



Contract Management and Procurement (Certified District Official's Program)

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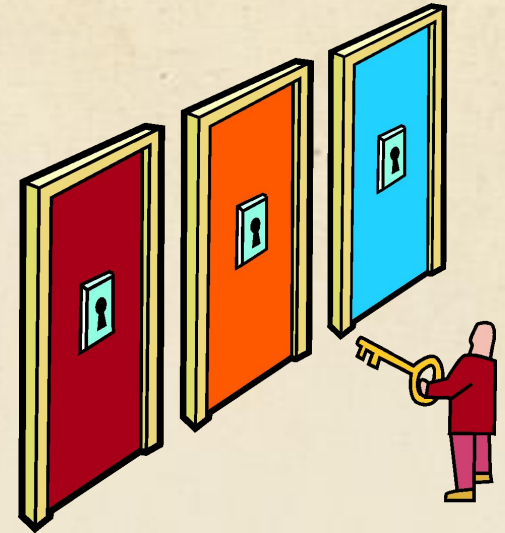
Overview of Today – Contracts and Professional Services for Special Districts

- I. Bidding Process For:
 - a. Contracts for Construction Projects;
 - b. Contracts for Professional Services; and
 - c. Contract Awards for Goods and Services other than Professional Services.
- II. Other Bid Considerations:
 - a. Bid Protests;
 - b. Piggy Backing; and
 - c. Prompt Payment Act.
- III. Contracts and Other Considerations:
 - a. Contract Management;
 - b. Surplus and Abandoned Property;
 - c. Sunshine and Public Record Law Implications/Exemptions
- IV. Quiz with Rewards

Purpose of Competitive Procurement

Purpose of public bid statutes/laws is:

1. Preventing favoritism toward certain contractors by public officials; and
2. Ensuring fair competition by providing equal terms/criteria for award of contracts.



Competitively Award

“Competitively Award” means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiations. - Fla. Stat. § 255.20(1)

Contracts for Construction Projects

- Construction projects of a certain magnitude must be competitively awarded by all special districts pursuant to Section 255.20, Florida Statutes.
 1. Construction projects that cost \$300,000.00 or more;
 2. Electrical projects costing \$75,000.00 or more;
 3. Contracts to construct or improve bridges, roads, streets, highways, railroads and services that are incidental to those projects that will equal or exceed \$250,000.00
- Construction costs include the cost of all labor, equipment and materials costs for the project. Fla. Stat. § 255.20.

Contracts for Construction Projects

- Construction projects that are less than \$300,000.00 or \$75,000.00 are not subject to competitive award requirements, but should be subject to some reasonably rigorous procedure for selection of the appropriate contractor.
- Many special districts have adopted policies that set thresholds in dollar amounts beneath the statutory standards for construction projects; some require formal competitive bidding for construction projects greater than \$25,000.00

Contracts for Construction Projects

- Contracts for construction projects that are less than \$300,000.00 or \$75,000.00 plus CPI adjustments may be awarded in a variety of ways including:
 1. Authorization for the chief executive officer to acquire quotations;
 2. Invitation for contractors to submit price lists or rates for daily work.

Six Criteria for the Competitive Award of a Contract

- 1. Price**
- 2. Request for Proposal**
- 3. Competitive Negotiations**
- 4. Construction Performed by Local Government Employees**
- 5. Contract Segmentation**
- 6. Timber Products**

A Closer Look at the 6 Criteria

1. **Price:** the lowest qualified and responsive bidder. The district may reject all bids and re-bid the project or elect not to proceed.
2. **Request for Proposal (RFP)**
3. **Competitive Negotiations:** A contract awarded by competitive negotiation must be processed in accord with Section 287.055, Florida Statutes, the Consultant's Competitive Negotiations Act (CCNA). CCNA, requires advertisement, review of qualifications, a determination of the three most qualified bidders and negotiations in serial fashion with candidates rated number 1, 2 and 3 respectively.

A Closer Look at the 6 Criteria

Contd.

4. **Construction Performed by Local Government Employees:**
Such work must be conducted by employees that are appropriately licensed.
5. **Contract Segmentation:** A special district is not permitted to construct a project in segments to avoid the dollar limit on construction costs.
6. **Timber Products:** Projects that utilize forestry or lumber projects must include a specification in the bid criteria that state forestry products must be used if such materials are available.

