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Opinion Number 03-0298

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90-A-1 Public Funds & Contracts
R.S. 38:2211 A (11)
R.S. 38:2212 A (1) (a) & (d)
R.S. 38:2212 A (1)(b)
R.S. 38:2218A

Louisiana Public Bid Law requires a Bid Bond of not more than five percent of the contract price for public works projects exceeding \$25,000.00. Bid Bond submitted by low bidder was responsive to public works bid solicitation of public entity.

Dear Mr. Purvis:

On behalf of the Sandy Lake Water System you have requested an opinion of our office regarding whether formal bids made by G.D. Womack Trenching, Inc. and CBC Services, Inc. in response to public works project No. 01-10-379E were responsive and whether an award of the contract to Womack Trenching as low bidder would be inconsistent with the advisory notice issued by the consulting engineers on June 10, 2003, and, if so, would the award of the contract violate the Louisiana Public Bid Law. Included with your request were copies of the three bids for the project, the advertisement, summary of the bid proposals received from the three bidders including the bid bonds, copies of two addendums, and the June 10, 2003, advisory notice issued by the public entity through McManus Consulting Engineers.

The June 10, 2003, advisory notice stated to all bidders that: "When bidding, please use the forms in the specification book as provided; i.e. Bid Bond, Corporate Resolutions, and Certificate of Corporate Principal. USDA requires the use of these forms. Should you be awarded the contract, the above-mentioned forms will save contract approval time from USDA." Both Womack and CBC prepared and submitted a Bid Bond but did so on a form different than that found in the specification book. The information contained in the submitted Bid Bonds were the same as that set forth in bid form found in the specification book with some minor and inconsequential additions and formatting changes.

The question presented is whether or not G.D. Womack and CBC were responsive bidders when they submitted Bid Bonds required by R.S. 38:2218A but on a form other than the Bid Bond form found in the specification book. If responsive then G.D. Womack would be the low responsive and responsible bidder and would be awarded the contract. If non-responsive then the bids of both G.D. Womack and CBC would be rejected.

Under the Louisiana Public Bid Law, contracts for public works projects costing \$100,000 or more must be advertised and let to the lowest responsive and responsible bidder. Public works means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used or leased by a public entity. LSA R.S. 38:2212A(1)(a) & (d) and 38:2211A.(11). The project let out for bids by Sandy Lake Water System is a public works project and will cost in excess of \$100,000.

La. R.S. 38:2218A reads as follows:

The public entity advertising for bids for work shall require the bidders to attach a certified check, cashier's check, or bid bond for not more than five percent of the contract price of the work to be done, as an evidence of good faith of the bidder.

La. R.S. 38:2212A(1)(b) read as follows:

The provisions and requirements of this Section, those stated in the advertisement for bids, and those required on the bid form shall not be waived by any public entity.

The bid bond form found in the specification book and referenced in the June 10, 2003, advisory issued by the consulting engineers is not a requirement found in the Public Bid Law, is not required in the legal advertisement issued on this project and is not a requirement found on the bid form. R.S. 38:2218 does not prescribe a particular bid bond form that bidders must use; only that a bid bond be submitted by a bidder and that the bid bond be for not more than five percent of the contract price. As such the prohibitory requirements of R.S. 38:2212A(1)(b) are not applicable.

Furthermore, the language of the June 10, 2003, advisory does not contain a requirement that each bidder use the bid bond contained in the specification book such that failure to utilize the form would be considered non-responsive to the bid solicitation. The advisory only states that each bidder "...please use the forms in the specification book as provided; i.e. Bid Bond ...". The notice is more in the form of a request than a mandate.

It is therefore the opinion of this office that the Bid Bonds submitted by Womack and CBC were responsive to the bid solicitation issued by Sandy Lake Water System, Inc. and the contract for public works project No. 01-10-379E, Contracts A & D may be awarded to G.D. Trenching Inc. as the lowest responsive and responsible bidder.

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We trust that this answers your inquiry.

Yours very truly,

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BY:


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