

PUBLICATION

Louisiana Fourth Circuit Holds Public Bid Invalid Absent Written Evidence of Authority to Sign Bid

Authors: Mark W. Frilot, Nicholas Ray Pitre

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Contractors that bid public projects in Louisiana are familiar with the Public Bid Law's requirement that "[w]ritten evidence of authority of the person signing the bid for public works shall be submitted at the time of bidding." The Public Bid Law further provides that, for bidders that are limited liability companies, a signatory's authority is deemed sufficient if the signatory is a member of the limited liability company and is listed as a member in the most current business records on file with the Secretary of State. The Louisiana Fourth Circuit, in *Dynamic Constructors, L.L.C. v. Plaquemines Parish Government*, was recently called upon to decide whether, under Section 2212B(5)(a) and specific bid instructions, an L.L.C. bidder was required to furnish with its bid written evidence of the individual signatory's authority to bind the L.L.C., even when the signatory was an L.L.C. member who was listed in the Secretary of State's most current business records. The court held that, under the facts before it, the low bidder, who had not furnished written evidence of authority of the person signing the bid, did not comply with the Public Bid Law, rendering its bid non-responsive and requiring the public owner to award the project to another bidder.

In *Dynamic*, the public owner, Plaquemines Parish Government (PPG), determined that Dynamic Constructors, L.L.C. (Dynamic) was the lowest responsive bidder on a public works demolition contract. Dynamic's bid was executed by Jeffrey Hymel, a member of Dynamic who was listed in the most current business records on file with the Secretary of State. Before PPG awarded the contract to Dynamic, Hamp's Construction, L.L.C. (Hamp's) submitted a bid protest challenging the responsiveness of Dynamic's bid on the bases that Dynamic (1) failed to attach to Dynamic's bid written evidence of the authority of the person signing the bid and (2) failed to provide a list of each member of Dynamic, as the bid instructions required. PPG found merit to the protest and rescinded its initial notice of award to Dynamic. PPG determined that Dynamic's bid was non-responsive because it did not contain written evidence of authority allowing Mr. Hymel to execute the bid on Dynamic's behalf.

Dynamic filed suit against PPG seeking: (1) a preliminary injunction prohibiting PPG from awarding the contract to any entity other than Dynamic and (2) a writ of mandamus directing PPG to award the contract to Dynamic. The trial court granted the preliminary injunction, holding "that [Dynamic] had complied with the requirements of the Public Bid Law because the signature of Mr. Hymel as 'Jeffrey R. Hymel, Jr., owner of Dynamic,' was sufficient under the law to qualify Mr. Hymel to sign the bid." Hamp's, which intervened in the action, appealed the trial court's judgment.

The Fourth Circuit framed the issue as whether, under the requirements of the Public Bid Law and the requirements of the bid instructions, the signature of Mr. Hymel, who was listed as a member of Dynamic in its most recent business records on file with the Secretary of State, was sufficient written evidence of his authority to sign the bid documents on Dynamic's behalf. The court began its analysis by examining the relevant text of La. R.S. 38:2212B:

(2) . . . 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: . . . 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

* * *

(5) Written evidence of the authority of the person signing the bid for public works shall be submitted at the time of bidding. The authority of the signature of the person submitting the bid shall be deemed sufficient and acceptable if any of the following conditions are met:

(a) The signature on the bid is that of any corporate officer listed on the most current annual report on file with the secretary of state, or the signature on the bid is that of any member of a partnership, limited liability company, limited liability partnership, or other legal entity listed in the most current business records on file with the secretary of state.

Dynamic argued that Mr. Hymel's signature was sufficient under La. R.S. 38:2212B(5)(a) because he was listed as a member of Dynamic on its most current filing with the Secretary of State. Dynamic argued that "the Public Bid Law does not require that the bidder provide the pertinent records of the secretary of state as a part of the bid, only that the person signing the bid be, in fact, a member of the business entity submitting the bid."

The court disagreed. The court found that "Dynamic was required, *at the opening of the bid*, to present some form of *written* evidence or documentation (*i.e.*, a copy of the company's current business record on file with the Secretary of State) substantiating that Jeffrey Hymel was, in fact, a member of the limited liability company and, thus, had the requisite authority to sign the bid on Dynamic's behalf." The court noted that its decision was consistent with the 2014 amendment to La. R.S. 38:2212, which previously did not expressly require submission of *written* evidence of authority *at the opening of the bid*. The court reasoned, "Clearly, in rewording the statute, the Legislature intended to change the law and to now require, at the time of the opening of the bid, *written* evidence of the authority of the person signing the bid on the bidder's behalf."

Therefore, the court concluded that Dynamic violated the Public Bid Law and the bid instructions by failing to include written evidence of Mr. Hymel's authority to sign the bid on its behalf, mandating that PPG rescind the notice of award to Dynamic. The court reversed the trial court's judgment granting Dynamic's request for a preliminary injunction and writ of mandamus.

It is worth noting that the bid instructions at issue in *Dynamic* required a limited liability company to list the name and address of every managing member. The instructions also required that evidence of agency, corporate or partnership authority be submitted with the bid and warned that PPG would rescind the notice of award if a bidder did not comply. In reaching its decision, the Fourth Circuit relied in part on Dynamic's failure to comply with those requirements of the bid instructions.

If you have any questions regarding the Public Bid Law Requirements, please contact the authors of this alert or a member of the Construction group.