Exceptions to Section 255.20

Section 255.20, Florida Statutes, does not apply in the following circumstances:

1. When a project is undertaken to repair, reconstruct or replace an existing facility, destroyed by an act of God;
 - a) An immediate danger to public health or safety;
 - b) Other loss of public or private property which requires emergency action;
 - c) An interruption of an essential government service;

Exceptions to Section 255.20, Contd.

Section 255.20, Florida Statutes, does not apply in the following circumstances:

2. If, after notice by publication, the governmental entity does not receive any responsive bids or proposals;
3. Construction, remodeling, repair or improvement of an electric or gas utility system is performed by personnel of the system;
4. Construction, remodeling, repair or improvement of a public electric utility system;
5. Projects undertaken as a repair or maintenance to an existing public facility.

Exceptions to Section 255.20, Contd.

Section 255.20, Florida Statutes, does not apply in the following circumstances:

6. Projects undertaken exclusively as part of a public education system;
7. When the funding source of the project will be diminished or lost because of the time involved in competitive award;
8. When the local government has competitively awarded a project to a private sector contractor and the contractor has abandoned the project;

Exceptions to Section 255.20, Contd.

Section 255.20, Florida Statutes, does not apply in the following circumstances:

9. When the special district governing board has determined that it is in the best interest of the district to use its own services, employees, and equipment; or
10. When the special district governing board has determined upon certain criteria that it is in the best interest of the district to award the project to an appropriately licensed private sector contractor in accord with district procedures that pre-date Section 255.20, Florida Statutes; or
11. Projects subject to Chapter 336, Florida Statutes (County Road System).

Miscellaneous

1. Qualified contractors not awarded a contract may challenge the award. Fla. Stat. § 255.20 (4).
2. Special districts are encouraged to utilize minority contractors whenever possible. Fla. Stat. § 255.101.
3. Vendors convicted of a public entity crime (e.g. fraud, bribery or material misrepresentation) in the last 36 months are prohibited from transacting business with a District in excess of the Category 2 threshold (\$35,000). District's require an affidavit specifying that proposing vendors comply with this requirement. Fla. Stat. § 287.133.

Professional Services

Consultants Competitive Negotiations Act

- The Florida Consultants Competitive Negotiations Act (CCNA) covers all contracting above a certain monetary level for a variety of professional services required by local government, including special districts.

Professional Services Contd.

1. **Professional Services:** Services within the scope of the practices of architectural, professional engineering, landscape architecture or registered surveying and mapping as defined by state law.
2. **Project:** Include fixed capital outlay studies or planning activities described in the CCNA.
3. **Continuing Contact:** A continuing contract is a contract for professional services that is entered into in accordance with Section 287.055, Florida Statutes, for professional services for projects in which construction costs will not exceed \$2,000,000.00 or for study activity when the fee for the professional services will not exceed \$200,000.00.

Thresholds for CCNA

Special districts must utilize the CCNA for professional services involving a planning or study activity when the fee for services will exceed the threshold provided in Section 287.017, Florida Statutes, for Category Two costs.

- Category Two costs are capped at \$35,000.000 plus a consumer price index increase.
- Where professional services for a transportation project, the basic construction cost of which exceeds \$325,000.00 plus the aforementioned CPI are sought, the CCNA must also be used.

Public Announcement and Qualification Procedures

Announcement Procedures

- Publicly announce in a uniform and consistent manner whenever professional services must be purchased for construction projects or professional services that exceed Categories Two or Five, respectively. Fla. Stat. §287.055(3).
- Notice must include a general description of the project and indicate how interested consultants may apply for consideration.
- Each agency announcing the need for consultant services must provide a good faith estimate in determining whether the proposed activity meets the thresholds of CCNA.
- Any individual desiring to provide professional services must first be certified by the agency as qualified pursuant to applicable registration or licensing laws.

