FAPPO – Advocacy Committee

- Provides information and guidance to Board and membership regarding legislative issues and laws related to procurement
- Members annually appointed by FAPPO President
- Current committee members are:
  - Bobbye Marsala, CPPO, CPPB, C.P.M., FCPM, FCPA
  - Greg Spearman, CPPO, FCCM
  - Neil Appel, C.P.M.
Content contained in this presentation is provided as a Guide for informational purposes only.

Please use this information to conduct your own research for more detail on FL Statutes.

Consult your legal staff for assistance on how these Statutes may or may not apply specifically to your entity.
How do you know what applies?

- When all else fails.
- F.S. Chapter I – Construction of Statutes
- Definitions for local government:
  - Agency
  - Political Subdivision
  - Eligible User
  - Local Govt. Entity
  - Educational Units or Boards
  - Public Entity
  - Governmental Units
State Definition F.S. 287.012

- “Agency“
  - ...any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization however designated, of the executive branch state government. Agency does not include the university and college boards of trustees or the state university and college”
- Does not include units of local govt. except where specifically identified
- Eligible User
  - “...any person or entity authorized by the “department” pursuant to rule or purchase from state term contract or to use the on-line procurement system”
- Department
  - The Department of Management Services (State)
Purchasing Threshold Categories

287.017

- CATEGORY ONE: $20,000
- CATEGORY TWO: $35,000
- CATEGORY THREE: $65,000
- CATEGORY FOUR: $195,000
- CATEGORY FIVE: $325,000
F.S. 287.055 Consultants’ Competitive Negotiation Act (CCNA)

- “Agency” Definition:
  - F.S. 287.055(b)
    - “…the state, a state agency, a municipality, a political subdivision, a school district, or a school board.”
- Provides specific detailed outline for the selection of services for:
  - Professional architectural, engineering, landscape architectural or survey and mapping services
  - Applies to procurements for these services when the estimated cost for construction exceeds $325,000 (Category 5); or for a planning/study activity when the fee exceeds $35,000 (Category 2)
- Continuing Contracts
- Design Build
FL Statute 287.056

- Authorizes purchases from purchasing agreements and state term contract by:
  - County and municipality
  - Accredited independent nonprofit college or university

(1) Eligible users “may” purchase commodities & contractual services

- Refers to:
  - 287.057(23) authorizes eligible users to use the States’ on-line procurement program
  - optional & for a fee - 287.042(1)(h)
FL Statute 287.057(1) Procurement

• Effective July 1, 2014:
  • Requires that State Agencies must consider the prior relevant experience of a vendor when evaluating the response to an RFP or ITN
    • Previously was an Option
  • “Agency” definition includes various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization of the executive branch of state government.
  • “Agency” does not include the university and college boards of trustees or the state universities and colleges, governmental entities
In General

- Establishes requirements for responsible public entities must adhere, including reviewing & approving proposals
- Proposals may either be solicited OR unsolicited

Solicited
- RFP process – as normally followed

Unsolicited
- If entity intends to enter into an agreement – must be publicly noticed in FL Administrative Register & Local newspaper
  - Once a week for 2-weeks
  - Minimum 21-days acceptance period
  - Submittals evaluated and ranked in order of preference
Public Private Partnership

“Responsible public entity” means a county, municipality, school board, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.
Examples of “Qualifying Project” would include (but not limited to):

- Facility projects that serve a public purpose
  - Mass transit facility, vehicle parking facility, airport, rail facility, fuel facility, recreational/sporting facility, medical or educational facility, water/wastewater facility
  - An improvement (including equipment) of a building that will principally be used by a public entity or public at large
  - Projects that involve facility owned & operated by a responsible public entity
Public Private Partnerships

- Intent to encourage investment in the state by private entities; to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.
PUBLIC-PRIVATE PARTNERSHIP GUIDELINES TASK FORCE

