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ATTORNEY GENERAL

State of Louisiana
DEPARTMENT OF JUSTICE
P.O. BOX 94005
BATON ROUGE
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NOV 26 2013
Opinion 13-0167

Ms. Melissa Folse
General Counsel
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90-A-1 PUBLIC FUNDS & CONTRACTS

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

The Louisiana Public Bid Law is not applicable to the Lower Mississippi River Port Wide Strategic Security Council in procuring a contract for legal, accounting, management, or other professional services.

Dear Ms. Folse:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the Lower Mississippi River Port Wide Strategic Security Council ("Council"), you have asked for our opinion as to whether contracted services, such as legal services, accounting services, management services, and other professional services, are required to be competitively bid under Louisiana's Public Bid Law.

According to your request, the Council is composed of one representative from each of the following ports: Port of South Louisiana, Port of New Orleans, Port of Greater Baton Rouge, St. Bernard Port, Harbor, and Terminal District, and the Port of Plaquemines. Your request also states that the Council is provided funding through a federal grant program administered by the United States Department of Homeland Security. You state that representatives from the Department of Homeland Security and FEMA are under the assumption that certain services are to be procured through a competitive bid process. As such, you ask for our opinion as to whether services are required to be competitively bid under Louisiana's Public Bid Law.

Under Louisiana's Public Bid Law, 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. A public works project means the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity. La. Rev. Stat. 38:2211. Public works projects that are estimated to cost less than \$150,000 are not subject to the advertising and bidding requirements of the Public Bid Law and may be undertaken by the public entity with its own employees or may be negotiated with one or more contractors.

Also under 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. R.S. 38:2212.1(A)(1)(a). This is commonly referred to as the Invitation to Bid ("ITB") method. 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.

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. However, the Council is cautioned to consider applicable federal law in procuring service contracts when anticipating a claim for reimbursement from a federal entity. Such federal entities may require that the services procured were necessary and reasonable in cost and competitively bid and negotiated.

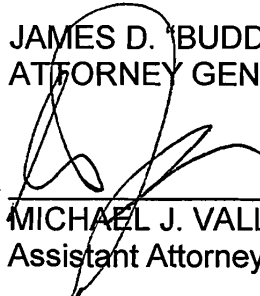
Thus, under applicable Louisiana law, it is the opinion of this office that the Council and its members are free to contract for services without engaging in any sort of competitive bid process. This authority would extend to contracting for legal services, accounting services, management services, and other professional services.

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,

JAMES D. "BUDDY" CALDWELL
ATTORNEY GENERAL

BY:



MICHAEL J. VALLAN
Assistant Attorney General

JDC/MJV/chb