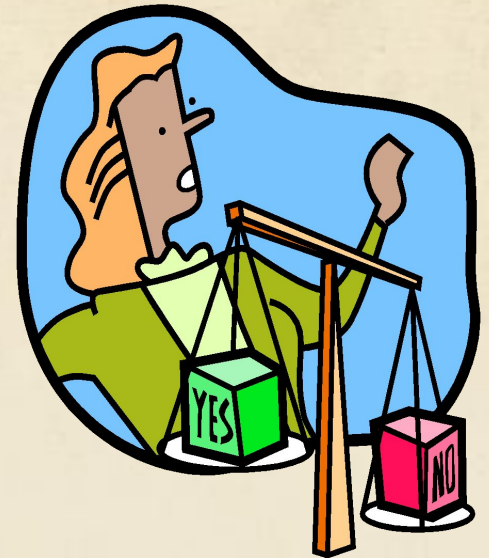
Public Announcement and Qualification Procedures Contd.

Emergencies Declared

The only time the CCNA does not have to be applied when the law is otherwise applicable, is in the event of an emergency. The governing board of a special district must, therefore, meet in a public session and declare the emergency.

Competitive Selection

1. For each proposed project a district is obligated to:
 - evaluate statements of qualifications of the professionals; and
 - conduct discussions which may require public presentations by no fewer than three firms.



Competitive Selection Contd.

2. A district must then select in order of preference no fewer than three firms deemed to be the most qualified. Selection must include factors such as:
 - a. whether the firm is a certified minority business enterprise,
 - b. past performance,
 - c. willingness to meet time and budget requirements,
 - d. location,
 - e. recent, current and projected workloads of the firms,
 - f. the volume of work previously awarded to the firm by the agency.
 - g. A district may only request, accept and consider proposals for compensation to be paid under the contract during competitive negotiations with short listed applicants.

Competitive Negotiations

1. A district must evaluate the qualifications of applicants, interview the applicants and may require presentations.
2. A district must select a minimum of three firms ranked respectively 1, 2 and 3 with respect to qualifications.
3. If a project exceeds the Category Four costs (\$195,000.00 plus CPI), the applicant must sign a Truth In Negotiations certificate stating that the wage rates and other factual unit costs supporting compensation are accurate and complete.

Competitive Negotiations Contd.

4. If a district is unable to reach a contract with Applicant Number 1, then the agency must proceed to negotiate with Applicant Number 2.
5. If a district is unable to negotiate successfully with Applicant Number 2, the agency then must negotiate with Applicant Number 3.
6. The district may reject all applicants and re-notice the project.

Other Considerations

- It is a violation of the CCNA for any professional service provider to hire someone to secure a professional services contract and utilize a contingent fee contract to do so.
- Design/build contracts are authorized provided the service provider provides a maximum price and a guaranteed completion date.

Contract Awards for Goods and Services Other Than Professional Services

- No statute dictating cost thresholds for special districts purchasing goods or services. Districts should develop and adopt consistent policy for the acquisition of goods and services.

Questions?

Quiz Part 1 – True or False

1. In awarding a bid, a special district shall award to the lowest bidder.
2. A district may award a construction contract in excess of \$300,000 without going through an RFP if there the local government has competitively awarded a project to a private sector contractor and the contractor has abandoned the project.
3. The CCNA does not have to be applied in the event of an emergency. In such an instance, the governing board of a special district must meet in a public session and declare the emergency.

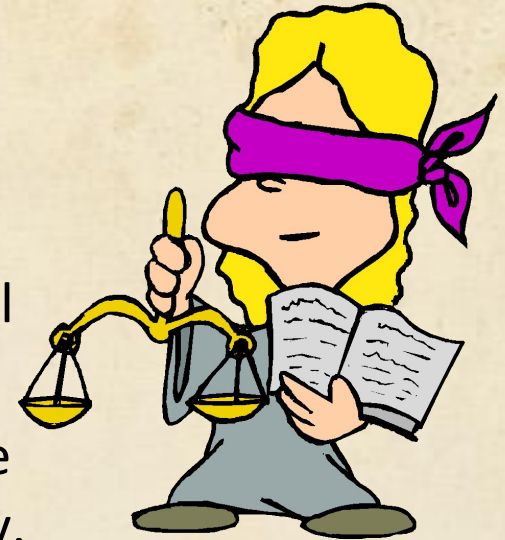


Quiz – True or False Contd.

