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DEPARTMENT OF JUSTICE

P.O. BOX 9400S

BATON ROUGE

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OPINION 15-0139

90-A-1 PUBLIC FUNDS & CONTRACTS

La. R.S. 38:2212

Mr. Ernest A. Burguières
Mandeville Councilman, District 3
3101 East Causeway Approach
Mandeville, LA 70448-3592

Pursuant to plain language of La. R.S. 38:2212(B)(2), the City may not require potential bidders to complete either Document A305, or Statement C-451 as part of the pre-bid materials. The City may, however, include such forms as part of their bidding documents and include a requirement and instruction to potential bidders that such forms would be required to be completed and submitted by the apparent low bidder within ten days after the date bids are opened.

Dear Councilman Burguières:

Your request for an Attorney General's Opinion has been assigned to me for research and reply. You have asked for our opinion as to whether the City of Mandeville ("City") may require potential bidders to fill out either the American Institute of Architects AIA Document A305 ("Document A305"), or the Engineers Joint Contract Documents Committee EJDC Qualifications Statement C-451 ("Statement C-451") in either the pre-bid, or post-bid materials. You have also asked our opinion as to whether either of these documents may be included in the City's publicly bid contracts.

As a public entity, as defined in La. R.S. 38:2211(A)(11), the City 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. La. R.S. 38:2212(A)(1). 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. La. R.S. 38:2212(N).

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. *Airline Construction Company, Inc. v. Ascension Parish School Board*, 568 So.2d 1029, 1032 (La.1990). Furthermore, Louisiana courts have recognized that a political entity has no authority to take any action which is inconsistent with the Public Bid Law. *Broadmoor*, 867 So.2d 651; *Louisiana Associated Gen. Contractors, Inc. v. Louisiana Dep't of Agric. & Forestry*, 05-0131 (La.2/22/06), 924 So.2d 90, 95.

La. R.S. 38:2212(B)(2) outlines what kind of documents and information a public entity can require potential bidders to complete and submit. It provides, in pertinent part, the following:

(2) Any public entity advertising for public work shall use only the Louisiana Uniform Bid Form as promulgated in accordance with the Administrative Procedure Act by the division of administration, office of facility planning and control. The bidding documents shall require only the following information and documentation to be submitted by a bidder at the time designated in the advertisement for bid opening: Bid Security or Bid Bond, Acknowledgment of Addenda, Base Bid, Alternates, Signature of Bidder, Name, Title, and Address of Bidder, Name of Firm or Joint Venture, Corporate Resolution or written evidence of the authority of the person signing the bid, and Louisiana Contractors License Number, and on public works projects where unit prices are utilized, a section on the bid form where the unit price utilized in the bid shall be set forth including a description for each unit; however, unit prices shall not be utilized for the construction of building projects, unless the unit prices and their extensions are incorporated into the base bid or alternates.

(3)(a) The bidding documents shall not require any bidder, other than the apparent low bidder, to furnish any other information or documentation, including the Attestation Affidavit and the E-Verification Form, any sooner than ten days after the date bids are opened; however, the apparent low bidder may submit such information or documentation at any time prior to the expiration of the ten-day period...

* * *

La. R.S. 38:2212(B)(2) specifically provides that public entities are required to use the Louisiana Uniform Bid Form promulgated by the Division of Administration for all publicly bid public works contracts. It then goes on to specifically delineate an exclusive list of the information and documentation potential bidders are required to submit with their bid. La. R.S. 38:2212(B)(3) further provides that the bidding documents shall not require any bidder, other than the apparent low bidder, to provide any other information or documentation any sooner than ten days after the date bids are opened.

Thus, pursuant to plain language of La. R.S. 38:2212(B)(2), it is the opinion of this office that the City may not require potential bidders to complete either Document A305, or Statement C-451 as part of the pre-bid materials. Pursuant to La. R.S. 38:2212(B)(2), the City is required to use the Louisiana Uniform Bid Form promulgated by the Division of Administration and may only require potential bidders to submit the information and documentation listed in statute. Since neither Document A305, nor Statement C-451 is

listed in statute, the City may not require potential bidders to complete these forms and submit them with their bid. The City may, however, include such forms as part of their bidding documents and include a requirement and instruction to potential bidders that such forms would be required to be completed and submitted by the apparent low bidder within ten days after the date bids are opened. It is the opinion of this office that La. R.S. 38:2212(B)(3) allows such a practice.

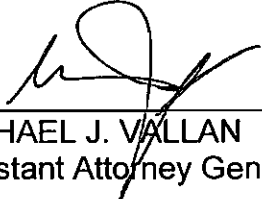
With respect to your second question about incorporating the referenced forms into the City's publicly bid contracts, our review of each of the referenced forms reveals that they generally can be referred to as contractor qualification statements and seek general background information about the potential bidder/contractor. Our review of the public bid law fails to reveal any prohibition against including such documents as an exhibit to the formal contract between the parties, or otherwise incorporating the information into the contract in a manner acceptable to the parties.

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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JDC/MJV/as