The Public Bid Law is found in LRS 38:2211-2296. These provisions, which pertain to municipal public works projects and municipal purchases of materials and supplies, should be studied in great detail. The following is a digest of the Public Bid Law. The 1999 Regular Session of the Louisiana Legislature brought a major change to the Public Bid Law in order to clarify the existing law. Act 768 reorganized the Public Bid Law, placing provisions relating to the purchase of materials and supplies by public entities in a separate section.

The requirement to publicly bid a contract depends on the object of the contract and its estimated value. Generally, contracts for the purchase of materials and supplies (including everything from office supplies to gravel and trucks and backhoes) and the construction of public works projects (including construction or major repair of buildings, roads, sewers, and the like) are to be publicly bid when they exceed certain dollar values. Generally, contracts for services, including insurance, trash collection, and professional services are not required to be publicly bid.

MATERIALS AND SUPPLIES

LRS 38:2212.1 pertains to the purchase of materials and supplies. Act 392 of the 2009 Regular Session of the Louisiana Legislature changed the monetary threshold for purchases of materials and supplies – such as equipment, vehicles, and so on – to provide that purchases which exceed the sum of $30,000.00, shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised.

It further provides that purchases of materials or supplies exceeding the sum of $10,000.00, but less than $30,000.00, shall be made by obtaining not less than three telephone or facsimile (FAX) quotations. In such case, a written confirmation of the accepted offer must be obtained and made a part of the purchase file, and the reasons for rejection shall be recorded in the file if quotations lower than the accepted quotation are received. Lastly, purchases under $10,000.00 are not required to be publicly bid, but should be purchased in accordance with existing purchasing policies and procedures.

Further, LRS 38:2212.1(A)(2) (a) increased the threshold for the purchase of a used or new motor vehicle for conversion into a law enforcement vehicle to $20,000. LRS 38:2212.1(A)(2)(b) also authorizes the purchase of any road maintenance or improvement equipment up to $25,000 without being advertised and let out for bids.
LRS 38:2234 et seq. authorizes political subdivisions to lease, rent, or purchase telecommunications or data processing systems and equipment through a request for proposals (RFP) as an alternative to the advertised sealed bid process of LRS 38:2212.1.

According to the decisions in various cases, items that are not considered as "materials and supplies" and, therefore, are not required to be bid include services (professional and otherwise), insurance, and leases of equipment. It should be noted that a "pure" lease of equipment is not required to be bid; however, a lease with an option to purchase is subject to the Public Bid Law, according to Attorney General's opinions.

PUBLIC WORKS

LRS 38:2212, requires that all public works – such as the construction of roads, buildings, and so on – which exceed $150,000.00, including labor, materials, equipment, and administrative overhead not to exceed 15 percent, shall be advertised and let by contract to the lowest responsible bidder who had bid according to the contract, plans, and specifications as advertised. In addition to labor and materials, administrative overhead (not to exceed 15 percent) and equipment as per the rates in the latest addition of the Associated Equipment Dealers Rental Rate Book (a/k/a “The Green Book”), must be included in determining the estimated value of the contract.

Projects that do not exceed the contract limit of $150,000.00 after this calculation need not be publicly bid. Generally, a municipality has two options in letting public works contracts that do not exceed the threshold. The first option is to enter into a private negotiated contract with a qualified contractor. The second option is to undertake the project with municipal employees.

Act 727 of the 2008 Regular Session instructed the Division of Administration, Office of Facility Planning and Control to develop and prescribe through the Administrative Procedure Act the bid form necessary to obtain the information and to implement the sections of the bid form to be utilized for the public bid of public works projects. This bid form shall be used by any entity seeking bids for public works projects pursuant to LRS 38:2212. This bid form can be obtained through the LMA website at the following link:

PUBLICLY-OWNED UTILITIES

LRS 38:2212(Q), regarding contracts for public works let by publicly-owned utilities, as recognized by the Louisiana Public Service Commission, allows municipalities which own their own utilities to undertake a public works project, other than the construction of a building, for the contract limit ($150,000.00) or less by entering into a contract with or without public bid or by using the employees of the public entity owning the utility.
DIVISION OF CONTRACTS PROHIBITED

LRS 38:2212 (V), provides that “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.”

MAINTENANCE

LRS 38:2212 (W) (1), provides “this section shall not apply to labor necessary for the maintenance of public works built and completed.”

ADVERTISING REQUIREMENTS

Advertising requirements are established in LRS 38:2212, which provides that any contract for public works shall be published once a week for three different weeks in a newspaper in the locality, the first advertisement to appear at least 25 days before the opening of bids. Any contract for materials or supplies shall be published two times in a newspaper in the locality, the first advertisement to appear at least 15 days before the opening of bids. The first publication can not occur on a Saturday, Sunday, or legal holiday, and plans must be available to bidders on the day of the first advertisement and be available until 24 hours before the bid opening date.

The requirements for advertising and letting to the lowest responsible bidder do not apply in cases of an “emergency” or an "extreme public emergency." It should be noted that the definitions of an "emergency" and “extreme public emergency” [LRS 38:2211(A)(5)] are very limited. An “emergency” is defined as an unforeseen mischance bringing with it destruction or injury of life or property or the imminent threat of such destruction or injury or as the result of an order from any judicial body to take any immediate action which requires construction or repairs absent compliance with the public bid requisites. In the case of an "emergency," such emergency must be certified by the public entity and notice of the emergency must be published in the official journal of the public entity within 10 days thereof. Every contract negotiated by a public entity in the event of an emergency must be supported by a written determination and findings by the public entity justifying the use of the emergency authority. When contract action is taken pursuant to telephone or other oral offers, a written confirmation of the accepted offer must be obtained and made a part of the contract file. Also, a record must be established by the public entity which shall contain:

- A description of the work to be performed
- The name and address of each offer or quoting
- The performance time and terms of each offer
The law further requires the reasons for rejection to be recorded and made part of the contract file, if quotations lower than the accepted quotation are received, and requires all records to be retained for at least six years following the purchase or completion of the work.

**ELECTRONIC BIDDING**

LRS 38:2212 and LRS 38:2212.1 provide that Contractors **shall** be provided the option to submit bids for public contracts through a uniform and secure electronic interactive system. (Please see balance of these sections for additional information and exemptions.

Other important additional points about the Public Bid Law are as follows:

- The Public Bid Law does not apply to a public entity purchasing surplus materials and supplies from another public entity. However, in such cases, there must be an ordinance declaring the property as surplus and establishing the minimum price [LRS 33:4712].

- A municipality may purchase materials and supplies through existing state contracts [LRS 39:1702(A)] and through contracts entered into by other political subdivisions [LRS 33:1324]. In such cases, there is no requirement that such purchases be bid. A reading of Attorney General Opinion Nos. 90-582, 09-0296, 09-0098 and 02-0399 would be prudent in such cases.

- Regarding the sale of surplus municipal property, Act 604 of the 2006 Regular Legislative Session enacted RS 33:4711.1 authorizing political subdivisions to sell surplus movable property on the internet by using sites such as E-Bay, etc. (Also see LRS 33:4712(F) and LRS 49:125)

Additional information regarding the award of contracts can be found in the Public Bid Laws.