4. The District must consider whether the firm is a certified minority business enterprise in awarding a contract under CCNA.
5. If a district is unable to reach a contract with Applicant Number 1, then the agency must proceed to negotiate with Applicant Number 2. If a district is unable to negotiate successfully with Applicant Number 2, the agency district may pick any other applicant.
6. It is not a violation of the CCNA for any professional service provider to hire someone to secure a professional services contract and utilize a contingent fee contract to do so.
7. On design/build contracts a special district can require the bidder provide a maximum price and a guaranteed completion date.
8. All special districts must adopt their own procurement policy.

Bid Challenges/Protest

- Competitive bidding statutes were enacted to secure fair competition on equal terms to all bidders.
- When challenges proceed to court, the court will review the
- collegial body's action to determine whether the governing body acted arbitrarily and capriciously.
- The letting of public contracts must be based upon facts reasonably supporting the decision reached by the government. *Marriott Corp. v. Metropolitan Dade Co.*, 383 So. 2d 662 (Fla. 3rd DCA 1980)



Special District Procurement Policies

- There is no general law that governs how special districts, or other local governments (ie, counties and cities), should handle bid protests.
- Chapter 120, Florida Statutes, contains the model bid protest procedure, but is only applicable to state agencies.
- Special districts should carefully consider developing their own bid protest procedure.
- Failure to develop a protest policy may result in: the special district being exposed to bid protest challenges for longer than reasonable or necessary, delay in the awarding the commodity or service sought by the bid, and needless exposure to litigation by the protesting party.



Special District Protest Policies

At a minimum, a protest policy should establish:

- How the special district will receive notice of a bid protest from the protesting party;
- What the notice of the protest should contain in terms of content;
- What the deadline is for the special district to receive a bid protest from the protesting party;
- An explanation of the bid protest procedure that the special district wants both parties to accept; and
- The timeframe for the bid protest procedure that will be accepted by the parties.

Special District Protest Policies

Contd.

- The benefit of having a protest policy is that the special district can establish an expedited process to resolve the protest.
- Like all other local procurement policies, once such a protest policy is established it needs to be followed.

Piggy Backing

- Florida Statutes § 189.4221 was passed in 2009.
- It permits special district to purchase commodities and contractual services (except those services covered by the CCNA), from the purchasing agreements of other special districts, municipalities or counties which have been procured competitively.
- Special district can “piggy back” on the procurement process used by another local government **when the process used by the other local government would have met the special districts’ procurement requirements.**



Piggy Backing Contd.

- If you are going to use the piggy back statute, your district needs to make sure that your legal counsel have reviewed all the relevant procurement documents from the local government whose process and agreement you want to adopt.
- Your district needs to maintain the bid request and response for the commodity or service submitted to the other local government.
- In other words, maintain the evidence/facts that supported the decision to use this process.

Local District Purchasing Policies

There Is No Requirement To Adopt a Local Purchasing Policy

- Florida has a strong public policy which requires that even in the absence of controlling statutes, expenditures of public funds should be made on competitive bids whenever possible. 1966 Op. Att'y. Gen. Fla. 66-9 (February 7, 1966); *City of Sweetwater v. Solo Construction Corp.*, 823 So. 2d 798 (Fla.3d DCA 2002).
- In the absence of a legislative requirements regarding the method of awarding public contracts, a special district may adopt a local purchasing policy.
- The adoption of such local policies is a purely legislative decision and to be enforceable should be adopted by the legislative branch of the local government. *City of Port Orange v. Leechase Corp.* 430 So. 2d 534 (Fla. 5th DCA 1983).

Local District Purchasing Policies

Contd.

When Special Districts Have Procurement Policies They Must Be Followed

- Failure to follow a local procurement policy may result in challenges and bid protests.
- *Marriott Corporation v. Dade County*, 383 So.2d 662 (Fla. 3d DCA 1980) (Charter authorized expression of the policy of its authorities by resolution, which required sealed competitive bids and the award of a franchise to that bidder whose bid, will result in the greatest financial benefit to the port authority. The court held that an award made solely because the contractor was a local man who would use local contractors and local labor and would patronize local businesses was an error, because it ignored the County's existing procurement policy.)