- Task Force created in July 2013 for the purpose of recommending guidelines for the Legislature to consider for purposes of creating a uniform process for establishing public-private partnerships, including the types of factors responsible public entities should review and consider when processing requests for public-private partnership projects pursuant to this section.
- Recommendations completed by December 31, 2014
FL Statute 287.084 Preference to Florida Businesses

- Applies to:
  - Universities, colleges, school district or other political subdivision of the State
    - Does not include Counties or Municipalities
  - Shall award a 5% preference to vendors whose principal place of business is within the State of Florida
  - Does not apply to transportation projects for which federal aid funds are available
  - Also applies to F.S. 283.35 – Printing Services
FL Statute 287.087 Preference for Drug-Free Workplace Program

- Applies to:
  - Any political subdivision of the State
  - Gives preference in award of contracts for those businesses who certify the implementation of a drug-free workplace program
  - Defines specific program requirements for businesses
  - Workers Compensation Drug-Free workplace program requirements contained in F.S. 440.102
  - Drug Free Workplace Act – F.S. 112.0455
FL Statute 287.093 Minority Business Enterprises

- Applies to:
  - County, municipality, community college or district school board
  - Allows for a set-aside of up to 10% or more for awards to minority business enterprises
  - Use is optional – not required
FL Statute 287.133 Public Entity Crime

- Applies to:
  - Any political subdivision of the State

Definition of Public Entity Crime 287.133(1)(g)
- A violation of any state or federal law by a person with respect to and directly related to the transaction of business with any public entity or with an agency or political subdivision or any other state within the U.S., involving antitrust, fraud, theft, bribery, collusion, racketeering, conspiracy or material misrepresentation
FL Statute 287.134 Discrimination

- Discriminatory vendor list
  - Required to be kept by DMS pursuant to procedures defined in (3)(d) of 287.134
- Public Entity may not accept bids, proposals from discriminatory vendor for a period of 36-months following date vendor was placed on list
FL Statute 287.135 Scrutinized Companies

- Applies to:
  - County, Municipality, Special District, or other Political Subdivision of the State
- Prohibits a company from the competitive solicitation process for contracts in excess of $1M if they are on the:
  - Scrutinized Companies with Activities in Sudan List
  - Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List
- List provided by the Florida State Board of Administration (FSBA)
FL Statute 119 - Public Records

- Agency definition includes
  - County, district, authority or municipality
  - Also includes
    - Any public or private agency, person, partnership, corporation or business entity acting on behalf of any public agency
- 119.01 General Policy of the State
  - Records are open for personal inspection and copying by any person
  - Providing access to public records is the duty of each agency
“Competitive Solicitation” means:

- The process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement [119.071(1)(b)]
- Sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt until such time as the agency provides notice of an intended decision or until 30 days after opening
- Whichever occurs first, 119.071(1)(b)2.
If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.

A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.
Trade Secrets, F.S. 812.081 includes:
- Includes any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof
- Is secret, of value, provides the business an advantage, or an opportunity to obtain an advantage, over those who do not know or use it

Exempt?
- Determination to be made on a case-by-case basis
- Based on Chapter 119 exemptions
F.S. 286.011 Public Meetings

- Applies to board or commission meetings of authority of any county, municipal corporation or political subdivision of which official acts are to take place
- Requires “reasonable” notice of such meetings
- Requires minutes to be “recorded”
- Evaluation Committee Meetings
- Violation penalties include $500 fine or 2\textsuperscript{nd} degree misdemeanor if a member knowingly attends a meeting that has not been noticed
A meeting that would reveal a security system plan or portion thereof made confidential and exempt

Any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation is exempt
F.S. 286.0113 Public Meetings - Exemptions

- Any portion of a team meeting at which negotiation strategies are discussed is exempt.
- A complete recording shall be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.
- The recording of, and any records presented at, the exempt meeting are exempt until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.
F.S. 286.0113 Public Meetings - Exemptions

