

Course 107 Public Bid Law and Donations (Cabela)

Description

This course is intended to help participants understand the laws and how they can use these to become more accountable and transparent and what needs to be done to be in complete compliance with the Public Bid Law.

Objectives

After this class participants will be able to:

- Explain the different laws and acts that they may be subject to.
- Participants will be able to clearly identify what are the laws and duties that they must perform to be in compliance with the laws.

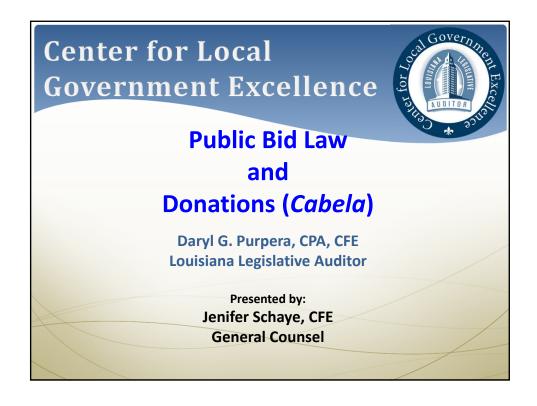
Who Will Benefit

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

About the Instructor

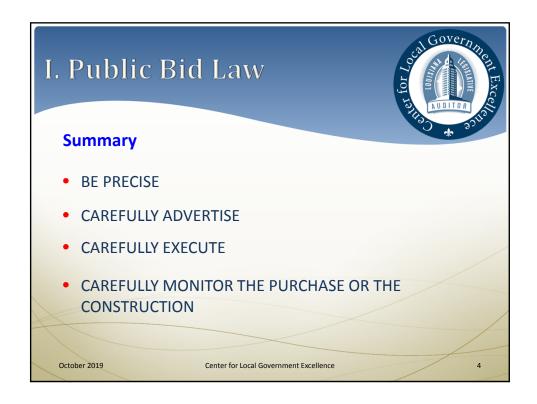
JENIFER SCHAYE, GENERAL COUNSEL

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-one 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.

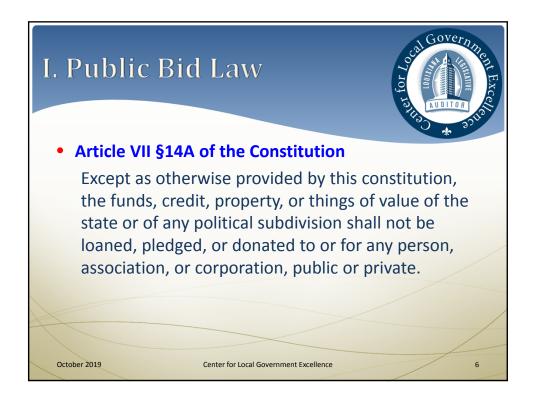


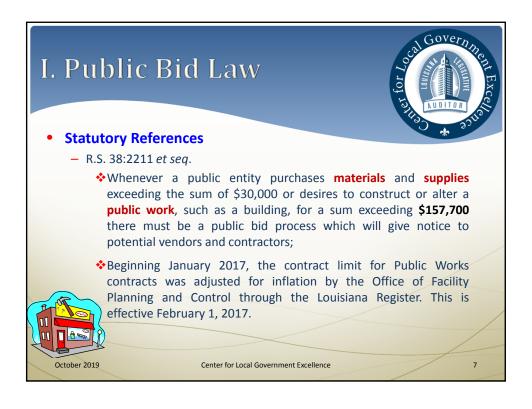




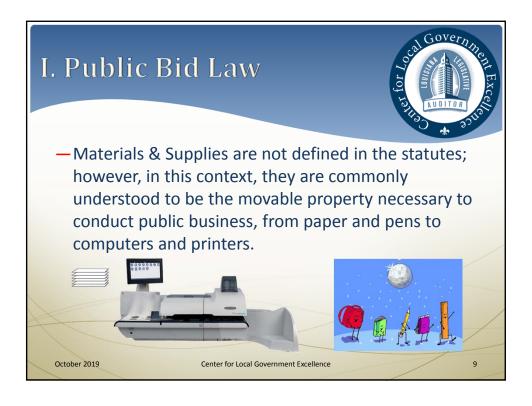




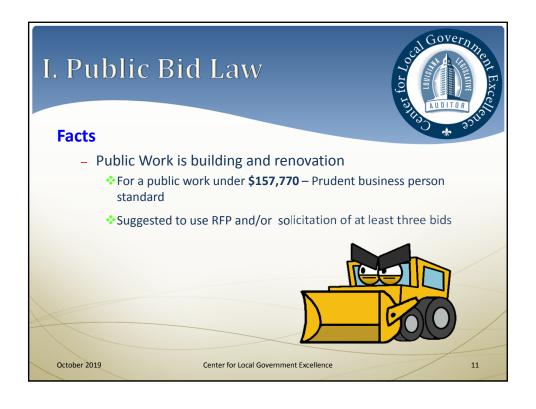






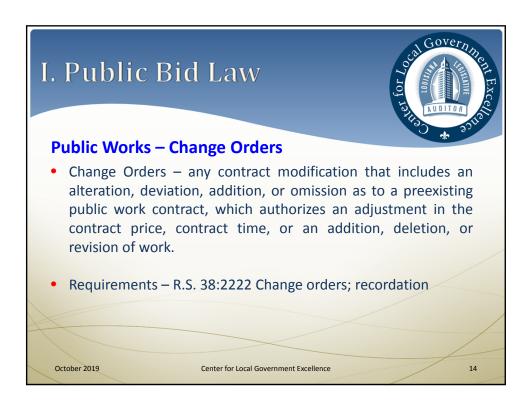














Public Works - Change Orders (cont'd)

- 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.

