

AGENDA
ST. JOHNS COUNTY
INDUSTRIAL DEVELOPMENT AUTHORITY

January 8, 2018
3:00 p.m.

Executive Board Conference Room
County Commission Office of the Administration Building
500 San Sebastian View, St. Augustine, FL 32084

****Regular Meeting****

Roll Call

Public Comment:

Each person addressing the Board shall state their name and address for the public record and limit comments to three (3) minutes. Public comment will also be provided for each item containing a proposition (other than ministerial acts) before the Board.

Additions and/or deletions to agenda

Approval of Minutes:

- November 13, 2017

Treasurer's Report:

- Review December Financials

Regular Business:

- Presentation by Lake Ray, First Coast Manufacturers Association
- Purchase/procurement policy update
- IDA issuers fee discussion

Reports:

- IDA Members

Adjournment:

Next Regular Meeting Date: February 12, 2018

**MINUTES OF MEETING
INDUSTRIAL DEVELOPMENT AUTHORITY
OF ST. JOHNS COUNTY
November 13 2017, 3:16 PM**

Members Present: Peter Apol, Joseph Rowell, Vivian Helwig, Henry Green and Thomas Skinner

Members Absent: None.

Guests Present: See attached sign in sheet.

Mr. Apol brings the meeting to order at 3:16 PM.

Mr. Apol asks for roll call.

All members present

Mr. Apol asks for Public Comment.

No public comment.

Mr. Apol moves to additions and deletions to the agenda.

None noted.

Mr. Apol moves to approval of the minutes for October 9, 2017.

Discussion.

Motion Mr. Rowell, Second Mr. Green to approve the minutes for October 9, 2017 as presented.

Vote unanimous.

Mr. Apol moves to Treasurer's Report.

Mr. O'Connell presents financial statements for October and a check made out to W.H. O'Connell & Associates, P.A. in the amount of \$825.00 for accounting services.

Discussion.

Mr. Apol moves to regular business.

Mr. Apol moves to the Westminster Pines schedule and closing.

Mr. Dobson goes over the schedule for the closing on the bond issue.

Mr. Apol moves to the Purchase/procurement policy update.

Mr. Dobson presents to the Authority a draft of a Procurement Policies and Procedures.

Discussion.

Mr. Dodson suggests that each member review the draft for comments at the next meeting.

Discussion.

Mr. Apol moves the meeting to the FCMA 2018-19 Manufacturing on the First Coast publication.

Discussion.

Motion Helwig, Second Mr. Rowell to move forward with having a feature on the back page of the FCMA Publication in conjunction with or without the Chamber of Commerce and allowing the Chairman Peter Apol to withdraw.

Vote unanimous.

Mr. Apol moves the meeting to reports from members.

Mr. Rowel no report

Mr. Helwig asks what publications the County and the Chamber advertise in.

Discussion,

Mr. Green no report

Mr. Skinner no report

Mr. Apol asks for reports from staff.

None noted

Mr. Apol states the next meeting is January 8, 2018 at 3:00PM

Motion Mr. Green, Second Mr. Skinner to adjourn a 4:37 PM.

Vote unanimous.

IDA

SIGN IN SHEET

IDA BOARD MEMBERS		IDA MEETING DATE: <u>11/13/17</u>
1	Joseph Lawler	
2	Peter Apol	
3	Henry Green	
4	Viv Helwig	
5	Rusty Schinnerer	
6		
7		

VISITORS / GUESTS		Who do you represent?
1	MAH Cornwall	CPA for Authority
2	Julie Long	SJC
3	Geoff DeBor	ATA
4	Deb S. Smith	SIC BCC
5	Melissa Glasgow	SJC
6	Michael McColo	ATA
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Industrial Development Authority
Balance Sheet
As of December 31, 2017

