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STATE OF LOUISIANA
DEPARTMENT OF JUSTICE
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OPINION 24-0101

Mr. Jason Wade
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90-A-1 Public Funds & Public Contracts

La. R.S. 38:2211
La. R.S. 38:2212
La. R.S. 39:551.5

The Louisiana Public Bid Law applies regardless of the proportion of funds contributed by a public entity as long as the project is in excess of the contract limit and public funds were used in some manner, way, or form. Additionally, La. R.S. 38:2212(V) prohibits the separation of a project in such a way as to avoid the contract threshold limits for the application of the Public Bid Law to a public work contract.

Dear Mr. Wade:

You have requested an opinion from our office on behalf of the North Webster Parish Industrial District ("District") regarding the Louisiana Public Bid Law, La. R.S. 38:2211, *et seq.* The District is considering a project involving work on a building it currently owns and is anticipating the total project cost to be approximately \$300,000.00. The District will cover an undetermined portion of the project cost, with the current tenant of the building proposing to cover the remaining portion. Specifically, you have asked us to opine on the following question:

Does the Public Bid Law apply when work on a building owned by the District is anticipated to cost approximately \$300,000 for the total project, if the district spends or contributes less than \$250,000 on the project and/or less than \$60,000 on materials and supplies?

Conclusion: Yes, Louisiana Public Bid Law applies regardless of the proportion of funds contributed by a public entity as long as the project is in excess of the contract limit and public funds were used in some manner, way, or form. Additionally, La. R.S. 38:2212(V) prohibits the separation of a project in such a way as to avoid the contract threshold limits for the application of the Public Bid Law to a public work contract.

The North Webster Parish Industrial District was created as a political subdivision pursuant to La. R.S. 39:551.5. As such, the District is considered a "public entity" under La. R.S. 38:2211(A)(12) and must adhere to the Public Bid Law for certain public works and certain purchases of materials and supplies. Under the Public Bid Law, contracts for public works exceeding the current contract threshold must be advertised and let to the lowest responsible and responsive bidder. La. R.S. 38:2212(A)(1)(a). A public work is defined as "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(A)(13). Public works that are estimated to cost less than the contract limit may be undertaken by the public entity with its own employees. La. R.S. 38:2212(N).

Louisiana courts have long recognized that the Public Bid Law is a prohibitory law founded on public policy. *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, 2004-0211 (La. 3/18/04), 867 So.2d 651, 656. The Public Bid Law 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 lacks the authority to take any action inconsistent with the Public Bid Law. *Broadmoor*, 867 So.2d 651, 656; *Louisiana Associated General Contractors, Inc. v. Louisiana Dep't of Agriculture & Forestry*, 2005-0131 (La. 2/22/06), 924 So.2d 90, 95.

As stated above, the District is currently unaware of the total cost of the proposed project but anticipates the cost being approximately \$300,000.00. The current contract threshold for public works under the Public Bid Law is found in La. R.S. 2212(C)(1) and provides that "the term *contract limit* . . . shall be equal to the sum of two hundred fifty thousand dollars per project, including labor, materials, and equipment. . . ." (Emphasis added).

We note that this statutory language establishing the threshold amount of a contract, which triggers the provisions of the Public Bid Law, does not distinguish the proportion of funds used nor the types or quantity of entities and parties involved. Additionally, in La. Atty. Gen. Op. No. 04-0197, it was determined that the Public Bid Law applies to public work contracts let by public entities, even when only part of the funding comes from state-appropriated funds. Similarly, La. Atty. Gen. Op. No. 08-0067, clarified that the applicability of the Public Bid Law is determined based on the entire renovation project. Lastly, in accord with this situation, La. Atty. Gen. Op. No. 15-0151, wherein the renovation and construction will be mostly assumed by a private entity with the public entity contributing funds, our office stated that "[a]lthough the proposed renovations and construction are being undertaken by a private entity, it is the opinion of this office that the [P]ublic [B]id [L]aw would still apply. Public funds will be used in some form or fashion to either renovate existing publicly owned facilities or construct a new facility on publicly owned property."

It remains the opinion of our office that the Public Bid Law applies when work on a public property exceeds the contract limit of \$250,000 for the total project regardless of the contribution of the public entity.

In contrast, the language of the provisions governing purchases of materials and supplies refers specifically to the amount to be paid out of public funds. Under La. R.S. 38:2212.1(A)(1)(a), "[a]ll purchases of any materials or supplies exceeding the sum of sixty thousand dollars to be paid out of public funds shall be advertised and let by contract to the lowest responsible bidder who has bid according to the specifications as advertised, and no such purchase shall be made except as provided in this Part." Contracts for the purchase of materials and supplies costing \$30,000 or more, but less than \$60,000, must

be made by obtaining no fewer than three telephone, facsimile, email, or any printable electronic quotations. La. R.S. 38:2212.1(A)(1)(b). For purchases of less than \$30,000, there is no prescribed procurement method.

However, for the purposes of your request, the provisions of the Public Bid Law governing the purchase of materials and supplies are only applicable to those purchases made strictly separate from a public works contract. La. R.S. 38:2212(V) provides that "[u]nder no circumstances shall there be a division or separation of any public work project into small projects which division or separation would have the effect of avoiding the requirement that public work be advertised and let by contract to the lowest responsible and responsive bidder as provided in this Section." There does not exist a scenario in which the District could provide a certain amount of "materials and supplies" through the regular procurement method in an attempt to drop the total project cost under the contract limit threshold to avoid the requirements of the Public Bid Law for public works contracts.

Hence, even if the District contributes an amount less than \$60,000.00 strictly for materials and supplies, if it is for the contribution for the work (the erection, construction, alteration, improvement, or repair) of the building owned by the District, then it is under the umbrella of a public work instead of a purchase of materials or supplies.

Considering the foregoing, it is the opinion of this office that the Louisiana Public Bid Law applies regardless of the proportion of funds contributed by a public entity as long as the project is in excess of the contract limit and public funds were used in some manner, way, or form. Additionally, La. R.S. 38:2212(V) prohibits the separation of a project in such a way as to avoid the contract threshold limits for the application of the Public Bid Law to a public work contract.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

Yours very truly,

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BY: 
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LM/CZ