

MEMORANDUM
FROM THE OFFICE OF THE CITY MANAGER

To: Mayor and City Commission
From: Pam Brangaccio, City Manager *PDB*
Re: City Manager's Report – August 27, 2014
Date: August 19, 2014

August 26th is the Primary Election – Remember to Vote! Our meeting is August 27th.

A dedication ceremony of an oak tree in honor of the late Robert Garriques will be held at the newly landscaped area southwest of the intersection of Canal Street and U.S.1, on Thursday, August 28, 2014 at 5:30 p.m.

City Offices will be closed on Monday, September 1st for the Labor Day Holiday.

Pictures of the CDBG sidewalk project are attached with this report; we are pleased with the way it turned out with cost savings, we are extending the sidewalk.

The last day for Hal Beard, Maintenance Operations Manager, was August 8th as he joined the City of Pompano Beach. We welcome Faith Miller, Parks Manager as the Interim Maintenance Operations Manager.

The right-of-way contractor, Faith Construction, hired two new workers just to pull weeds from the flower beds and they started last week. The beds are going to look like a work in progress until receipt of the weed control barrier cloth. The mowing and edging on U.S.1 and State Road 44 looks pretty good, while the landscape beds need detail work, but they are making progress this week.

Volusia County issued a memorandum regard the usage procedure for FirstCall, the Countywide Emergency Notification System; a copy is provided with this report.

FIND has made the final reimbursements to the City for the Swoope Site Boat Ramp Project, parking & dredging – Phase II and IIB for \$434,149 and \$171,003.

Last April, the County adopted fertilizer application guidelines based on a statewide model ordinance. The County's intent was to add several more stringent provisions that have been incorporated into the ordinance last month. The new fertilizer guidelines apply within the cities, and are included in this report. The City staff will work with the County staff on implementation.

A meeting was held with County staff on the design process for S. Atlantic Beach Park; the requirements for the ECHO Grant and 40 year lease are attached.

The August 13th Focus Group for interior utilization of the new NSB Civic Center (Brannon Center) project went well. A September 9th presentation is scheduled for the City Commission.

A staff meeting was held on the City Hall concept plan with the Architect. This is scheduled for the September 23rd Commission meeting.

A complete report is a separate item on tonight's agenda on the structural report on the north section of the high school football stadium.

A design scope is under review for the 2nd ECHO project at Otter and Pioneer Road; this will also be a September Commission agenda item.

A final review is underway on the North Causeway Boat Ramp Project, bid specifications. This project will go out to bid in September, 2014.

A 50% review meeting was held on the North Causeway beautification this week as well.

The multi-use trail is on track for completion date of November 2014. Colony Park Road is also in a full-construction mode, with land clearing underway.

The Fire Station remains as a September 2014 completion date. The draft MOU with Volusia County has been returned to the County with the City's revisions.

The second response to Volusia County on the US1 CRA (copy attached) was delivered on August 15th. It is time to request a hearing date for Fall 2014.

With regard to the SR44 Sewer Assessment, the City has requested a second design proposal for the project. A major property owner has requested to construct (for reimbursement) the extension. The City Attorney has provided the attached Attorney General opinion.

Should you have any questions or need additional information or clarification, please let me know.









**Department of Public Protection
Emergency Management Division**

July 30, 2014

EM-14-056

MEMORANDUM

To: Distribution

From: Director, Volusia County Emergency Management

Subject: USAGE PROCEDURE FOR FIRSTCALL COUNTYWIDE EMERGENCY NOTIFICATION SYSTEM

Purpose: The purpose of this memorandum is to provide information concerning the procedure for using the **FirstCall** countywide emergency notification system.

Background: Volusia County has had a telephone Emergency Notification System since 2002. Per County policy, a competitive bid was submitted for a countywide Emergency Notification System at the end of the five year contract cycle. The successful bidder was **FirstCall Emergency Notification**. Effective July 1, 2014, the system replaced the Twentyfirst Century system.

Information: Implementation of the FirstCall Emergency Notification is transparent to the citizens of Volusia County. The purpose of the system will continue to be to provide the citizens of Volusia County with notifications of **immediate emergency situations** that could result in injury to the population to be notified.

Examples of emergency situations include, but are not limited to: Hostage situations, hazardous materials incidents, fast-moving wildfires, rabid animals, lost Alzheimer's patients, sink holes impacting infrastructure, escaped inmates, boil water notices, and flooded neighborhoods or roadways preventing travel.

