

Time of Request: Saturday, October 30, 2010 14:05:56 EST
Client ID/Project Name: blog
Number of Lines: 231
Job Number: 1822:250404416

Research Information

Service: LEXSTAT(R) Feature
Print Request: Current Document: 1
Source: Get by LEXSTAT(R)
Search Terms: La. R.S. 38:2251

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LEXSTAT LA. R.S. 38:2251

LOUISIANA STATUTES ANNOTATED
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LOUISIANA REVISED STATUTES
TITLE 38. PUBLIC CONTRACTS, WORKS AND IMPROVEMENTS
CHAPTER 10. PUBLIC CONTRACTS
PART 4. PURCHASE OF MATERIALS, SUPPLIES AND PROVISIONS

GO TO LOUISIANA STATUTES ARCHIVE DIRECTORY

La. R.S. 38:2251 (2010)

§ 38:2251. Preference for products produced or manufactured in Louisiana; exceptions

A. As used in this Section, the following terms shall have the following meanings ascribed to them:

(1) "Assembled" means the process of putting together all component parts of an item of equipment by the manufacturer when the assembly plant is located within the territorial borders of the state of Louisiana. "Assembled" also means the assembly of computers and related equipment when such assembly takes place in Louisiana. "Assembled" shall not mean the process of reassembling parts packed for shipping purposes.

(2) "Louisiana products" means products which are manufactured, processed, produced, or assembled in Louisiana.

(3) "Manufactured" means the process of making a product suitable for use from raw materials by hand or by machinery. "Manufactured" shall not mean the process of assembling component parts.

(4) "Meat" and "meat product" means beef, veal, pork, mutton, poultry, and other meats, and products made from those meats.

(5) "Other products" includes "other meat", "other meat products", "other seafood", and "other seafood products" and means products which are produced, manufactured, grown, processed, and harvested outside the state.

(6) "Processed" means the alteration of any raw product altered from its original state to enhance its value or render it suitable for further refinement or marketing.

(7) "Produced" means the process of manufacturing, planting, cultivating, growing, or harvesting.

(8) "Seafood" means crawfish, catfish, other fish, shrimp, oysters, crabs, underutilized species, and other seafood and freshwater food.

B. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases agricultural or forestry products, including meat, seafood, produce, eggs, paper and paper products under the provisions of this Chapter shall procure or purchase Louisiana products provided all of the following conditions are met:

(1) The bidder certifies in the bid submitted that the product meets the criteria of a Louisiana product.

(2) The product is equal or better than equal in quality to other products.

(3) The cost of the Louisiana product shall not exceed the cost of other products by more than ten percent except as otherwise provided in this Chapter as a specific exception.

C. In addition to the requirements listed in Subsection B of this Section, the following products shall meet the following specific requirements:

(1) Produce shall be produced in Louisiana and produce products shall be produced and processed in Louisiana.

(2) Eggs shall be laid in Louisiana and egg products shall be processed from eggs laid in Louisiana.

(3) Meat and meat products shall be processed in Louisiana from animals which are alive at the time they enter the processing plant.

(4) (a) Seafood shall be:

(i) Harvested in Louisiana seas or other Louisiana waters; or

(ii) Harvested by a person who holds a valid appropriate commercial fishing license issued under *R.S. 56:1 et seq.*

(b) Products produced from such seafood shall be processed in Louisiana.

(5) Domesticated catfish shall be processed in Louisiana from animals which were grown in Louisiana.

(6) Paper and paper products shall be manufactured or converted in Louisiana. For the purposes of this Paragraph, "manufactured" shall mean the process of making a product suitable for use from raw materials by hand or by machinery, and "converted" shall mean the process of converting roll stock into a sheeted and fully packaged product in a full-time converting operation. For paper supplied in wrapped reams, each carton and each individual ream shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper is manufactured or converted. For paper and paper products supplied in bulk or in other forms, the smallest unit of packaging shall be clearly labeled with the name of the manufacturer or converter and the location within Louisiana where such paper or paper product is manufactured or converted.

(7) All other agricultural or forestry products shall be produced, manufactured, or processed in Louisiana.

D. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase meat and meat products which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry and which are equal in quality to other meat and meat products, provided the

cost of the further processed meat and meat products does not exceed the cost of other meat or meat products by more than seven percent.

E. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase domesticated or wild catfish which are processed in Louisiana but grown outside of Louisiana and which are equal in quality to domesticated or wild catfish which are processed outside of Louisiana provided the cost of the domesticated or wild catfish which are processed in Louisiana does not exceed the cost of the domesticated or wild catfish which are processed outside of Louisiana by more than seven percent.

