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DEPARTMENT OF JUSTICE
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BATON ROUGE
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Opinion 13-0135

Mr. James Gilmore
5543 Cortez Drive
Baton Rouge, LA 70461

90-A-1 PUBLIC FUNDS & CONTRACTS

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

The Baton Rouge Metro Airport Commission must follow the policy governing the procurement of professional services established by the Authority for the Greater Baton Rouge Airport District.

Dear Commissioner Gilmore:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. As a member of the Baton Rouge Metro Airport Commission ("Commission"), you have asked for our opinion as to whether the Commission is required to competitively bid professional services contracts. You also ask whether the Commission may establish its own policy governing the procurement of professional services.

Act 151 of the 1969 Regular Session ("Act 151") of the Louisiana Legislature authorized the Parish Council of East Baton Rouge Parish to create the Greater Baton Rouge Airport District ("District").¹ Act 151 further provided that the District shall be a subdivision of the State and the governing authority of the District shall be the Mayor and Parish Council of East Baton Rouge Parish and shall be referred to as the "Authority." Act 151 provides that the Authority shall be governed by and act with regard to procedure pursuant to those provisions of the Plan of Government applicable to the Parish Council of East Baton Rouge Parish. Act 151 also created and established a Board of Commissioners. The Board of Commissioners is composed of members appointed by the Authority and is responsible for recommending to the Authority the selection of airport sites and facilities. The Board of Commissioners also has the power to act as the governing authority of the District as authorized by Act 151, and where specifically delegated to it by ordinance or resolution.

As a public entity, as defined in La.Rev.Stat. 38:2211, the District is subject to the provisions of the Louisiana Public Bid Law. La.Rev.Stat. 38:2211 *et seq.* Under

¹ Act 151 was later amended and re-enacted by Act 804 of the 1982 Regular Session to increase the membership of the Board of Commissioners and Act 551 of the 1984 Regular Session to provide that a majority of the quorum of the Board of Commissioners, excluding *ex officio* members, was required to transact business.

Louisiana's Public 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.Rev.Stat. 38:2212.1. Further, contracts for public works projects exceeding \$150,000 must be advertised and let to the lowest responsible and responsive bidder. La.Rev.Stat. 38:2212.

However, Louisiana courts have held that contracts for services, professional or otherwise, are not subject to the requirements of the Louisiana Public Bid Law. See generally, *Regency Construction, Inc. v. Lafayette City-Parish Consolidated Government*, 2003-313 (La. App. 3 Cir. 6/4/03), 847 So.2d 796; *United Disaster Response, LLC v. Omni Pinnacle, LLC*, 2009 WL 901763 (E.D. La. 2009). Numerous Attorney General Opinions have expressed the same conclusion in response to inquiries on a wide variety of service contracts. See generally Attorney General Opinion No. 00-246, 07-0278, 09-0252.

Thus, under applicable Louisiana law, political subdivisions are generally free to contract for professional services without engaging in any sort of competitive bid process. Nevertheless, there is no prohibition against a political subdivision implementing or establishing a policy or competitive bid process to engage in when procuring professional services. For example, a political subdivision may establish a policy that requires a request for proposal (RFP) or request for qualifications (RFQ) process when procuring professional services.

The City and Parish Government of East Baton Rouge is a home rule charter government. The charter government is a local government entity directly authorized by the Louisiana Constitution. A home rule charter government enjoys all inherent power necessary for the fulfillment of the obligations and public purposes mandated by the home rule charter, as long as such purposes and powers are not prohibited by general state law or the constitution. La. Const. art. VI, § 5. The Plan of Government referenced by Act 151 is considered the City-Parish's home rule charter.

With respect to the questions presented, Act 151 provides that the District shall be governed by the Authority. Furthermore, Act 151 provides that the Authority shall be governed by "...those provisions of the Plan of Government applicable to the Parish Council of East Baton Rouge Parish." Act 151 also provides that the Commission has the power to act where either specifically authorized by Act 151, or where the power to act has been specifically delegated to it by the Authority.

We are not aware of any delegation of authority granted to the Commission allowing it to establish a policy governing the procurement of professional services. As such, pursuant to the plain language of Act 151, it is the opinion of this office that the Authority and not the Commission has the power to establish a policy and procedure for procuring professional services contracts by the District.

It is our understanding that the Parish Council of East Baton Rouge Parish currently has a policy in place which requires professional, consulting, personal, and social services contracts valued at over \$17,500 be approved by the Council and contain the signature of the Mayor-President. Contracts up to and including the sum of \$17,500 annually may be signed by the Purchasing Director without Council approval. The policy further states that competitive proposals are not required for any professional, consulting, personal, or social services contracts which do not exceed \$50,000 annually. However, with some exceptions, competitive proposals are recommended for most consulting services, professional services contract, and social services contracts which exceed \$50,000 annually. According to the policy, personal services contracts with individuals generally do not require competitive proposals. We have attached a copy of this policy for your review.

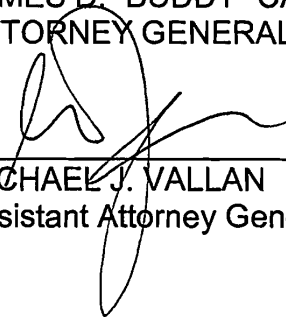
Accordingly, it is the opinion of this office that absent any delegation of authority granted to the Commission, pursuant to the plain language of Act 151, the Baton Rouge Metro Airport Commission must adhere to the Parish Council of East Baton Rouge Parish Plan of Government, and its policy governing the procurement of professional, consulting, personal, and social services contracts.

We trust this adequately responds to your request. If you should have any questions about the response contained herein, please feel free to contact our office.

Yours very truly,

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ATTORNEY GENERAL

BY:



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