

# PUBLICATION

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## Louisiana Public Bid Law Update: Two Big Wins in the Louisiana First Circuit for Unsuccessful Bidders Disputing Public Bid Awards

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**Last month, the Louisiana First Circuit Court of Appeal issued two decisions in favor of unsuccessful bidders on public projects.**

In *Phylway Const., LLC v. Terrebonne Parish Consol. Government*, 2013-1589 (La. App. 1 Cir. 9/5/14), \_\_\_ So.3d \_\_\_, the third lowest bidder disputed the awarding authority's award to the first lowest bidder and then to the second lowest bidder because neither had submitted a completed Attestation Clause (regarding past criminal convictions of bidders) within ten days of the bid opening. While La. R.S. 38:2227 requires only the lowest bidder to submit the Attestation Clause, the bid form required *each* bidder to submit the Attestation Clause within ten days of the bid opening. Consistent with courts' strict enforcement of Public Bid Law and bid document requirements, the First Circuit held that, if an awarding authority includes a requirement in the bid form or advertisement, then the public entity cannot waive the requirement, even if the requirement is more than what is mandated by the Public Bid Law. In addition to maintaining the consistency of Louisiana courts' strict enforcement of the Public Bid Law and bid requirements, this case is noteworthy because the court applied that same strict enforcement standard to documents and information that were required to be submitted after bids were submitted.

In *Gibson & Associates, Inc. v. State Dept. of Transp. and Development*, 2013-2069 (La. App. 1 Cir. 9/24/14), \_\_\_ So.3d \_\_\_, the court awarded the disputing bidder on a Louisiana DOTD project attorneys' fees of \$106,215 under La. R.S. 38:2220.4. The DOTD argued that an award of fees under La. R.S. 38:2220.4 was not appropriate because the bidder had not asserted a "whistleblower" suit, which is provided under La. R.S. 38:2220.2 and requires certain other procedural requirements under La. R.S. 38:2220.3, including notice to the Louisiana Attorney General. The First Circuit disagreed and held that, regardless of whether the suit is a "whistleblower" suit under La. R.S. 38:2240.2, any person who receives an order declaring a violation of the Public Bid Law has occurred is entitled to recover attorneys' fees under La. R.S. 38:2220.4..

Note that La. R.S. 38:2220.4B(1) also allows the award of reasonable attorneys' fees to a defendant who prevails in a bid dispute, so unsuccessful bidders should be aware of that possibility when considering whether to dispute a bid award.

Should you have any questions about possible subcontractor liability or other construction law issues in general, please contact a member of the [Firm's Construction Group](#).