	<u>Dec 31, 17</u>	<u>Nov 30, 17</u>
ASSETS		
Current Assets		
Checking/Savings		
1002 · Ameris Bank	214,992.22	171,194.63
1004 · Ameris CD 2	95,022.22	95,022.22
Total Checking/Savings	310,014.44	266,216.85
Other Current Assets		
13000 · CD Interest Receivable	146.92	146.92
Total Other Current Assets	146.92	146.92
Total Current Assets	310,161.36	266,363.77
TOTAL ASSETS	<u>310,161.36</u>	<u>266,363.77</u>
LIABILITIES & EQUITY		
Liabilities		
Current Liabilities		
Accounts Payable		
20000 · Accounts Payable	1,075.00	600.00
Total Accounts Payable	1,075.00	600.00
Total Current Liabilities	1,075.00	600.00
Total Liabilities	1,075.00	600.00
Equity		
2810 · Fund Balance - Unreserved ...	132,016.26	132,016.26
32000 · Retained Earnings	135,369.08	135,369.08
Net Income	41,701.02	(1,621.57)
Total Equity	309,086.36	265,763.77
TOTAL LIABILITIES & EQUITY	<u>310,161.36</u>	<u>266,363.77</u>

9:01 AM
01/03/18
Accrual Basis

Industrial Development Authority
Profit & Loss
October through December 2017

	<u>Oct 17</u>	<u>Nov 17</u>	<u>Dec 17</u>	<u>TOTAL</u>
Income				
3005 · Bond Issue Fees	0.00	0.00	43,805.00	43,805.00
3013 · Prosperity Bank Interest Inco...	7.49	10.94	12.59	31.02
Total Income	<u>7.49</u>	<u>10.94</u>	<u>43,817.59</u>	<u>43,836.02</u>
Expense				
5010 · Accounting	825.00	600.00	475.00	1,900.00
5090 · Office Supplies	40.00	0.00	20.00	60.00
5710 · DCA Special Fees	175.00	0.00	0.00	175.00
Total Expense	<u>1,040.00</u>	<u>600.00</u>	<u>495.00</u>	<u>2,135.00</u>
Net Income	<u><u>(1,032.51)</u></u>	<u><u>(589.06)</u></u>	<u><u>43,322.59</u></u>	<u><u>41,701.02</u></u>

9:01 AM
01/03/18
Accrual Basis

Industrial Development Authority
Budget vs. Actual
November 2017

	<u>Nov 17</u>	<u>Budget</u>	<u>\$ Over Bud...</u>
Income			
3013 · Prosperity Bank Interest Inc...	10.94	3.33	7.61
3015 · Prosperity CD Interest	0.00	7.50	(7.50)
Total Income	10.94	10.83	0.11
Expense			
5010 · Accounting	600.00	750.00	(150.00)
5016 · Contractual Services	0.00	1,400.00	(1,400.00)
Total Expense	600.00	2,150.00	(1,550.00)
Net Income	<u><u>(589.06)</u></u>	<u><u>(2,139.17)</u></u>	<u><u>1,550.11</u></u>

Industrial Development Authority
Budget vs. Actual
December 2017

	<u>Dec 17</u>	<u>Budget</u>	<u>\$ Over Bud...</u>
Income			
3005 · Bond Issue Fees	43,805.00	47,500.00	(3,695.00)
3013 · Prosperity Bank Interest Inc...	12.59	3.33	9.26
3015 · Prosperity CD Interest	0.00	7.50	(7.50)
	<hr/>	<hr/>	<hr/>
Total Income	43,817.59	47,510.83	(3,693.24)
Expense			
5010 · Accounting	475.00	750.00	(275.00)
5016 · Contractual Services	0.00	1,400.00	(1,400.00)
5090 · Office Supplies	20.00	0.00	20.00
	<hr/>	<hr/>	<hr/>
Total Expense	495.00	2,150.00	(1,655.00)
Net Income	<u>43,322.59</u>	<u>45,360.83</u>	<u>(2,038.24)</u>

Industrial Development Authority
Budget vs. Actual - Fiscal Year
October 2017 through September 2018