F. The provisions of this Section shall not apply to a drainage district or sewerage and water board located in a municipality with a population in excess of 500,000 wherein the cost of products produced or manufactured in the state of Louisiana does not exceed by more than five percent the cost of products which are equal in quality to products produced or manufactured outside of the state in purchases of one million dollars or more, as provided by Acts 880 and 693 of the 1985 Regular Session of the Louisiana Legislature.

G. Notwithstanding any other provision of this Section to the contrary, each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase produce processed in Louisiana but grown outside of Louisiana and which is equal in quality to produce processed and grown outside of Louisiana provided the cost of the produce processed in Louisiana does not exceed the cost of the produce processed outside of Louisiana by more than seven percent.

H. Except as otherwise provided in this Section, each procurement officer, purchasing agent, or similar official who procures or purchases materials, supplies, or equipment under the provisions of this Chapter may purchase materials, supplies, or equipment which are Louisiana products, as defined in Paragraph (A)(2) of this Section, and which are equal in quality to other materials, supplies, or equipment, provided that all of the following conditions are met:

NOTE: Paragraph (1) as amended by Acts 2000, 1<st>Ex. Sess., effective until held invalid.

(1) The cost of the Louisiana products does not exceed the cost of other materials, supplies, or equipment which are manufactured, processed, produced, or assembled outside the state by more than ten percent.

NOTE: Paragraph (1) effective if Acts 2000, 1<st>Ex. Sess., No. 123, is held invalid.

(1) The cost of the Louisiana products does not exceed the cost of other materials, supplies, or equipment which are manufactured, processed, produced, or assembled outside the state by more than seven percent.

(2) The vendor of Louisiana products agrees to sell the products at the same price as the lowest bid offered on such products.

NOTE: Paragraph (3) as amended by Acts 2000, 1<st>Ex. Sess., effective until held invalid.

(3) In cases where more than one bidder offers Louisiana products which are within ten percent of the lowest bid, the bidder offering the lowest bid on Louisiana products is entitled to accept the price of the lowest bid made on such products.

NOTE: Paragraph (3) effective if Acts 2000, 1<st>Ex. Sess., No. 123, is held invalid.

(3) In cases where more than one bidder offers Louisiana products which are within seven percent of the lowest bid, the bidder offering the lowest bid on Louisiana products is entitled to accept the price of the lowest bid made on such products.

I. The provisions of this Section shall not apply to the procurement or purchase of fire fighting or rescue equipment.

J. Notwithstanding any other provision of this Section to the contrary, such preferences shall only apply to bidders whose Louisiana business workforce is comprised of a minimum of fifty percent Louisiana residents.

K. Notwithstanding any other provision of this Section to the contrary, such preference shall not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed, or refined in Louisiana for sale as an expanded clay aggregate form different than its original state. No provision of this Subsection shall affect the preferences applicable to brick manufacturers.

L. The provisions of this Section shall not apply to treated wood poles and piling.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

Government Procurement of Goods

HISTORY: Acts 1987, No. 778, § 1; Acts 1990, No. 449, § 1, eff. July 18, 1990; Acts 1993, No. 577, § 1, eff. June 15, 1993; Acts 1993, No. 1032, § 1, eff. July 1, 1993; Acts 1995, No. 1255, § 1; Acts 1999, No. 854, § 1, eff. July 2, 1999; Acts 2000, 1st Ex. Sess., No. 123, §§ 1, 3, eff. July 1, 2000; Acts 2001, No. 644, § 1; Acts 2001, No. 693, § 1, eff. July 1, 2001; Acts 2003, No. 744, § 1, eff. June 27, 2003; Acts 2003, No. 1175, § 1, eff. July 3, 2003.

NOTES:

LexisNexis (R) Notes:

Amendment Notes

2003 Amendments.

Acts 2003, No. 744, § 1, effective June 27, 2003, added (L). Acts 2003, No. 1175, § 2, effective July 3, 2003, in (K), substituted "such preference shall not apply to" for "each procurement officer, purchasing agent, or similar official who procures or purchases products under the provisions of this Part shall procure or purchase," deleted "and which is equal in quality to such products manufactured, processed, or refined outside of Louisiana provided the cost of the Louisiana product does not exceed the cost of such product produced or processed outside of Louisiana by more than ten percent" following "original state," and added the last sentence.