There will continue to be **no cost to municipalities and agencies using the system for emergency situations**. The system continues to be available twenty-four hours a day, seven days a week, 365 days a year and may be accessed by appropriate supervisory personnel from all public safety agencies through the Volusia County Sheriff's Communications Center using the procedures outlined in the attachment.

Action: This memorandum is provided for appropriate implementation by addressees and further coordination with respective public safety agencies. Please provide further distribution of this memorandum as appropriate. Questions about system usage should be directed to the Volusia County Emergency Management Division (Attention: Larry LaHue at one of the numbers listed below.)

Distribution:

City Managers, Emergency Management Coordinators, Police Chiefs, Fire Chiefs, Public Works Directors
Attachment 1

Attachment 1

PROCEDURE TO USE THE COUNTYWIDE EMERGENCY NOTIFICATION SYSTEM

1. Call the Volusia County Sheriff's Office Communication Center at 386-248-1777 or 386-736-5999. Identify yourself and the agency you are representing.
2. Inform the Center that you would like to use the Emergency Notification System and the situation requiring the notification.
3. Describe the **geographic area** that you would like to notify. Streets should be used to define the boundaries of the call in a N-S-E-W fashion (example: From the intersection of Clyde Morris Blvd and US 92 east to Nova Rd, south to Beville Rd, west to Clyde Morris Blvd.) Alternatively, a distance from a single geographic point can be used (Example: .5 mile radius centered at 3825 Tiger Bay Road Daytona Beach).
4. The requesting agency is responsible for developing the message. Please use the following format as a guide:

1. This is an emergency/public safety message from _____.
2. Time and date of the call
3. Nature of the emergency/public safety notification
4. Areas affected by the emergency/public safety notification
5. Protective actions that need to be taken
6. Directions to get more information (**phone number and point of contact required**).

Example: "This is an emergency message from Volusia County Fire Services. At 4:30 PM July 30 2014, a tanker truck containing hydrogen chloride overturned at the intersection of interstate 95 southbound at mile marker 261, spilling approximately 500 gallons of hydrogen chloride. Interstate 95 southbound is closed at mile marker 261 until further notice. Residents within a two mile radius of the spill should remain indoors, close all windows and doors, and turn off air conditioning units. Residents will be advised when it is safe to go outdoors. For further information, contact Volusia County Fire Services at 386-555-1212."

5. Provide any other information related to the notification. For example, if you would like to have the notification repeated more than once, or at a specific time in the future, etc.
6. Consider initiating a call that concludes the actions directed by the earlier message. Example: "The precautionary boil water notice that was issued for the City Daytona Beach is no longer in effect."

Please note:

1. **UNLISTED LAND LINES, CELLULAR TELEPHONES, AND VOIP TELEPHONE NUMBERS ARE NOT INCLUDED IN THE NOTIFICATION SYSTEM DATABASE.** If someone with an unlisted land line/cell phone would like to be included in the database, please refer them to www.volusia.org/emergency and click on the link for the FirstCall secure registration. For those without computer access, Volusia County Emergency Management will enter the data. Direct citizens requesting this service to call 386-254-1500. Please note that due to the prevalence of cell/VOIP phone usage as the only means of telephone communication, a successful connection rate of 50% or less is to be expected.

2. When a request for an emergency notification has been made by any jurisdiction that may directly or indirectly impact another jurisdiction, **coordination between jurisdictions must be effected** by the initiating agency.

FLORIDA INLAND NAVIGATION DISTRICT



August 7, 2014

cc: Pam
Tha
Judith

Mr. Khalid Resheidat
City of New Smyrna Beach
124 Industrial Park Ave
New Smyrna Beach, FL 32168

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MARK T. CROSLY
EXECUTIVE DIRECTOR

JANET ZIMMERMAN
ASSISTANT EXECUTIVE
DIRECTOR

RE: Swoope Site Boat Ramp, Parking, Dredge - Phase II and IIB
Project # VO-NSB-12-94 and VO-NSB-13-97;

Dear Mr. Resheidat:

Enclosed are two District checks in the amount of \$434,149.02 and \$171,003.00 which represents the District's first and final reimbursement payment of your expenses for the above referenced projects. This is consistent with the executed project agreements for the project.

The District is pleased to have participated with you in this important project that serves our mutual constituents.

Should you have any questions concerning this matter, please contact me.