	<u>Oct '17 - Sep ...</u>	<u>Budget</u>	<u>\$ Over Budget</u>
Income			
3005 · Bond Issue Fees	43,805.00	47,500.00	(3,695.00)
3013 · Prosperity Bank Interest Inc...	31.02	40.00	(8.98)
3015 · Prosperity CD Interest	0.00	90.00	(90.00)
Total Income	<u>43,836.02</u>	<u>47,630.00</u>	<u>(3,793.98)</u>
Expense			
5010 · Accounting	1,900.00	9,000.00	(7,100.00)
5016 · Contractual Services	0.00	16,800.00	(16,800.00)
5050 · Legal Advertising	0.00	700.00	(700.00)
5090 · Office Supplies	60.00	150.00	(90.00)
5710 · DCA Special Fees	175.00	175.00	0.00
5715 · Meeting and Events	0.00	500.00	(500.00)
Total Expense	<u>2,135.00</u>	<u>27,325.00</u>	<u>(25,190.00)</u>
Net Income	<u>41,701.02</u>	<u>20,305.00</u>	<u>21,396.02</u>

IDA Procurement Policy Comments

Thomas Skinner:

I have suggested \$5,000, but would offer the following:

1. Should we specify who will receive sealed bids? The could be Henry or County ED staff.
2. While we specify that below the threshold sealed bids are not required, we still require quotes. Do we want to say that any purchase below\$200 (or any other amount) does not require a quote?
3. Do we want to open another purchase approach consistent with state law- which is similar to CCNA but could cover other professional needs where [rice is but one element of selection- an Invitation to Negotiate (ITN)?

Rebecca Lavie:

- Section 2 should require members to comply with all applicable provisions of the State Code of Ethics. Instead of referencing immediate family in the conflict of interest provision, I would use the term relative as defined in Section 112.312(21), Florida Statutes.
- The policy prohibits contracts with parties excluded from Federal procurement/non-procurement programs. I recommend also prohibiting contracts with parties who are barred from procurements on the County level.
- They may want to consider including some sort of bid protest procedure.

St. Johns County Industrial Development Authority
Procurement Policies and Procedures

1. Purpose of procurement standards. The purpose of these standards is to establish procedures for the Authority for the procurement of supplies and other expendable property, equipment, real property and other services.

2. Code of conduct. No employee, officer, or agent shall participate in the selection, award, or administration of a contract if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the Authority shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements except for where the financial interest is not substantial or the gift is an unsolicited item of nominal value. Members of the Authority's board shall comply with all relevant fiduciary duties, including those governing conflicts of interest, when they vote upon matters related to procurement contracts in which they have a direct or indirect financial or personal interest. Officers, employees, directors, and agents of the Authority shall be subject to disciplinary actions for violations of these standards.

3. Competition. Any procurement which falls under the provisions of the Florida Consultant's Competitive Negotiation Act (copy attached) shall comply with the provisions of such act. Any procurement which falls under the provisions of Chapter 217, Florida Statutes shall comply with the provisions of such Chapter. All procurement of public printing services shall comply with the provisions of Chapter 283, Florida Statutes. All other procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The Authority shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the Authority, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the Authority. Any and all bids or offers may be rejected when it is in the Authority's interest to do so. In all procurement the Authority shall avoid practices that are restrictive of competition. These include but are not limited to:

- (a) Placing unreasonable requirements on firms in order for them to qualify to do business,
- (b) Requiring unnecessary experience and excessive bonding,

- (c) Noncompetitive pricing practices between firms or between affiliated companies,
- (d) Noncompetitive awards to consultants that are on retainer contracts,
- (e) Organizational conflicts of interest,
- (f) Specifying only a brand name product instead of allowing an equal product to be offered and describing the performance of other relevant requirements of the procurement, and
- (g) Any arbitrary action in the procurement process.

4. Methods of Procurement to be Followed.

(a) Procurement by small purchase procedures. Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that do not cost more than the "Simplified Acquisition Threshold," hereby set at \$_____ and where procurement by sealed bid is not required by applicable law. If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources to insure that the selection process is competitive in accordance with these policies.

(b) Procurement by sealed bids (formal advertising). Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price.

(i) The sealed bid method is the preferred method for procuring construction if the following conditions are present:

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively and for the business; and
- (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

- (A) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time prior to the date set for opening

the bids;

- (B) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services in order for the bidder to properly respond;
- (C) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (D) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs shall be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (E) Any or all bids may be rejected if there is a sound documented reason.