October 2019

Center for Local Government Excellence

15

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

October 2019

Center for Local Government Excellence

- 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



October 2019

Center for Local Government Excellence

I. Public Bid Law

EMERGENCIES DEFINED

Government Excel

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.
- 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).

October 2019

Center for Local Government Excellence







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.

October 2019

Center for Local Government Excellence

21

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.

October 2019

Center for Local Government Excellence



- 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)

October 2019

Center for Local Government Excellence

23

I. Public Bid Law



- Contracts for Services
 - #11-0059 Municipal and parish trash collection unless structured as an exclusive franchise may be negotiated rather than publically bid.
 - #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 \$157,700). However, by choosing to bid out...now bound by requirements set forth in bid document.
 - #17-0027 Purchases from Prison Enterprise.

October 2019

Center for Local Government Excellence



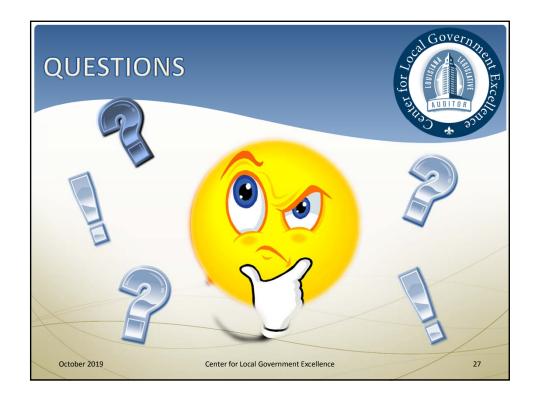
- Uniform Bid Form
 - #09-0304
 - > Use of Uniform Bid Form is mandatory and may not be waived by a public entity.
 - > Public entity must reject all bids if Uniform Bid Form is not utilized.
- Piggy Backing/ Cooperative Purchasing
 - #17-0152
 - > Local government political subdivisions may utilize 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.

October 2019

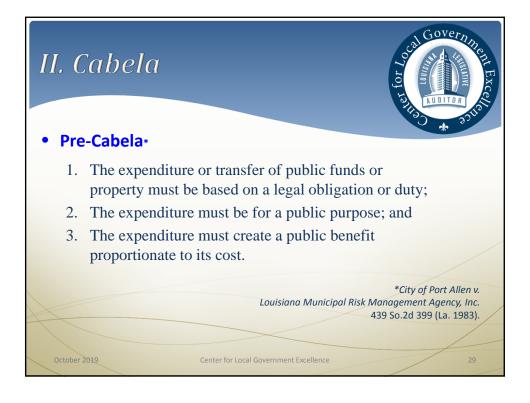
Center for Local Government Excellence

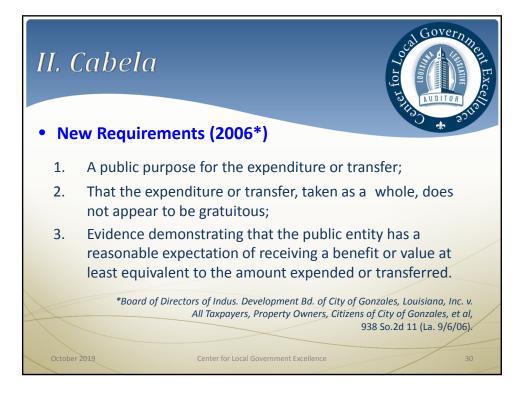
25

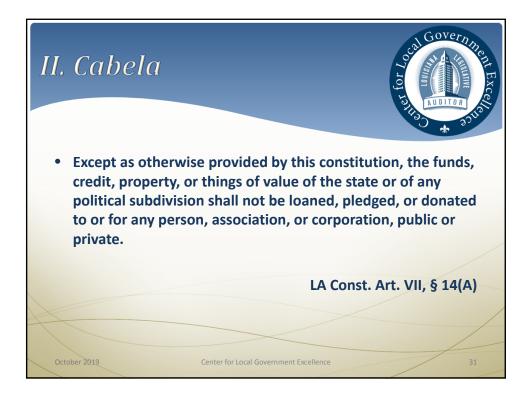
WHAT THIS MEANS ■ Public Trust Using Public Funds: ♣ PUBLIC SERVICE IS NO SECRET SOCIETY ♣ PUBLIC MONEY IS NO TREASURE TROVE October 2019 Center for Local Government Excellence 25













II. Cabela



Attorney General Opinions

- ❖ Op. No. 19-0001 Since the stated purpose of NOLA 311 is not in accord with the stated purpose for the Orleans Parish Communication District, the AG has opined that the communications district may not use communications' funds to administer the NOLA 311 call center.
- 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.

October 2019

Center for Local Government Excellence

33

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.

October 2019

Center for Local Government Excellence

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.

October 2019

Center for Local Government Excellence

35

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.

October 2019

Center for Local Government Excellence





