

March 12, 2004
Opinion Number 04-0030

90-A-1 Public Funds & Public Contracts
R.S. 38: 2211(9) and (11);
R.S. 38:2212(A)(1)(a) and (d);
R.S. 37:2150-2163

Mr. Al Ater, Chief of Staff
Secretary of State
P.O. Box 94125
Baton Rouge, LA 70804-9125

Dear Mr. Ater:

Public works contracts that do not exceed the statutory contract limit of \$100,000 as set forth in LSA R.S. 38:2211A(1)(d) are not subject to the advertising and bidding requirements of the Louisiana Public Bid Law and may be undertaken by the public entity using its own employees, may be negotiated with one or more contractors, or may be let out for public bids. Public works contracts are subject to the contractor licensing requirements of LSA R.S. 37:2150-2163 including the requirement that any contract that exceeds the sum of \$50,000.00 be performed by a duly licensed

On behalf of the State of Louisiana, Secretary of State, you have requested the opinion of this office on whether LSA R.S. 38:2211(A)(9), (11) and (12) and 38:2212(d) of the Public Bid Law allows the Secretary of State to “negotiate” a “public work” contract up to the “contract limit” without the necessity of going through the formal bid process.

The Louisiana Secretary of State is a public entity within the meaning of LSA-R.S. 38:2211(10) and is therefore subject to the provisions of the Louisiana Public Bid Law in contracting for public works. LSA R.S. 38:2211-2296. The purpose of the Public Bid Law is to secure free and unrestricted competition among bidders, to eliminate fraud and favoritism, and to avoid undue or excessive costs. *Apolinar v. Professional Services*, 663 So. 2d 17 (La. 1995); *Louisiana Associated General Contractors, Inc., et al v. Calcasieu Parish School Board*, 586 So. 2d 1354 (La.1991).

Under the Public Bid Law, contracts for public works projects exceeding \$100,000 must be advertised and let to the lowest responsible and responsive 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 38:2211(9) & (11). Public works contracts that do not exceed the contract limit of \$100,000 are not subject to the advertisement and bidding requirements of the Public Bid Law and may be negotiated by the public entity.

To determine if the public works contract exceeds the \$100,000 contract limit, the public entity must add together the total cost of materials that will go into the project, the wages and benefits which will be paid to the employees used in the project, the cost of supervision and administrative overhead not to exceed fifteen percent, and the rental value of the owned equipment which will be used as per the rates in the latest edition of the Association Equipment Dealers Rental Book.

It is therefore the opinion of this office that a public works contract undertaken by the Louisiana Secretary of State that does not exceed the sum of \$100,000, including labor, materials, and equipment as set forth in R.S. 38:2212A(1)(d) may either be undertaken by the Secretary of State using its own employees, may be negotiated with one or more contractors, or may be let out for public bids. Please note that any expenditure by the Secretary of State is subject to the State budget provisions of LSA R.S. 39:56 and that any public works contract is subject to the contractor licensing requirements of LSA R.S. 37:2150-2163 including the requirement that any contract that exceeds the sum of \$50,000.00 must be performed by a duly licensed contractor.

We trust that this answers your inquiry.

Yours very truly,

CHARLES C. FOTI, JR.
Attorney General

BY: _____
RICHARD L. MCGIMSEY
Assistant Attorney General

RPI/RLM/dam

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Syllabus

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Public works contracts that do not exceed the statutory contract limit of \$100,000 as set forth in LSA R.S. 38:2211A(1)(d) are not subject to the advertising and bidding requirements of the Louisiana Public Bid Law and may be undertaken by the public entity using its own employees, may be negotiated with one or more contractors, or may be let out for public bids. Public works contracts are subject to the contractor licensing requirements of LSA R.S. 37:2150-2163 including the requirement that any contract that exceeds the sum of \$50,000.00 be performed by a duly licensed contractor.

Mr. Al Ater, Chief of Staff
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P.O. Box 94125
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Date Released:

Date Received: March 12, 2004

Richard L. McGimsey
Assistant Attorney General