2001 Amendments.

Acts 2001, No. 644, § 1, effective August 15, 2001, added the last three sentences in (C)(6). Acts 2001, No. 693, § 1, effective July 1, 2001, in (A)(8), substituted "'Seafood' means crawfish, catfish, other fish" for "'Seafood' means fish" at the beginning of the paragraph, and added "and freshwater food" to the end of the paragraph; in (B), added "Notwithstanding any other provision of this Section to the contrary" to the beginning of paragraph, and inserted "agricultural or forestry products, including meat, seafood, produce, eggs, paper and paper" preceding "products" near the middle of the paragraph and "all of" preceding "the following conditions" near the end of the paragraph; in (B)(1), substituted "certifies" for "shall indicate," and "meets" for "has met"; inserted "Louisiana" preceding "product" near the

end of (B)(3); substituted "shall be produced in Louisiana and produce products shall be produce and processed" for "shall be grown, canned, processed, or frozen" in (C)(1); added "and egg products shall be processed from eggs laid in Louisiana" in (C)(2); added (C)(4)(b) and redesignated (C)(4) as (C)(4)(a), former (C)(4)(a) as (C)(4)(a)(i), and former (C)(4)(b) as (C)(4)(a)(ii); in (C)(4)(a), deleted "and seafood products" following "Seafood" at the beginning of the subparagraph and "produced from seafood which is" from the end of the subparagraph; added the last three sentences in (C)(6); added (C)(7); substituted "seven percent" for "ten percent" at the end of (D), (E), and (G); substituted "Except as otherwise provided in this Section, each" for "Each" at the beginning of (H); and added (K).

2000 Amendments.

Acts 2000, 1st. Ex. Sess., No. 123, § 1, effective July 1, 2000, added (J); substituted "ten percent" for "seven percent" in (B)(3); inserted "and Forestry" following "the Louisiana Department of Agriculture" near the middle of (D); in (E), inserted "or wild" following "domesticated" in four places, and substituted "ten percent" for "four percent" at the end of the subsection; substituted "ten percent" for "four percent" at the end of (G); and substituted "ten percent" for "seven percent" at the end of (H)(1) and near the middle of (H)(3). Acts 2000, 1st. Ex. Sess., No. 123, § 3, also amended (B)(3), (D), (E), (G), and (H)(1) and (H)(3). See note regarding § 6 of this Act for effective date and applicability information. Acts 2000, 1st. Ex. Sess., No. 123, § 6, provides: "A. Sections 1, 2, 5, and 6 of this Act shall become effective on July 1, 2000. "B. In the event that any provision of Section 1 of this Act, or the application thereof, is held invalid, and a court shall determine that such provisions, items, or applications cannot be given effect without the invalid provision, item, or application, Section 3 of this Act shall become effective. "C. In the event that any provision of Section 2 of this Act, or the application thereof, is held invalid, and a court shall determine that such provisions, items, or applications cannot be given effect without the invalid provision, item, or application, Section 4 of this Act shall become effective."

1999 Amendments.

Acts 1999, No. 854, § 1, effective July 2, 1999, inserted ""Assembled" also means the assembly of computers and related equipment when such assembly takes place in Louisiana" in (A)(5); substituted "seven percent" for "five percent" in (H)(1); substituted "seven percent" for "five percent" in (H)(3).

RELATED STATUTES & RULES

Louisiana Law:

Fraud by vendors or by purchaser, see *La. R.S. 3:4617*

Preference to firms doing business in state, see *La. R.S. 38:2253*

Preference for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana; exceptions, see *La. R.S. 39:1595*

CASE NOTES

1. Trial court did not err in finding that a generator repair service's petition to nullify a school board's award of a

repair service bid had failed to state a cause of action where the bid was for repair services and repair services did not fall within purview of the public bid laws; the repair service had not alleged that it was the "manufacturer" of the parts to have been utilized. *B & C Elec., Inc. v. E. Baton Rouge Parish Sch. Bd.*, La. App. 2002-1578, 849 So. 2d 616, 2003 La. App. LEXIS 1350 (La.App. 1 Cir. May 9 2003).

2. Trial court did not err in finding that a generator repair service's petition to nullify a school board's award of a repair service bid had failed to state a cause of action where the bid was for repair services and repair services did not fall within purview of the public bid laws; the repair service had not alleged that it was the "manufacturer" of the parts to have been utilized. *B & C Elec., Inc. v. E. Baton Rouge Parish Sch. Bd.*, La. App. 2002-1578, 849 So. 2d 616, 2003 La. App. LEXIS 1350 (La.App. 1 Cir. May 9 2003).