Sincerely,

Janet Zimmerman
Assistant Executive Director

Brangaccio, Pam

From: Gummey, Frank
Sent: Monday, August 18, 2014 9:20 AM
To: Brangaccio, Pam
Subject: RE: Volusia Strengthens Rules for Fertilizer Applications

Categories: Unopened Emails

The COV ordinance, which has countywide application under the COV Charter's preemptive environmental powers, needs neither CONSB acceptance or adoption (just like the beachfront lighting restrictions to protect turtles). Since protection of the Lagoon is the priority of the City Commission, it might be well to find out how police, building, public works, code enforcement can work with COV staff with education and regulation. The ordinance addresses fertilizer application, blowing grass clippings into storm drains and other activities that CONSB does not issue permits for or inspects. Maybe there has already been outreach by COV staff, but that's something I would not be in the loop on.

From: Brangaccio, Pam
Sent: Friday, August 15, 2014 1:22 PM
To: Gummey, Frank
Subject: Fwd: Volusia Strengthens Rules for Fertilizer Applications

See below statement on the revised standards being in place in cities as well.

Don't we have to opt in? Or adopt A separate ordinance ?

Sent from my iPad

Begin forwarded message:

From: Dave Castagnacci <dave@daytonachamber.com>
Date: August 15, 2014 at 1:20:20 PM EDT
To: Dave Castagnacci <dave@daytonachamber.com>
Subject: Volusia Strengthens Rules for Fertilizer Applications



Volusia Strengthens Rules for Fertilizer Applications

Volusia's new countywide rules for **FERTILIZER APPLICATIONS** have been made even more restrictive by the County Council.

The new rules are geared to limit the flow of fertilizer components nitrogen and phosphorous into groundwater and stormwater runoff – as these nutrients are viewed as a primary cause of algal blooms that clog waterways and springs, kill sea grass and cause other harm to the natural habitat.

Last April, the council adopted fertilizer application guidelines based on a statewide model ordinance. The ordinance **prohibits fertilizer applications before the seeding or sodding** of a site and within 30 days afterward. It establishes **fertilizer-free zones** or voluntary low maintenance zones within 10 feet of any pond, stream, watercourse, lake, canal or wetland – or from the top of a seawall. The ordinance sets fertilizer content rates and methods for fertilizer application. It also **forbids grass clipping or vegetative material** from being washed, swept or blown into stormwater drains, ditches, waterbodies, wetlands, sidewalks or roadways.

When adopting the ordinance, the council directed staff to advise state environmental and agricultural agencies of the county's intent to add several more stringent provisions that subsequently were incorporated into the ordinance last month. The more stringent provisions totally **ban the use of fertilizers with phosphorous** (unless there is documentation of a phosphorous deficiency in the soil) and require that at least 50 percent of nitrogen be applied in a slow-release form. In addition, they impose a **seasonal ban** on fertilizers with phosphorous and nitrogen during the rainy season between June 1 and Sept. 30; and **expand the fertilizer-free zones to 15 feet from water bodies**.

These new fertilizer application **guidelines apply within cities as well as unincorporated areas** – as Volusia government's charter enables the County Council to enact environmental regulations countywide.

Exempt are agricultural and pasture lands, golf courses, athletic fields and recreation areas that already follow best management practices for fertilizer application.

Throughout the past several years, local governments throughout Central Florida have been adopting restrictions for fertilizer applications. And the issue has become even more pressing in coastal counties with major pollution problems plaguing sea grass and habitats within the Indian River Lagoon. Many of the local governments within the lagoon have adopted ordinances similar to Volusia's that are even more restrictive than the state government model.

Much appreciation to the sponsors of VCARD's news updates ...

[Dredging & Marine Consultants \(www.dmces.com\)](http://www.dmces.com)

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[Gallery Homes of DeLand \(www.galleryhomesofdeland.com\)](http://www.galleryhomesofdeland.com)

[Greenberg Traurig \(www.gtlaw.com\)](http://www.gtlaw.com)

[Lassiter Transportation Group \(www.lassitertransportation.com\)](http://www.lassitertransportation.com)

[S & ME \(www.smeinc.com\)](http://www.smeinc.com)

[Terracon Consultants \(www.terracon.com\)](http://www.terracon.com)

[Wright, Casey & Stowers, P.L \(www.surfcoastlaw.com\)](http://www.surfcoastlaw.com)

From: Updike, Michelle
Sent: Thursday, August 14, 2014 2:50 PM
To: 'jnolin@volusia.org'; Henrikson, Gail; Resheidat, Khalid; Fegley, Kyle
Cc: Brangaccio, Pam
Subject: RE: South Atlantic Beach Parking: Program Requirements Confirmation

All-

Thank you for your attendance and input to today's regroup on the South Atlantic Beach Parking Program requirements.