(c) Procurement by competitive proposals. The technique of competitive proposals is normally conducted with more than one source submitting an offer, and either a fixed-price or cost-reimbursement type contract is awarded. It is generally used when conditions are not appropriate for the use of sealed bids or small purchase procedures. If this method is used, the following requirements apply:

- (i) Requests for proposals will be publicized and identify all evaluation factors and their relative importance. Any response to publicized requests for proposals shall be honored to the maximum extent practical;
- (ii) Proposals will be solicited from an adequate number of qualified sources;
- (iii) The Authority shall evaluate responses to its solicitations and select awardees in accordance the procedures outlined in section 5 below ("Procurement Procedures")
- (iv) Awards will be made to the responsible firm whose proposal is most advantageous to the Authority with price and other factors considered; and
- (v) The Authority shall use the competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiation of

fair and reasonable compensation. A procurement process where price is not to be used as a stated selection factor can only be used in procurement of A/E professional services. It cannot be used to purchase other types of although A/E firms are a potential source to perform the proposed effort.

(d) Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate.

(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:

- (A) The item is available only from a single source;
- (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
- (C) The funding source specifically authorizes the use of noncompetitive proposals; or
- (D) After solicitation of a number of sources, competition is determined inadequate.

(ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.

(iii) When using a noncompetitive process the Authority normally will be expected to submit the proposed procurement to the relevant funding source for pre-award.

5. Procurement procedures.

(a) All procurement by the Authority shall comply, at a minimum, with the requirements of subsections (i), (ii), and (iii) below:

- (i) the Authority avoid purchasing unnecessary items.
- (ii) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement.
- (iii) Solicitations for goods and services provide for all of the following.

- (A) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
- (B) Requirements which must be fulfilled and all other factors to be used in evaluating proposal submitted in response to solicitations .
- (C) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
- (D) When relevant, the specific features of "brand name or equal" descriptions that are to be included in responses submitted to solicitation.
- (E) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
- (F) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by the Authority to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. The Authority shall take all of the following steps to further this goal.

- (i) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (ii) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (iii) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (iv) Encourage, when practical, contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(v) Use the services and assistance, as appropriate and practical, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the Authority but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of- cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(e) Debarment and Suspension - No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

6 Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action above \$500 in value. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

6. Procurement records - Procurement records and files for purchases in excess of the small purchase threshold as fixed at 41 U.S.C. 403(11) (currently \$25,000) shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

7. Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. The Authority shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

8. Contract provisions. The Authority shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following

provisions shall also be applied to subcontracts.

(a) Contracts in excess of the Simplified Acquisition Threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the Simplified Acquisition Threshold shall contain suitable provisions for termination by the Authority, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) For contracts dealing with construction or facility improvements the Authority shall comply with all requirements imposed by its funding sources (and the government regulations applicable to those funding sources) with regard to construction bid guarantees, performance bonds, and payment bonds.

(d) All negotiated contracts (except those for less than the Simplified Acquisition Threshold) awarded by the Authority shall include a provision to the effect that the Authority shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by the Authority and their contractors where the source of the funds, directly or indirectly, is the federal government, shall contain the following procurement provisions as applicable.

(i). Equal Employment Opportunity - All contracts, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(ii). Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c) - All contracts in excess of \$2000 for construction or repair, when funded in whole or part by monies derived from the Federal government (either directly or indirectly) shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the

construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

(iii). Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7) - **When required by Federal program legislation**, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

(iv). Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333) - All contracts in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5).

(v). Rights to Inventions Made Under a Contract or Agreement - Contracts or agreements for the performance of experimental, developmental, or research work, when funded in whole or part by monies derived from the Federal government (either directly or indirectly), shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(vi). Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended - Contracts and subgrants of amounts in excess of \$100,000, **when funded in whole or part by monies derived from the Federal government** (either directly or indirectly), shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(vii). Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contacts for an amount above \$100,000, **when funded in whole or part by monies derived from the Federal government** (either directly or indirectly), shall include a certification by the contracting parties that they have not and will not use Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. and to further require disclosure of any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

Select Year:

The 2017 Florida Statutes

[Title XIX](#)
PUBLIC
BUSINESS

[Chapter 287](#)
PROCUREMENT OF PERSONAL PROPERTY AND
SERVICES

[View Entire
Chapter](#)

287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.—

(1) **SHORT TITLE.**—This section shall be known as the “Consultants’ Competitive Negotiation Act.”