- If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation,
  - the recording and any records presented at the exempt meeting remain exempt until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation,
  - or until the agency withdraws the reissued competitive solicitation.
- A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.
F.S. 286.0114 Public Meetings – Reasonable Opportunity to be Heard

- Applies to:
  - “board or commission” of any state agency or authority, authority of a county, municipal corporation or political subdivision
- Members of the public shall be given reasonable opportunity to be heard on a proposition
- Need not occur at the meeting of which official action takes place
- Opportunity occurs at a meeting that is during the decision making process
- Does not apply to “exempt” meetings (286.011)
Chapter 255 Public Property & Publicly Owned Buildings

- Definition for “Political Subdivision” found in Chapter 1 – Construction of Statutes
  - 1.01(8) The words "public body," "body politic," or "political subdivision" include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and all other districts in this state.
FL Statute 255.05 Public Construction Bonds

- Applies to:
  - Counties, Cities, political subdivisions, public authorities
- For construction or repair of public buildings, completion or repair of a public work
- Required at owners discretion for projects valued at $200,000 or less
- Requires contractor to provide agency with certified copy of recorded bond before commencement of work. Agency can not make payment until Contractor complies
  - Additional requirement for bonds & liens are addressed
FL Statute 255.05 Public Construction Bonds

- Provides Form of:
  - Notice of Contest of Claim Against Payment Bond 255.05(2)(a)1
  - Waiver of Right to Claim Against the Payment Bond- 255.05(2)(a); for progress payments- 2(b); for final payment- 2(c)
  - Public Construction Bond 255.05(3)

- Provides for alternate source of security, 255.05(7)
  - Cash, money order, certified check, cashier’s check, irrevocable letter of credit
  - 255.051 – Good Faith Deposit – allows for the acceptance of cashier’s checks, treasurer's checks or bank drafts in lieu of certified checks
FL Statute 255.0516 Bid Protest by Educational Boards

- Applies to school boards, community colleges, state universities
- “IF” Chapter 120 bid protest procedure is utilized, related to educational facilities or public buildings
- Allows for the posting of a Protest Bond
  - $25K or 2% of lowest acceptable bid over $500K (whichever is greater)
  - 5% for all other projects
255.0518 OPENING SEALED BIDS FOR P/W PROJECTS

- State & Local Government Entities – must open sealed bids that include “the price submitted” for public works projects at a public meeting
- Entities must announce the name of each bidder AND the price submitted and,
- Make the name and price information available upon request
- The components of the bids remain exempt for 30-days or notice of award, whichever occurs
FL Statute 255.0525 Advertising for Bids/Proposals

- Applies to counties, municipalities and political subdivisions
- Construction projects in excess of $200K
  - Advertised at least once in newspaper, 21 days prior to project opening
  - 5-days prior to any scheduled pre-bid conference
- Construction projects in excess of $500K
  - Advertised at least once in newspaper, 30 days prior to project opening
  - 5-days prior to any scheduled pre-bid conference
Florida Prompt Payment Act
255.0705 – 255.078

"Public entity" means the state, or any office, board, bureau, commission, department, branch, division, or institution thereof, but does not include a local governmental entity 255.072
FL Statute 255.101 Utilization of Minority Business Enterprises

- Applies to counties, school boards, municipalities, special districts
- For letting of construction contracts
- Encourages agencies to be sensitive to the effect of job-size barriers on minority businesses
- Encourages the competitive award of public construction projects in excess of $100K
- 255.102 – provides for consideration by agencies of preferences for
  - Price or weighted formulas to increase minority participation
F.S. 295.187 Service-Disabled Veterans Business Enterprise Opportunity Act

- July 1, 2012 - Title Changed to:
  - Florida Veterans Business Enterprise Opportunity Act
- Reflects preference to include Wartime Veterans
- Allows for a preference in contract awards
  - “all things being equal”
- Encouraged for consideration by political subdivisions of the State - not required
Questions?

- For additional information:
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