3. Public contract source preference statute, La. Rev. Stat. Ann. § 38:2251, did not apply to fire trucks, but to food products only. *Ferrara Fire Apparatus, Inc. v. Morgan City*, 600 So. 2d 1387, 1992 La. App. LEXIS 1766 (La.App. 1 Cir. 1992), writ of certiorari denied by 605 So. 2d 1116, 1992 La. LEXIS 3030 (La. 1992).

ADMINISTRATIVE LAW AND DECISIONS

Attorney General:

R.S. 38:2251; R.S. 15:702 and 15:703, OPINION No. 81-172, La. Atty. Gen. Op. No. 1981-172; 1981 La. AG LEXIS 270.

A municipality or other political subdivision in purchasing supplies and materials required to be by public bidding may not grant a preference solely to local bidders., OPINION NUMBER 82-471, La. Atty. Gen. Op. No. 1982-471; 1982 La. AG LEXIS 540.

Discussion of rules and regulations granting preference to bidders and limiting or restricting bidders supplying products manufactured in certain countries., OPINION NUMBER 82-402, La. Atty. Gen. Op. No. 1982-402; 1982 La. AG LEXIS 585.

Misc. "C", OPINION REQUEST No. 85-297, La. Atty. Gen. Op. No. 1985-297; 1985 La. AG LEXIS 625.

School Board may not establish parish preferences on procurements which are bid under R.S. 38:2212., OPINION No. 87-199, La. Atty. Gen. Op. No. 1987-199; 1987 La. AG LEXIS 289.

Utility poles made from La. grown trees but processed or manufactured in another state do not qualify for preference for La. product preference., OPINION No. 87-562, La. Atty. Gen. Op. No. 1987-562; 1987 La. AG LEXIS 298.

School Board may not establish parish preferences on procurements which are bid under R.S. 38:2212., OPINION No. 87-223, La. Atty. Gen. Op. No. 1987-223; 1987 La. AG LEXIS 349.

Preference for La. products is mandatory on state agencies and other entities subject to La. Procurement Code and violations are subject to criminal penalties., OPINION No. 87-409A, La. Atty. Gen. Op. No. 1987-409; 1987 La. AG LEXIS 355.

To qualify for in state procurement price preference, substantially all of the manufacturing process which produces a product must occur within La., OPINION No. 87-8, La. Atty. Gen. Op. No. 1987-8; 1987 La. AG LEXIS 400.

Preference for La. products is mandatory on political subdivisions and may be enforced by civil action or criminal penalties., OPINION No. 87-409, La. Atty. Gen. Op. No. 1987-409; 1987 La. AG LEXIS 401.

The purchasing agent has an affirmative duty to determine if a bidder is entitled to a preference, even if it is not claimed by the bidder; however, where the bidder fails to respond to bid specifications requiring the bidder to claim a preference, then the nonconforming bid may be rejected as if there was no bidding., OPINION NUMBER 89-22, La. Atty. Gen. Op. No. 1989-22; 1989 La. AG LEXIS 82.

Municipality may prefer home-town vendor when prices are the same., OPINION NUMBER 90-361, *La. Atty. Gen. Op. No. 1990-361; 1990 La. AG LEXIS 409.*

Fire fighting equipment manufactured and assembled in Louisiana qualifies for procurement preference., OPINION No. 90-590, *La. Atty. Gen. Op. No. 1990-590; 1990 La. AG LEXIS 472.*

The provisions of *R.S. 38:2251(C)(6)* include products manufactured, grown, or harvested in Louisiana, other than agricultural or seafood products., OPINION NUMBER 93-124, *La. Atty. Gen. Op. No. 1993-124; 1993 La. AG LEXIS 45.*

Under *R.S. 38:2251(B)(3)* and (H) a conditional five percent purchasing preference may be applied to the purchase of computers. The seven percent preference granted by Paragraphs(B)and(C) apply only to food and paper products., OPINION NUMBER 98-291, *La. Atty. Gen. Op. No. 1998-291; 1998 La. AG LEXIS 550.*

Public entity has choice whether to invoke provisions of *R.S. 38:2251H* and give preference to bidder who offers Louisiana products. If it does not invoke those provisions, it may choose either of two bidders who have offered the same price since both vendors were foreign corporations doing business in Louisiana., OPINION NUMBER 99-297, *La. Atty. Gen. Op. No. 1999-297; 1999 La. AG LEXIS 345.*

Contracts entered into by the St. Bernard Parish Government for management and removal of debris generated as the result of Hurricanes Katrina and Rita constitute contracts for services which are not subject to the Louisiana Public Bid Law. Public Bid Law is not applicable when contracting for services, whether of a professional or other nature , Opinion No. 07-0061. *2007 La. AG LEXIS 40.*

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