Local District Purchasing Policies

Contd.

- *City of Opa-Locka v. Trustees of Plumbing Ind. Pro. F.*, 193 So. 2d 29 (Fla. 3d DCA 1966) (The city could not waive their code provision requiring a bidder to hold an appropriate certificate of competency qualifying him to perform the work proposed by the bid).
- *Miami Marinas Ass'n., Inc. v. City of Miami*, 408 So.2d 615 (Fla. 3d DCA 1981) (City charter of the City of Miami required competitive bidding process and prevented award of waterfront property management contract through any other means.)

Local District Purchasing Policies

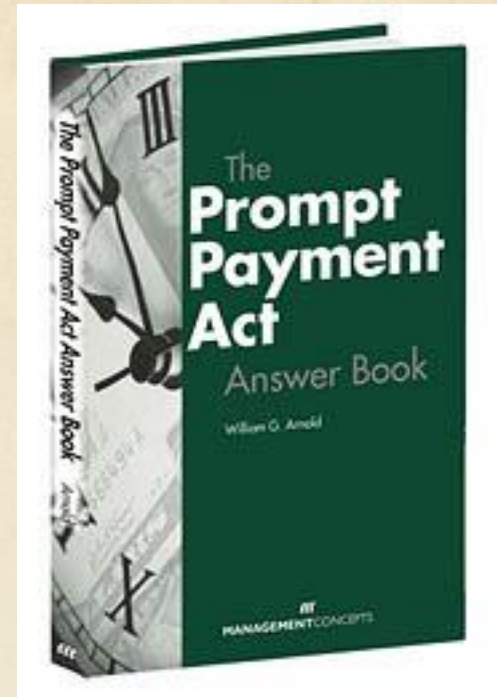
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Local Preferences in Purchasing Policies.

- Many local purchasing policies include “local preferences” for local businesses within the geographical area to provide local economic benefits/incentives.
- The most commonly used local preferences is used to address tie bids. In such policies, if there is a tie in price, the special district can award the bid to the “local” bidder/proposer.
- Examples of local preferences being upheld can be found in 2001 Op. Att’y Gen. Fla. 2001-65 (Sept. 14, 2001); 2002 Op. Att’y Gen. Fla. 2002-03 (Jan. 7, 2002); *City of Port Orange v. Leechase Corp.* , 430 So. 2d 534 (Fla. 5th DCA 1983).

Florida's Prompt Payment Act

- Florida Statutes §§ 218.70 - 218.80 sets forth the Local Government Prompt Payment Act which requires payment for all purchases by local governmental entities, including special districts, be made in a timely manner.
- The Prompt Payment Act sets forth timeframes when payments are due by a special district following receipt of an invoice for purchases relating services rendered, rental period, contracts, and construction services. Fla. Stat. §§ 218.73, 218.735.



Florida's Prompt Payment Act

Contd.

Particularly, in regard to construction service payments, Act contains specific requirements relating to:

- The timing of payments;
- The manner by which invoices are “stamped in”;
- The timing of any rejections of invoices;
- How much payments can be withheld from the contractor;
- What interest rate will be charged for non-payment; and
- How disputes over invoices should be resolved. Fla. Stat. § 218.735.

The Act does not apply to construction services paid for, in whole or in part, with federal funds or to construction services that costs \$200,000 or less. Fla. Stat. § 218.735.

Ethical Considerations

- Generally, §112.313, Fla. Sta., provides standards of conduct for public officers, employees of agencies and local government attorneys.
- Florida's Ethics Code prohibits: (1) solicitation of and acceptance of gifts, (2) doing business with one's agency, (3) unauthorized compensation, (4) misuse of public position and conflicting contractual relationships.
- Additionally, Florida's Ethic Code also contains financial disclosure requirements for certain special district officials and purchasing agents. See, Fla. Stat. §112.3145.

Ethical Considerations Contd.

- To ensure that there is not an appearance of impropriety, many local governments include provisions in their local policies and/or RFP's that restrict lobbying activities while bids or RFP's are pending.



Questions?

