract;
- * Obtain agreement from the vendor; and
- * The vendor, product, materials, supplies, or equipment are identical to those specified in the originally bid contract, and the price is the same as the original contract price.

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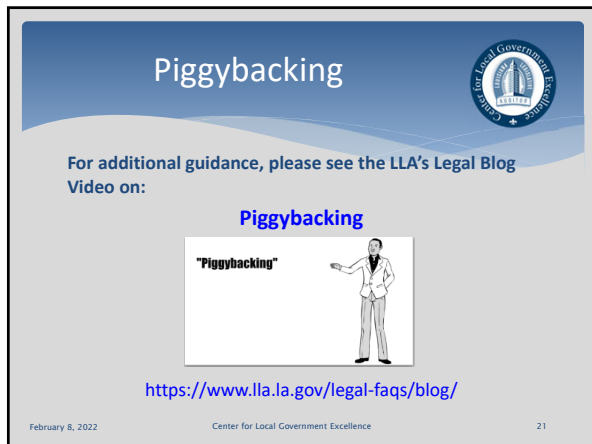


Piggybacking

Local Services Law Requirements according to the AG:

- * Original contract bid in compliance with Public Bid Law;
- * Original contract must be still active, fresh, or "viable";
- * Obtain the written consent of the political subdivision which bid out the contract, the contract number, and if applicable, the resolution accepting the contract/bid;
- * The vendor, product, materials, supplies, or equipment are the same and the price is the same or lower.


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Piggybacking

For additional guidance, please see the LLA's Legal Blog Video on:

Piggybacking



<https://www.la.la.gov/legal-faqs/blog/>



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Recurring Purchases



The Attorney General has opined that public entities must consider all recurring purchases for the entire fiscal year in determining if the purchases exceed the Public Bid Thresholds.

See AG Op. No. 02-0122 and AG Op. No. 21-0059

REMINDER:

If purchases for the fiscal year total:

- ✓ \$10,000 - \$30,000 – Obtain 3 or more quotes
- ✓ >\$30,000 – Bid Out, unless an exception applies.

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Recurring Purchases




Requirements Contracts

Unknown amount of material, supply, or equipment needed over the fiscal year.


See AG Op. No. 21-0059

Fuel Contracts
Price Index




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Recurring Purchases



For additional guidance, please see the LLA's Legal Blog Video on:

Recurring Purchases



<https://www.la.gov/legal-faqs/blog/>

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Trade-Ins

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Trade-Ins

Scenario

- ❖ Political subdivision needs to replace its aging vehicles.
- ❖ The agency head wants to look into whether they can trade-in the old vehicles to help reduce the cost of the new vehicles.

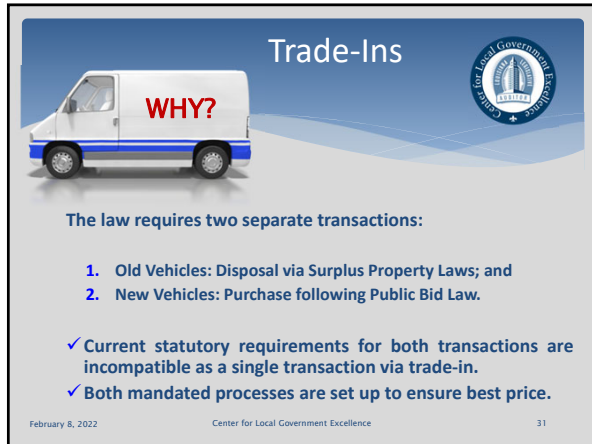
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Trade-Ins

Can a political subdivision trade-in its old vehicles as part of the purchase of new vehicles?

No. Trade-ins are not allowed.

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Trade-Ins

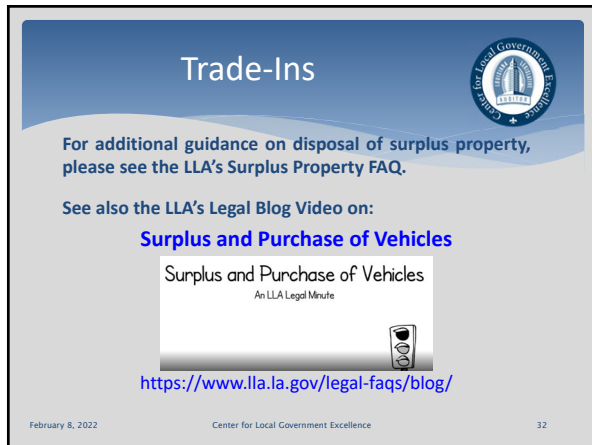
WHY?

The law requires two separate transactions:

1. Old Vehicles: Disposal via Surplus Property Laws; and
2. New Vehicles: Purchase following Public Bid Law.

- ✓ Current statutory requirements for both transactions are incompatible as a single transaction via trade-in.
- ✓ Both mandated processes are set up to ensure best price.

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Trade-Ins

For additional guidance on disposal of surplus property, please see the LLA's Surplus Property FAQ.

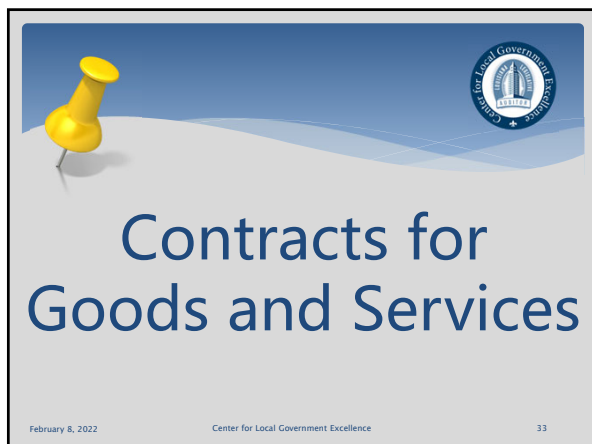
See also the LLA's Legal Blog Video on:

Surplus and Purchase of Vehicles

Surplus and Purchase of Vehicles
An LLA Legal Minute

<https://www.la.la.gov/legal-faqs/blog/>

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Contracts for Goods and Services

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Contracts for Goods and Services




Scenario

A political subdivision is looking to enter into a contract which involves both the purchase of materials and supplies and professional services to be rendered.

The agency head wants to know if the contract will be subject to the Public Bid Law.

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Contracts for Goods and Services



It Depends

- The Attorney General has stated that the predominant portion of contracts that are a mix of materials and supplies and professional services will determine how it should be treated.
- For instance, the Attorney General has said that contracts for food services for school cafeterias should generally be treated as contracts for materials and supplies, because the purchase of the food is the predominant portion of the contract.
AG Op. No. 07-0278

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One more thing...

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National Co-Ops

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National Co-Ops

Scenario

CONTRACTS

A political subdivision is contacted by a National Co-Op, which states that it has several contracts for materials, supplies, and equipment that have been competitively bid under another state's laws and that their rules allow for the political subdivision to utilize the contracts which are great prices.

Can the political subdivision buy off the National Co-Op's price lists?

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National Co-Ops


The Public Bid Law only authorizes:


- * Hospitals/Hospital Service Districts, and
- * School Boards/School Districts/Schools


To make purchases off of Co-Ops/Group Purchasing Organizations.

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National Co-Ops



 For other political subdivisions, the Attorney General has noted that they may not “piggyback” or otherwise purchase using contracts that were not originally bid under the Louisiana Public Bid Law.

 However, if the Office of State Procurement adopts the contract as a State contract, the political subdivision may then purchase off the contract as any other State contract.

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Time for Questions



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**CONTACT INFORMATION
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