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State of Louisiana
DEPARTMENT OF JUSTICE
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JAN 22 2014
Opinion 13-0224

Honorable Camille Buras
Chief Judge, Orleans Parish
Criminal District Court
2700 Tulane Avenue
New Orleans, LA 70119

90-A-1 PUBLIC FUNDS & CONTRACTS

La.Rev.Stat. 38:2212.1, La.Rev.Stat. 38:2234, La.Rev.Stat. 39:1701

When procuring data processing and telecommunications equipment, the Orleans Parish Criminal District Court may use either the invitation to bid process authorized by La.Rev.Stat. 38:2212.1, the request for proposal process authorized by La.Rev.Stat. 38:2234 et seq., or the Court may purchase the equipment directly from the state contract vendor as authorized by La.Rev.Stat. 39:1702.

Dear Judge Buras:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. You have asked for our opinion on a matter related to Louisiana's Public Bid Law. La.Rev.Stat. 38:2211, *et seq.* According to your request, the Orleans Parish Criminal District Court ("Court") is prepared to purchase new servers and attendant software, switches, etc. The proposed expenditure will be well over \$200,000, and all equipment purchased will be under state contract. You ask for our opinion as to whether the proposed purchase must be accomplished via the request for proposal ("RFP") process, or whether the Court may purchase the equipment directly from the state contract vendor.

As recognized by Attorney General Opinion No. 89-0141, the judiciary is subject to the provisions of Louisiana's Public Bid Law. (La.Rev.Stat. 38:2211 et seq.) See also *Anne Lind & Associates v. Orleans Private Industry Council*, 95-0462 (La.App. 4 Cir. 3/14/96), 673 So.2d 227, recognizing that Title 39 of the Louisiana Revised Statutes, often referred to as the Procurement Code, does not apply to the legislative or judicial branches of government.

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.Rev.Stat. 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.Rev.Stat. 38:2212.1(A)(1)(b). For purchases of less than \$10,000, there is no prescribed procurement method.

In addition to the customary ITB method for purchases of \$30,000 or more, Louisiana's Public Bid Law allows political subdivisions to use the RFP process when procuring telecommunications or data processing systems, equipment, and related services. La.Rev.Stat. 38:2234, *et seq.* La.Rev.Stat. 38:2236 defines telecommunications equipment, systems, and related services as equipment and means to provide electronic transmission facilities, data transmission systems, voice transmission systems, telephone systems, facsimile systems, radio paging services, mobile telephone services, intercom and electro-mechanical paging systems, and any and all systems based on emerging and future telecommunication technologies relative to the above-mentioned systems. In our view, equipment such as servers, attendant software, and switches appear to be in accord with the definition of telecommunications equipment and systems provided for in La.Rev.Stat. 38:2236. It is therefore the opinion of this office that equipment such as servers, attendant software and switches may be procured by either the invitation to bid process authorized pursuant to La.Rev.Stat. 38:2212.1 or the request for proposal process authorized by La.Rev.Stat. 38:2234, *et seq.*

Additionally, we note that La.Rev.Stat. 38:2212.1(F) provides that any public entity may purchase materials, supplies, and equipment pursuant to the cooperative purchasing provisions of Part VII of Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes. Further, La.Rev.Stat. 39:1702(A)(1) specifically provides, in pertinent part, the following:

§ 1702. Cooperative purchasing authorized; participation in federal General Services Administration vendor list

A. (1) Any public procurement unit may either 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.

Our reading of Part VII of Chapter 17 of Subtitle III of Title 39 of the Louisiana Revised Statutes, and specifically La.Rev.Stat. 39:1702(A)(1), is that these provisions provide an alternative to the ITB and RFP processes referenced above, and authorize the Court to purchase materials and supplies directly from a state contract vendor, subject to any conditions or limitations imposed by the Office of State Purchasing.

Accordingly, it is the opinion of this office that, in addition to using the procurement methods set forth in La. Rev.Stats. 38:2212.1 and 38:2234, *et seq.*, the Court is also authorized to purchase the contemplated new servers, attendant software, switches, etc. directly from the state contract vendor pursuant to La.Rev.Stat. 39:1702.

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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BY:



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