Quiz Part 2 – True or False

9. The bid protest process for special districts is governed by the Florida Administrative Procedures Act, Chapter 120, Florida Statutes.
10. Special districts all subject to Florida's Prompt Payment Act except when construction services are less than \$200,000.00.
11. Special districts may piggy-back on other local governments' purchase agreements for goods and services, but only when the process meets the special district's procurement requirements.



Acquisition, Maintenance and Disposal of Property

A special district is responsible for the supervision and control of its property. Fla. Stat. Sections 274.03 and 274.12.

- The special district may delegate to a custodian the use and immediate control of its property.
- Property is defined as fixtures and other tangible personal property of a nonconsumable nature. Fla. Stat. §274.02.
- Further, any person violating this act shall be guilty of a misdemeanor of the second degree. Fla. Stat. § 274.08.

Maintenance of Property Contd.

Where the funds of the special district are used in connection with the purchase of uniforms, either directly or indirectly, the expenditure is deemed an expenditure of the district and the provisions of Chapter 274 should be complied with. AGO 62-18.



Maintenance of Property

Special districts are required to maintain adequate records of property within their custody. Fla. Admin. Code 69I-73.003.

All property with a value or costs of \$1,000 or more and a projected useful life of 1 year or more shall be recorded in the district's financial system as property for inventory purposes. Fla. Admin. Code 69I-73.002.

Maintenance of Property Contd.

Each item of property shall be accounted for in a separate property record; however, related individual items which constitute a single functional system may be designated a property group (e.g. modular furniture, computer components, book sets). Each property record shall contain the following information:

1. Identification Number
2. Description of item or items.
3. Physical location (city, county, address, or building name, room number)
4. Name of the custodian assigned responsibility for the items.
5. If a property group, then the number and description of the component items comprising the group.
6. Name, make or manufacturer, if applicable.
7. Year and/or model, if applicable.

Maintenance of Property Contd.

8. Manufacturer's serial number, if any and if an automobile, then the vehicle identification number and title certificate number, if applicable.
9. Date acquired.
10. Cost or value of the date of acquisition for the item or identified component parts.
11. Method of acquisition and for purchased items, the voucher and check or warrant number.
12. Date the item was last physically inventoried and the condition of the item at that date.

Maintenance of Property Contd.

13. If disposed of, then the following information shall be included:
 - a. Date of disposition/Authority for disposition (resolution recorded in minutes)/Manner of disposition (sold, donated, transferred, destroyed)/ Notation identifying any related transactions (receipt for sale, insurance recovery)/ For property certified as surplus, documentation evidencing it was disposed of according to the Fla. Stat. §§ 247.05 or 247.06.
14. Other information the district may want to include.

Maintenance and Disposal of Property

Maintenance

A district control account showing the total cost/value of the custodian's property shall be maintained. District property shall be marked with an assigned identification number, unless the value or utility would be significantly impaired by such marking.

Disposal of Property – Surplus Property

A special district has the discretion to classify as surplus any of its property that is obsolete or the continued use of which is **uneconomical or inefficient or which serves no useful function.**
Fla. Stat. § 274.05.

- Surplus property may be offered to other governmental units for sale or donation or may offer it to private nonprofit agencies. The best bid received shall be accepted.
- The authority for the dispose of property shall be recorded in the minutes of the Board. Fla. Stat. § 274.07.

Disposal of Property – Surplus Property (Alternative)

Alternatively, a special district may dispose of its surplus property to any person for value, or if the property is without commercial value, it may be donated, destroyed or abandoned. Fla. Stat. § 274.06.

- For property under \$5,000 in value = it may be disposed of in the most efficient and cost-effective means as determined by the District. Fla. Stat. § 274.06.
- For property \$5,000 or more in value = the district shall sell such property only to the highest responsible bidder, or by public auction, after publication of notice not less than 1 week nor more than 2 weeks prior to sale in a newspaper.

Abandoned Property

- Abandoned property is “all tangible personal property that does not have an identifiable owner and that has been disposed on public property in a wrecked, inoperative, or partially dismantled condition or has no apparent intrinsic value to the rightful owner.” Fla. Stat. §705.101(3).
- Chapter 705, Florida Statutes governs lost and abandoned property.

Abandoned Property Contd.

