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ATTORNEYS AT LAW

LEGISLATIVE ALERT ACT 726

The 2008 Regular Session of the Louisiana Legislature passed House Bill No. 558 (Rep. Hollis Downs) which has been signed by the Governor and is now effective as 2008 Act 726. This legislation adds new provisions to the public bid law by amending the key Public Works Act statute, La. R.S. 38:2212, to now require:

- 1) **no public work**, whether by the State nor any political subdivision, may be “advertised for bid” if the estimate made by the design professional of record “is more than the funds budgeted by the public entity for the project”;
- 2) the designer's estimate **must be read aloud** at the bid opening’
- 3) **all Public Works (State and political subdivisions) bid forms must contain:**
 - a) Bid Security or Bid Bond,
 - b) acknowledgment of Addenda (if any),
 - c) the Base Bid,
 - d) Alternates (if any),
 - e) Bid total,
 - f) signature of Bidder,
 - g) name, title and address of Bidder,
 - h) name of firm or joint venture bidding,
 - i) corporate resolution of bidder ; and
 - j) Louisiana Contractors License Number (for the classification of work as identified by the Bidding Documents).
 - *k) On public works projects where unit prices are utilized, those unit process **must** be included on the bid form.

- 4) any “other” documentation required from a bidder “shall” be furnished by the low bidder at a later date, in accordance with the Bidding Documents;
- 5) the “bid form” to be used from now on “shall” be developed and “prescribed” by the Division of Administration, Office of Facility Planning and Control, which shall then be promulgated in accordance with the Administrative Procedure Act; and
- 6) these new provisions do not apply to the Department of Transportation and Development.

As of August 26, 2008, the Division of Administration, Office of Facility Planning and Control has not published a “bid form” as required by Act 726. The latest “bid form” published by FP&C (which apparently has not been updated since 1994), is found on the internet at the following web pages:

Bid Form:

http://doa.louisiana.gov/fpc/l%20to%20D/l_to_D_2004/25_Bid_Form_Format.doc

Bidding Instructions:

http://doa.louisiana.gov/fpc/l%20to%20D/l_to_D_2005/24_Instructions_to_Bidders.doc

The following is the Act in its entirety with the new language underlined:

AN ACT

To amend and reenact R.S. 38:2212(A)(3)(a), (b), and (c), relative to public contracts; to provide relative to certain designer's estimates and to the procedures for bidding on such contracts including forms used for such purposes; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 38:2212(A)(3)(a), (b), and (c) are hereby amended and reenacted to read as follows:

§2212. Advertisement and letting to lowest responsible bidder; public work; electronic bidding; participation in mentor-protégé program

A.

* * *

(3)(a) The advertisement required by this Section for any contract for public works shall be published once a week for three different weeks in a newspaper in the locality, and the first advertisement shall appear at least twenty-five days before the opening of bids. In addition to the newspaper advertisement, a public entity may also publish an advertisement by electronic media available to the general public.

(b) The first publication of the advertisement shall not occur on a Saturday, Sunday, or legal holiday. Plans and specifications shall be available to bidders on the day of the first advertisement and shall be available until twenty-four hours before the bid opening date.

(c)(i) If at the end of the contract document phase, it is determined that the designer's estimate is more than the funds budgeted by the public entity for the project, the project shall not be advertised for bid. The designer's estimate shall be read aloud upon opening bids

(ii) The bid form shall contain Bid Security or Bid Bond, Acknowledgment of Addenda, Base Bid, Alternates, Bid Total, Signature of Bidder, Name, Title and Address of Bidder, Name of Firm or Joint Venture Corporate Resolution and Louisiana Contractors License Number, and on public works projects where unit prices are utilized, their inclusion in the bid form. Other documentation required shall be furnished by the low bidder at a later date, in accordance with the Bidding Documents. The division of administration, office of facility planning and control, shall develop and prescribe the necessary bid form for public works projects for public bid purposes and implement the provisions of this Section of the bid form in accordance with the Administrative Procedure Act.

(iii) The provisions of this Subparagraph shall not apply to bid forms of the Department of Transportation and Development pursuant to Title 48 of the Louisiana Revised Statutes of 1950.



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