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State of Louisiana
DEPARTMENT OF JUSTICE
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BATON ROUGE
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MAY 01 2013
Opinion 13-0050

Hon. Michael S. Yenni
Mayor, City of Kenner
1801 Williams Boulevard
City Hall, Building B, Suite 200
Kenner, LA 70062

90-A-1 PUBLIC FUNDS & CONTRACTS

La. Rev. Stat. 38:2211, *et. seq.*

The Louisiana Public Bid Law provides that all statutory requirements, advertisement requirements, and bid form requirements must be observed. Here, because the presumptive low bidder failed to comply with a bid requirement, the City of Kenner must reject the non-responsive bid.

Dear Mayor Yenni:

Your opinion request has been assigned to me for research and reply. You have asked for our opinion on certain matters related to Louisiana's Public Bid Law. According to your opinion request, the City of Kenner ("City") recently solicited bids for a two (2) year contract to supply P.V.C. pipe and fittings to the City on an as needed basis. The General Provisions for the bid stated that all terms, conditions, and prices were to remain unchanged during the length of the contract. However, the presumptive low bidder included a notation on its bid form indicating a 3.5% escalation clause per year.

Your request indicates that after consultation with the City Attorney's Office, the City deemed the bid non-responsive. However, your request indicates that the decision to deem the presumptive low bidder's bid non-responsive has received opposition from certain members of the City Council. You have asked for our opinion as to whether the presumptive low bidder's bid may be accepted in accordance with Louisiana law.

As a public entity, as defined in La. Rev. Stat. 38:2211, the City is subject to the provisions of the Louisiana Public Bid Law. La. Rev. Stat. 38:2211, *et seq.* Under the bid law, contracts for the purchase of materials and supplies exceeding \$30,000 must be advertised and let by contract to the lowest responsible and responsive bidder. La. R.S. 38:2212.1(A)(1)(a). Contracts for the purchase of materials and supplies costing \$10,000 or more, but less than \$30,000, must be made by obtaining no fewer than three telephone or facsimile quotations. La. R.S. 38:2212.1(A)(1)(b). For purchases of less than \$10,000, there is no prescribed procurement method.

It is generally well-settled that the provisions and requirements of Louisiana's Public Bid Law, as well as those provisions and requirements stated in the bid documents, shall not be waived by any public entity. See La. Rev. Stat. 38:2212

(A)(1)(b); *Hamp's Construction, LLC. v. City of New Orleans*, 2005-0489 (La. 2/22/06), 924 So.2d 104; *Beverly Construction Company, L.L.C. v. Parish of Jefferson*, 2007-847 (La. App. 5 Cir. 2/6/08), 979 So.2d 551. Once a requirement is established, that requirement must be uniformly followed by all bidders. A failure to comply with any statutorily imposed requirement would render a bid non-responsive and would warrant a mandatory rejection by the public entity. The same holds true for a failure to comply with any validly imposed requirement stated in the public entity's bid documents. Numerous Louisiana courts have recognized that the statutory requirements, advertisement requirements, and bid form requirements, including those included by reference to other documents, must be completely and accurately observed, and a bidder's failure to comply with every detail can invalidate the bid. See *Hamp's, supra*, *Beverly, supra*.

Turning attention now to the question presented, it is the opinion of this office that the bid in question should be rejected as being non-responsive. According to your request, the bid documents required that the bidders agree that all terms, conditions, and prices were to remain unchanged during the length of the contract. The presumptive low bidder's addition of a disclaimer indicating that its price was subject to a 3.5% escalation per year fails to comply with this requirement. Accordingly, its bid should be rejected as being non-responsive.

We call to your attention La.Rev.Stat. 38:2220 which provides that any contract for the purchase of materials or supplies executed in violation of the provisions of the Louisiana Public Bid Law shall be null and void. Furthermore, in connection with any action to declare a contract null and void brought by a district attorney or the Attorney General, the district court granting a judgment of nullity may award a civil penalty not in excess of fifty thousand dollars against each offending member of the governing authority of the public entity who authorized the violation. La. Rev. Stat. 38:2220(C).

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

Yours very truly,

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ATTORNEY GENERAL

BY:

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JDC/MJV/chb