(2) **DEFINITIONS.**—For purposes of this section:

(a) “Professional services” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

(b) “Agency” means the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term “agency” does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. [380.06](#) or ss. [163.3220-163.3243](#).

(c) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the

state.

(d) "Compensation" means the amount paid by the agency for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.

(e) "Agency official" means any elected or appointed officeholder, employee, consultant, person in the category of other personal service or any other person receiving compensation from the state, a state agency, municipality, or political subdivision, a school district or a school board.

(f) "Project" means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency under paragraph (3)(a). A project may include:

1. A grouping of minor construction, rehabilitation, or renovation activities.
2. A grouping of substantially similar construction, rehabilitation, or renovation activities.

(g) A "continuing contract" is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$2 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$200,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

(h) A "design-build firm" means a partnership, corporation, or other legal entity that:

1. Is certified under s. [489.119](#) to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
2. Is certified under s. [471.023](#) to practice or to offer to practice engineering; certified under s. [481.219](#) to practice or to offer to practice architecture; or certified under s. [481.319](#) to practice or to offer to practice landscape architecture.

(i) A "design-build contract" means a single contract with a design-build firm for the design and construction of a public construction project.

(j) A "design criteria package" means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction

project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.

(k) A “design criteria professional” means a firm who holds a current certificate of registration under chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

(l) “Negotiate” or any form of that word means to conduct legitimate, arms length discussions and conferences to reach an agreement on a term or price. For purposes of this section, the term does not include presentation of flat-fee schedules with no alternatives or discussion.

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES.—

(a)1. Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. 287.017 for CATEGORY FIVE or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in s. 287.017 for CATEGORY TWO, except in cases of valid public emergencies certified by the agency head. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

2. Each agency shall provide a good faith estimate in determining whether the proposed activity meets the threshold amounts referred to in this paragraph.

(b) Each agency shall encourage firms engaged in the lawful practice of their professions that desire to provide professional services to the agency to submit annually statements of qualifications and performance data.

(c) Any firm or individual desiring to provide professional services to the agency must first be certified by the agency as qualified pursuant to law and the regulations of the agency. The agency must find that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

(d) Each agency shall evaluate professional services, including capabilities, adequacy of

personnel, past record, experience, whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act, and other factors determined by the agency to be applicable to its particular requirements. When securing professional services, an agency must endeavor to meet the minority business enterprise procurement goals under s.287.09451.

(e) The public must not be excluded from the proceedings under this section.

(4) COMPETITIVE SELECTION.—

(a) For each proposed project, the agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.

(b) The agency shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (5).

(c) This subsection does not apply to a professional service contract for a project the basic construction cost of which is estimated by the agency to be not in excess of the threshold amount provided in s. 287.017 for CATEGORY FIVE or for a planning or study activity when the fee for professional services is not in excess of the threshold amount provided in s. 287.017 for CATEGORY TWO. However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, the agency shall reject all proposals and reinstate the procurement pursuant to this subsection.

(d) Nothing in this act shall be construed to prohibit a continuing contract between a firm and an agency.

(5) COMPETITIVE NEGOTIATION.—

(a) The agency shall negotiate a contract with the most qualified firm for professional services

at compensation which the agency determines is fair, competitive, and reasonable. In making such determination, the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount provided in s. [287.017](#) for CATEGORY FOUR, the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

(b) Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The agency shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency must terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

(c) Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached.

(6) PROHIBITION AGAINST CONTINGENT FEES.—

(a) Each contract entered into by the agency for professional services must contain a prohibition against contingent fees as follows: "The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the

full amount of such fee, commission, percentage, gift, or consideration.

