

The requirement that a bidder be “responsive” in order to be awarded a public contract is a recent requirement added to the Public Bid Law during the 2014 legislative session. *See* 2014 La. Acts 759. Although the terms “responsive” and “responsive bidder” are not defined by the statute, they generally refer to whether a particular bid or bidder complies with the bid law’s statutory requirements and the requirements stated in the bid documents as advertised by the public entity. *See* La. Atty. Gen. Op. No. 15-0052, 2015 WL 4128654 (June 3, 2015).²

Thus, to determine whether Construction Diva was the lowest “responsive bidder” to whom the contract must be awarded, we must examine the requirements of the Public Bid law and those requirements set forth in the City’s bid documents for this project.

As for the Public Bid Law, there are no provisions requiring that bidders be SLDBE-certified in the specific work set forth in the bid documents. Likewise, although the bid documents establish the City’s commitment to participation by SLDBEs on this project, nowhere in the bid documents is there a requirement that the successful bidder be SLDBE-certified in the field of landscaping.

The following bid documents refer to the City’s SLDBE requirements for this contract:

- The “Invitation to Bid” (“ITB”) states that “[t]here is a 40.00% SL/DBE goal percentage for this contract.”
- The “Additional Contract Terms and Conditions” found as Attachment “B” to the ITB state that “[i]t is the policy of the City and NOAB in conjunction with its State Local Disadvantaged Business Enterprise (SLDBE) program to encourage maximum utilization of firms, owned and controlled by socially and economically disadvantaged persons. **Firms participating as SLDBE firms must be currently listed as SLDBE firms by one of the certifying agencies of the SLDBE program. The certifying agencies for the SLDBE program are the City of New Orleans (CNO), Sewerage & Water**

² Although Louisiana Attorney General Opinions are merely advisory and not binding, the courts of this State have recognized their persuasive authority, particularly when there are no cases on point. *Orleans Parish Sch. Bd. v. Quatrevaux*, 13-1653, p. 10 (La. App. 4 Cir. 11/7/14), 154 So. 3d 612, 618.

Board of New Orleans (S&WB), **New Orleans Aviation Board (NOAB)**, and Harrah's Jazz Casino.

- Attachment "F" to the ITB is the "Schedule of Contract Participation," which states that **"[f]irms must be (AC)DBE- or SLDBE-certified at the time of bid submission in order to count their participation towards that specific goal."**

The bid documents, therefore, require only that a bidder seeking work under City's SLDBE program for airport contracts be DBE-certified by the City of New Orleans or the NOAB at the time of bid submission. It is undisputed that when Construction Diva submitted its bid for this contract, it was certified by the City of New Orleans as an SLDBE. Whether the airport has "rules" in place which require that "a DBE firm be certified in the field or work or services to be provided" in order to meet its DBE goals is immaterial, given that these "rules" are not included in the bid documents. I disagree with the majority's finding that the mere "nature of the contract up for bid," which is described in the Invitation to Bid as "landscaping services," mandates that all responsive bidders be SLDBE-certified in landscaping.

The issue raised in this appeal implicates one of the important purposes of the Public Bid Law, which is to "insure fundamental fairness to the bidders in the [public bid] process by setting forth specific requirements for particular bids." La. Atty. Gen. Op. No. 03-1401, 2003 WL 22683704 (Oct. 29, 2003). "Inherent in the bidding process is the requirement that the public body shall prescribe a common standard on all matters that are material to the proposals. To that end the interested person may bid intelligently and will be induced to bid by the promise of impartiality." *Id.* It is in the best interest of the taxpayers of Louisiana to award contracts in favor of a bidder such as Construction Diva who has complied with the bidding requirements in all respects. *Id.*

"In enacting the Public Bid Law, the legislature has specifically prescribed the conditions upon which it will permit work to be done on its behalf or on behalf

of its political subdivisions.” *Concrete Busters of Louisiana, Inc. v. Bd. of Comm’rs of Port of New Orleans*, 10-1172, p. 4 (La. App. 4 Cir. 2/2/11), 69 So. 3d 484, 486-87. Given the nature of the legislative mandate, a political entity such as the City “has no authority to take any action which is inconsistent with the Public Bid Law.” *Id.*, 10-1172 at pp. 4-5, 69 So. 3d at 487.

In this case, neither the bidding documents nor the bid laws require bidders to be SLDBE-certified in landscaping. *See Durr Heavy Constr., LLC v. City of New Orleans*, 15-0915 (La. App. 4 Cir. 3/16/16), -- So. 3d -- , 2016 WL 1061384 (Jenkins, J., dissenting), *writ granted*, 16-609 (La. 4/15/16), 189 So. 3d 384 (finding bid responsive where bid documents did not require proposal number on outside of sealed bid envelope). Therefore, I find that the City was required by law to award the contract to Construction Diva, which was the lowest numerical bidder whose bid complied with the requirements set forth in the bid documents and the Public Bid Law. Because I find that the City contravened the Public Bid Law by rejecting Construction Diva’s responsive bid, I would reverse the trial court’s judgment and order the City to award the landscaping contract to Construction Diva.