1. When the District finds abandoned property on District property, the District should contact local law enforcement.
2. Law enforcement should remove the tangible property.
3. The law enforcement agency then retains the item(s) for 90 days and publishes a notice that it is holding such item(s) in case the property owner wants to come and retrieve them.
4. If no one comes to retrieve the item(s), the property is donated or destroyed by the law enforcement agency.
5. If the finder of the property wants to assert a claim for the property, it must give a deposit to the law enforcement agency when the law enforcement agency comes to retrieve the item for pick up. Fla. Stat. §705.103.

Abandoned Property Contd.

- If the abandoned item is too large to be moved, the law enforcement agency will post a notice on the item notifying owners that it must be removed by the owner within five (5) days or else the law enforcement agency will remove and destroy it. Fla. Stat. §705.103(2).
- Although Chapter 705 of the Florida Statutes provides provisions for state, county, and municipal employees to perform the functions of the law enforcement agency and receive the lost or abandoned property, it does not provide such for a special district's employee and hence, a special district would need to contact law enforcement when dealing with lost or abandoned property.

Sunshine Law

- The purpose of the Sunshine Law is to provide the public a right of access to government proceedings.
- All public agencies including special districts are subject to the Sunshine Law.



Sunshine Law

Sunshine Laws extends to discussions and deliberations taken by a public board and is applicable to any gathering (formal or casual) of 2 or more members of the same board of commission, **including meetings with or attended by any person elected to such board or commission, but who has not yet taken office** to discuss some matter on which foreseeable action will be taken by the public board or commission. Fla. Stat. § 286.011 and Art. 1, Sec. 24 of the Florida Constitution; HB 1305 (LOF Chapter 2012-25).

Sunshine Law Requirements

Pursuant to Section 286.001, Florida Statutes, there are three (3) basic requirements to comply with the Sunshine Law:

1. Meetings of the public must be open to the public;
2. Reasonable notice of such meetings must be provided;
and
3. Minutes of the meeting must be taken.

Sunshine Law Considerations

- The Sunshine Law generally applies to purchasing matters.
- Meetings with agency staff are not ordinarily subject to Sunshine Laws unless staff ceases to function in a staff capacity and is delegated authority normally within the public agencies discretion (i.e., committee composed of staff to select or rank a candidate or contractor). See, *News-Press Publishing Co., Inc. v. Carlson*, 410 So. 2d 546 (Fla. 2d DCA 1982).
- The Sunshine Law is applicable to bid evaluation meetings. *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168.
- However, pursuant to section 286.0113(2)(a), Florida Statutes, there is an exemption from the public meeting requirement for negotiation meetings. See, *Godheim v. City of Tampa*, 426 So. 2d. 1084 (Fla. 3d DCA 1983).

Consequences of Sunshine Law Violations

Violations of the Sunshine Law can result in the following:

1. Criminal penalties for any member of a board or commission who knowingly violates the Sunshine Law is guilty of a misdemeanor of the second degree. Fla. Stat. § 286.011(3)(b).
2. In some cases the public official who is indicted for any misdemeanor arising of his/her official duties, may be removed or suspended from office.
3. The Sunshine Law provides that a fine not exceeding \$500 may be imposed for noncriminal infractions.
4. Reasonable attorneys fees will be assessed against any board or commission found to have violated the Sunshine Laws.

Public Records

- Chapter 119, Florida Statutes and Art. I, section 24 of the Florida Constitution set forth Florida's Public Records laws. Special districts are subject to the Public Records Laws. Article I, section 24 of the Florida Constitution states:

Every person has the right to inspect or copy **any public record made or received in connection with the official business** of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

Public Records Defined

"Public records" means all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency. Fla. Stat. § 119.011 (12).



Public Records Contd.

- Any person is authorized to inspect and receive copies of public records and they do not need to have a special or legitimate interest related to their request.
- Also, requests do not have to be made in writing.
- The records custodian of the special district or his/her designee is responsible for making public records available for inspection and/or copying “at any reasonable time, under reasonable conditions”. Fla. Stat. § 119.07.
- Further, private entities acting on behalf of any public entity are considered an agency as defined by the public records act and are subject to same.

