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State of Louisiana
DEPARTMENT OF JUSTICE
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November 26, 2013
OPINION 13-0182

Mr. David J. Norman, III
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303 Verret Street
Houma, LA 70360

90-A-1 PUBLIC FUNDS & CONTRACTS

La. R.S. 38:2212, La. R.S. 38:2225.2

The Houma-Terrebonne Airport Commission may not employ the design-build construction method for a potential capital improvements project.

Dear Mr. Norman:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. On behalf of the Houma-Terrebonne Airport Commission ("H-TAC"), you have asked for our opinion as to whether the H-TAC may employ the design-build construction method for a potential capital improvements project.

As a public entity, as defined in La. R.S. 38:2211(A)(11), the H-TAC is subject to the provisions of the Louisiana 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. This is commonly referred to as the design-bid-build method. 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. R.S. 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.

Louisiana courts have recognized that Louisiana's Public Bid Law is a prohibitory law founded on public policy. *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, 04-0211 (La. 3/18/04), 867 So.2d 651, 656. The statute was enacted in the interest of the taxpaying citizens for the purpose of protecting them against contracts of public officials entered into because of favoritism and involving exorbitant and extortionate prices. Furthermore, a political entity has no authority to take any action which is inconsistent with the Public Bid Law. *Id.*; *Louisiana Associated Gen. Contractors, Inc. v. Louisiana Dep't of Agric. & Forestry*, 05-0131 (La.2/22/06), 924 So.2d 90, 95.

Further, we note that La. R.S. 38:2225.2 provides the following with respect to design-build contracts:

§ 2225.2. Design-build contracts

Neither the state nor any local entity, unless specifically authorized by law, may execute any agreement for the purchase of unimproved property which contains provisions related to the successful design and construction of a construction project prior to the transfer of title to the state or local entity.

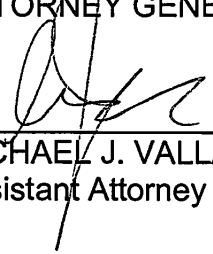
Pursuant to the plain language of La. R.S. 38:2212, which prescribes the specific method by which public entities must undertake public works projects, and the express language of La. R.S. 38:2225.2, it is the opinion of this office that, unless specifically authorized by law, a public entity has no authority to enter into a design-build contract. It is our understanding that the H-TAC does not have special statutory authority to execute a design-build contract. As such, it is the opinion of this office that the H-TAC may not use the design-build construction method for its proposed capital improvements project.

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
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