(b) Any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for an architect, professional engineer, or registered land surveyor and mapper, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(c) Any architect, professional engineer, or registered surveyor and mapper, or any group, association, company, corporation, firm, or partnership thereof, who offers to pay, or pays, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(d) Any agency official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the agency and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(7) AUTHORITY OF DEPARTMENT OF MANAGEMENT SERVICES.—Notwithstanding any other provision of this section, the Department of Management Services shall be the agency of state government which is solely and exclusively authorized and empowered to administer and perform the functions described in subsections (3), (4), and (5) respecting all projects for which the funds necessary to complete same are appropriated to the Department of Management Services, irrespective of whether such projects are intended for the use and benefit of the Department of Management Services or any other agency of government. However, nothing herein shall be construed to be in derogation of any authority conferred on the Department of Management Services by other express provisions of law. Additionally, any agency of government may, with the approval of the Department of Management Services, delegate to the Department of Management Services authority to administer and perform the functions described in subsections (3), (4), and (5). Under the terms of the delegation, the agency may reserve its right to accept or reject a

proposed contract.

(8) STATE ASSISTANCE TO LOCAL AGENCIES.—On any professional service contract for which the fee is over \$25,000, the Department of Transportation or the Department of Management Services shall provide, upon request by a municipality, political subdivision, school board, or school district, and upon reimbursement of the costs involved, assistance in selecting consultants and in negotiating consultant contracts.

(9) APPLICABILITY TO DESIGN-BUILD CONTRACTS.—

(a) Except as provided in this subsection, this section is not applicable to the procurement of design-build contracts by any agency, and the agency must award design-build contracts in accordance with the procurement laws, rules, and ordinances applicable to the agency.

(b) The design criteria package must be prepared and sealed by a design criteria professional employed by or retained by the agency. If the agency elects to enter into a professional services contract for the preparation of the design criteria package, then the design criteria professional must be selected and contracted with under the requirements of subsections (4) and (5). A design criteria professional who has been selected to prepare the design criteria package is not eligible to render services under a design-build contract executed pursuant to the design criteria package.

(c) Except as otherwise provided in s. [337.11\(7\)](#), the Department of Management Services shall adopt rules for the award of design-build contracts to be followed by state agencies. Each other agency must adopt rules or ordinances for the award of design-build contracts. Municipalities, political subdivisions, school districts, and school boards shall award design-build contracts by the use of a competitive proposal selection process as described in this subsection, or by the use of a qualifications-based selection process pursuant to subsections (3), (4), and (5) for entering into a contract whereby the selected firm will, subsequent to competitive negotiations, establish a guaranteed maximum price and guaranteed completion date. If the procuring agency elects the option of qualifications-based selection, during the selection of the design-build firm the procuring agency shall employ or retain a licensed design professional appropriate to the project to serve as the agency's representative. Procedures for the use of a competitive proposal selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.
2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.

3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.

4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.

6. In the case of public emergencies, for the agency head to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

(10) REUSE OF EXISTING PLANS.—Notwithstanding any other provision of this section, there shall be no public notice requirement or utilization of the selection process as provided in this section for projects in which the agency is able to reuse existing plans from a prior project of the agency, or, in the case of a board as defined in s. [1013.01](#), a prior project of that or any other board. Except for plans of a board as defined in s. [1013.01](#), public notice for any plans that are intended to be reused at some future time must contain a statement that provides that the plans are subject to reuse in accordance with the provisions of this subsection.

(11) CONSTRUCTION OF LAW.—Nothing in the amendment of this section by chapter 75-281, Laws of Florida, is intended to supersede the provisions of ss. [1013.45](#) and [1013.46](#).

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 73-19; ss. 1, 2, 3, ch. 75-281; s. 1, ch. 77-174; s. 1, ch. 77-199; s. 10, ch. 84-321; ss. 23, 32, ch. 85-104; s. 57, ch. 85-349; s. 6, ch. 86-204; s. 1, ch. 88-108; s. 1, ch. 89-158; s. 16, ch. 90-268; s. 15, ch. 91-137; s. 7, ch. 91-162; s. 250, ch. 92-279; s. 55, ch. 92-326; s. 1, ch. 93-95; s. 114, ch. 94-119; s. 10, ch. 94-322; s. 868, ch. 95-148; s. 2, ch. 95-410; s. 45, ch. 96-399; s. 38, ch. 97-100; s. 1, ch. 97-296; s. 80, ch. 98-279; s. 55, ch. 2001-61; s. 63, ch. 2002-20; s. 944, ch. 2002-387; s. 1, ch. 2005-224; s. 19, ch. 2007-157; s. 3, ch. 2007-159; s. 3, ch. 2009-227.