Public Records – Exemptions Related to Bids

- Any exemption from the public records laws must be stated in writing. Fla. Stat. § 119.07(1)(e). The public records laws are construed in favor of open government, so exemptions are **strictly construed**.
- Financial statements of prospective bidders on public works projects are exempt from public records law.
- There is a temporary exemption from the public records act for sealed bids or proposals received by the special district pursuant to a bid or request. The sealed bid/proposals are not subject to the public records law until the special district provides notice of its decision or within 10 days after the bid is opened, whichever is earlier. The 10-day period does not include the date of the notice or opening. Fla. Stat. § 119.07(1).

Consequences of Public Record Law Violations

Violations of the Public Record Law can result in the following:

1. A criminal penalty for any member of a board or commission who knowingly violates the Public Records Law is guilty of a misdemeanor of the first degree. Fla. Stat. § 119.10.
2. In some cases the public official who is indicted for any misdemeanor arising of his/her official duties, may be removed or suspended from office.
3. The Public Records Law provides that a fine not exceeding \$500 may be imposed for noncriminal infractions. Fla. Stat. § 119.10.

Consequences of Public Record Law Violations Contd.

4. If a civil action is filed against an agency and the court determines that the agency unlawfully refused to permit a public record to be inspected or copied, the court shall assess and award attorneys fees against the agency responsible the reasonable costs of enforcement including reasonable attorney's fees. Fla. Stat. § 119.12.
 - *Lorenzo v. City of Venice*, Case No. 2008 CA 8108 SC (Fla. 12th Cir. Ct. Oct. 7, 2009) - Judge Robert Bennett ordered the City of Venice to pay **\$777,114.42** in attorneys' fees and costs to the Plaintiffs' attorney.



Questions?

Quiz Part 3 – True or False

12. A special district has the discretion to classify as surplus any of its property.
13. The authority for the dispose of property shall be recorded in the minutes of the Board.
14. There is an exemption to the Sunshine Law for bid evaluation and negotiation meetings.
15. There is a permanent exemption from the public records act for sealed bids or proposals received by the special district pursuant to a bid or request.



Quiz - Answers

1. False. The award of a bid should go to the lowest qualified and responsive bidder. The district may reject all bids and re-bid the project or elect not to proceed.
2. True. A district may award a construction contract in excess of \$300,000 without going through an RFP if there the local government has competitively awarded a project to a private sector contractor and the contractor has abandoned the project.
3. True. The CCNA does not have to be applied in the event of an emergency. In such an instance, the governing board of a special district must meet in a public session and declare the emergency.

Quiz – Answers Contd.

4. True. The District must consider whether the firm is a certified minority business enterprise in awarding a contract under CCNA.
5. False. If a district is unable to reach a contract with Applicant Number 1, then the agency must proceed to negotiate with Applicant Number 2. If a district is unable to negotiate successfully with Applicant Number 2, the agency then must negotiate with Applicant Number 3. If a district is unable to reach agreement with any of the three applicants, the district may reject all applicants and re-notice the project.
6. False. It is a violation of the CCNA for any professional service provider to hire someone to secure a professional services contract and utilize a contingent fee contract to do so.
7. True. On design/build contracts a special district can require the bidder provide a maximum price and a guaranteed completion date.

Quiz – Answers Contd.

8. False. There is no requirement that special districts adopt their own procurement policy
9. False. A special district's bid protest process is not governed by Chapter 120, Florida Statutes.
10. True. Special districts are subject to Florida's Prompt Payment Act.
11. True. Special districts may piggy-back on their local government's purchase agreements when the special district's procurement requirements are met.

Quiz – Answers Contd.

12. False. A special district has the discretion to classify as surplus any of its property **that is obsolete or the continued use of which is uneconomical or inefficient or which serves no useful function.**
13. True. The authority for the dispose of property shall be recorded in the minutes of the Board.
14. False. Pursuant to section 286.0113(2)(a), Florida Statutes, there is an exemption from the public meeting requirement for negotiation meetings, but not for bid evaluation meetings.
15. False. There is a temporary exemption from the public records act for sealed bids or proposals received by the special district pursuant to a bid or request. The sealed bid/proposals are not subject to the public records law until the special district provides notice of its decision or within 10 days after the bid is opened, whichever is earlier.

**Copies of this PowerPoint and written
appendices are available today and
upon request**

THANK YOU!

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