

April 26, 2005
OPINION NUMBER 05-0109

Honorable Gil Pinac
House of Representatives
State of Louisiana
P.O. Box 495
Crowley, LA 70527-0495

61 Laws-General
90-A-1-(c) Public Funds and Contracts-Purchase of materials and
 supplies
R.S. 38:2211-2296
R.S. 39:1595
R.S. 39:1595.1

R.S. 39:1595(H)(1)-(3) provides a conditional ten percent purchasing preference to be applied to the purchase of fire apparatus produced, manufactured processed or assembled in Louisiana. R.S. 39:1595.1 grants Louisiana vendors a preference over out-of-state vendors in the same manner that any out-of-state vendor would be given on a comparative bid in the home state of the out-of-state vendor.

Dear Representative Pinac:

You have requested an opinion of the Attorney General on whether under the Louisiana Procurement Code (LSA-R.S. 39:1551 et seq.) there is a preference for Louisiana manufacturers when Community Development Block Grant funds are utilized by a governmental entity to purchase fire apparatus and, if there is no specific preference but there is a Reciprocity Statute, does the State of Louisiana provide a specific percentage of preference to an in-state manufacturer.

Attached to your opinion request is a memorandum from Bonaventure Fire Apparatus stating that the State of Louisiana has established state contract whereby municipalities, fire districts and/or volunteer fire departments may purchase fire apparatus (fire truck) through the state purchase program. The memorandum further states that there are 12 categories of fire apparatus that may be purchased under the state contract program with Bonaventure being the prime contractor for one of the categories.

LSA R.S. 33:1701-1705 provides the authority for political subdivisions to purchase equipment through existing state contracts and thus avoid the necessity of following the bid requirements set forth in the Public Bid Law (LSA-R.S. 38:2211-2296). Specifically, LSA R.S. 1702(A)(1) provides:

Any public procurement unit may participate in, sponsor, conduct, or administer a cooperative purchasing agreement for the acquisition of any supplies, services, major repairs, or construction with one or more public procurement units or external procurement activities or one or more private procurement units in accordance with an agreement entered into between the participants. Such cooperative purchasing may include but is not limited to joint or multi-party contracts between public procurement units and open-ended state public procurement unit contracts which are

made available to local public procurement units. (Also see AG Opinion Nos. 93-129 and 90-582)

Under the State Procurement Code, and specifically R.S. 39:1595, purchasing agents of the state are required to purchase items produced, manufactured, assembled, grown, or harvested in Louisiana in preference to items produced, manufactured, assembled, grown, or harvested in other states, if the price of the Louisiana items do not exceed those items produced, manufactured, assembled, grown, or harvested in other states.

Section 1595H relates to the purchase of materials, supplies, products, provisions, or equipment and provides as follows:

H. Except as otherwise provided by this Section, each procurement officer, purchasing agent, or similar official who procures or purchases materials, supplies, products, provisions, or equipment under the provisions of this Chapter may purchase such materials, supplies, products, provisions, or equipment which are produced, manufactured, or assembled in Louisiana, as defined in R.S. 38:2251(A), and which are equal in quality to other materials, supplies, products, provisions, or equipment, provided that all of the following conditions are met:

(1) The cost of such items does not exceed the cost of other items which are manufactured, processed, produced, or assembled outside the state by more than ten percent.

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

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

A review of Paragraph (H) reveals that the preference for equipment such as fire apparatus/fire trucks that are manufactured, processed, produced, or assembled in Louisiana is established at ten percent, with the added condition that the vendor with the lowest bid of a qualified Louisiana product must agree to sell the product at the same price as the lowest bid offered by an out-of-state vendor. The preference is for items or products manufactured, processed, produced, or assembled in Louisiana and not for Louisiana vendors or manufactures. While it may be that a Louisiana product or item offered for bid pursuant to Section 1495 is submitted by a Louisiana manufacturer it is the fact that the product or item was manufactured, processed, produced or

assembled in Louisiana and not due to the fact that the bidder was a Louisiana manufacturer that allows for the preference.

Although Section 1595 allows only a product preference and not a vendor preference there is the possibility of a vendor preference in Section 1595.1 and which is sometimes referred to a "reciprocity statute". Pursuant to this provision where there is both in-state and out-of-state vendors bidding, the in-state vendors shall be given a preference in the same manner that any out-of-state vendors would be given on a comparative bid in their own state. Thus, if an out-of-state bidder would be given a percentage preference to the exclusion of out-of-state bidders in its home state then that same percentage preference would be given to Louisiana vendors in evaluating the bids for the Louisiana contract.

Accordingly, it is the opinion of this office that R.S. 39:1595 provides a product or item preference but not a vendor or manufacturer preference and that pursuant to Section 1595(H)(1)-(3) there is a conditional ten percent purchasing preference to be applied to the purchase of fire apparatus/fire trucks that are produced, manufactured or assembled in Louisiana. Pursuant to R.S. 39:1595.1 Louisiana vendors are given a preference over out-of-state vendors in the same manner that any out-of-state vendor would be given on a comparative bid in the home state of the out-of-state vendor.

Trusting this adequately responds to your inquiry, I am

Very truly yours,

CHARLES C. FOTI, JR.
ATTORNEY GENERAL

By: _____
RICHARD L. MCGIMSEY
Assistant Attorney General

CCF, Jr./RLM/dam

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Syllabus

61-Laws-General

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R.S. 38:2211-2296

R.S. 39:1595

R.S. 39:1595 provides a product or item preference but not a vendor or manufacturer preference and that pursuant to Section 1595(H)(1)-(3) there would be a conditional ten percent purchasing preference to be applied to the purchase of fire apparatus that is produced, manufactured or assembled in Louisiana. Pursuant to R.S. 39:1595.1 Louisiana vendors are given a preference over out-of-state vendors in the same manner that any out-of-state vendor would be given on a comparative bid in the home state of the out-of-state vendor.

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