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BY ELECTRONIC TRANSMISSION

July 11, 2018

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Councilman Paul D. Johnston
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RE: Advisory Opinion 2018-001

Dear President Yenni, Members of the Jefferson Parish Council, and Parish Attorney Power:

Pursuant to Jefferson Parish Charter, §410(A) and Jefferson Parish Code of Ordinances 2-538(b), the Jefferson Parish Ethics and Compliance Commission offers the following advisory opinion with regard to a lack of codified procedures for procurement protests.

OUR ATTORNEYS ARE ADMITTED TO PRACTICE IN ONE OR MORE OF THE FOLLOWING:
LOUISIANA AND FLORIDA

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Background Facts

On February 16, 2018, the Inspector General for the Parish of Jefferson issued Investigative Report No. 2017-0031, regarding Public Bid 50-00120070 for landscaping at the Jefferson Performing Arts Center. This investigative report made two (2) findings with regard to the Parish's bid process. Finding No. 2 indicates that there is no clearly defined ordinance, which governs a protest to the bid process. In response thereto, the Parish Attorney responded: "Jefferson Parish indeed has a bid protest policy, though not reduced to written ordinance." Thereafter, the Parish Attorney provided in a letter, the following as the Parish's uncodified process to protest a bid:

- 1) Receipt, logging, and review by the Purchasing Department;
- 2) Referral to the Purchasing Director for initial assessment and collection of pertinent materials;
- 3) Referral to and review by the Parish Attorney;
- 4) Written response to the protesting party; and
- 5) Advising the protesting party of the right to seek judicial intervention.

The Inspector General made recommendations with regard to the process for a bid protest but to date the protest procedures remain solely in the form of a policy established and maintained by the Administration, which conceivably could change from one administration to another. Given the size and complexities associated with the bidding procedures, Jefferson Parish, through its legislative branch, should create procedures that are codified in the ordinances which will govern all procurement protests in the future. This procedure should ensure that constitutional due process is afforded to all parties. At a minimum, the process for protesting a bid should include the following:

- 1) Requirement for the submission of written protest with all supporting documents attached within a prescribed time following the award of a contract;
- 2) The party assigned with review of the bid protest should notify the appropriate department and the successful bidder and seek a written response within a time prescribed, together with all documents supporting the response; and
- 3) The party tasked with reviewing all material should be impartial (preferably without prior knowledge of or involvement in the initial procurement) and should be required to provide a written decision, with reasons, to all parties within a time to be prescribed. It is not necessary to conduct a hearing prior to a decision being made, although one may prove to be beneficial.

In order to promote transparency and consistency throughout government in a seamless manner across changes of Administration, the Jefferson Parish Ethics and Compliance Commission submits to the Administration and to the Parish Council that the right to protest a bid and a procedure for its resolution be adopted formally in the Jefferson Parish Code of Ordinances. The Commission makes no recommendation as to what procedures should be adopted by the legislative branch of the Parish Government but strongly urges the Administration and the Parish Council to work together in order

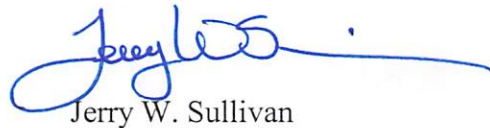
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to provide comprehensive legislation in the form of an ordinance, which will overtly govern all future protests and guarantee that due process is uniformly provided to all participants.

Thank you in advance for your consideration.

Very truly yours,



Jerry W. Sullivan

JWS/dpd

cc: Ms. Carroll W. Suggs, Chairwoman
Warren Bourgeois, M.D.
Ms. Dolores C. Hall
Mr. Howard Maestri