Per the lease agreement, ECHO grant details and further discussion today on feasibility, outlined below are design elements that will be communicated to the engineer (Anderson-Dixon) for incorporation:

Design Element:	Notes/Actions:	Requesting Entity:
70 – 80 Parking Spaces	75 is ideal but 70 meets the needs for the County. (2) parking spaces are to be designated spaces for Beach Patrol/Lifeguard use and shall have signage to support at landlord's cost.	Volusia County Requirement
12' x 12' space for Life Guard "base tower"	Acceptable to be placed along east side of side in dune area.	Volusia County Requirement
Stub outs for electrical and Plumbing to support the Life Guard "base tower"		Volusia County Requirement
10' x 12' storage area/structure	Joe Nolin to confirm storage items to better inform location requirements on site.	Volusia County Requirement
Permanent location for ECHO sign		ECHO Requirement
Visual Barrier (fence) along South property boundary due to concerns of neighbor	Possible need for variance to provide 6-8 foot fence.	New Smyrna Beach
Restrooms	Where possible.	New Smyrna Beach
Picnic Pavilion	Where possible.	New Smyrna Beach
Benches	Where possible.	New Smyrna Beach
Shower	Where possible.	New Smyrna Beach

We will target meeting with Anderson-Dixon next week (8/20/14) in order to review these details and have them provide a revised Site Layout & Design Proposal for review/approval and presentation to the City Commission in September.

Please feel free to add to or correct any of the information mentioned above.



Volusia County
 Council Agenda...

Thank you,

Michelle Updike
Capital Projects Manager

Brangaccio, Pam

From: Brangaccio, Pam
Sent: Tuesday, August 19, 2014 6:18 PM
To: Brangaccio, Pam
Subject: FW: Presentation Outline for Tomorrow evening - Brannon Center Workshop

Categories: Unopened Emails

From: Updike, Michelle
Sent: Thursday, August 14, 2014 9:19 AM
To: Tom E. DeSimone; Steve M. Langston
Cc: 'Chris E. Whitney'; Brangaccio, Pam; Resheidat, Khalid; Yancey, Liz
Subject: RE: Presentation Outline for Tomorrow evening - Brannon Center Workshop

RLF Team-

Wanted to thank you for a GREAT session last night with the "Civic Center Focus Group."

I really feel that was a powerful meeting that will make this process all that much better well received and overall success

Wanted to share the recap of follow up notes/design activities that I collected last night:

1. No need to divide the Grand Ballroom into 2 spaces.
2. Preference is 5' round tables with 8 people at each table.
3. No built in stage. Stage should be temporary/moveable and likely purchased/rented by the event group and not provided/owned by the City (this would increase storage needs).
4. The group was not concerned about the Multi-purpose rooms being unconnected to the kitchen. The preference is to provide a serving bar/coffee bar built in unit to the Multi-Purpose Room.
5. Group felt very strongly about finding a solution for possibly taking better advantage of the Pre-Function Area as interior space for seating when the LARGE events take place. Segmenting the event into one large room and one smaller room, was not preferred.
6. Concern regarding the steps at the Terrace on the Riverside – may need to rethink this. They loved the outdoor space and ability to seat/occupy the area, but they expressed a need for space for possible use of lower ceiling tent structures.
7. Group does want to plan for Phase II – expand to the South as discussed and consideration to be made to expand to the North per Steve's suggestion of revising the North corner of the building a bit.

Please feel free to add to the comments mentioned above so that we may all be working to the same set of program details.

Thank you,

Michelle Updike
Capital Projects Manager

City of New Smyrna Beach
Office 386.424.2207

Brangaccio, Pam

From: Resheidat, Khalid
Sent: Tuesday, August 19, 2014 5:15 PM
To: Brangaccio, Pam
Cc: Ray, David
Subject: Sports Complex

Just met with school board officials from the three high schools(NSB, Spruce Creek, and Atlantic). I briefed them on the report and our course of actions. From bleachers to second opinions to shoring..etc. They asked about leasing a press box and they felt that it's important for the coaches, officials, and announcers. I indicated that David Ray will be looking for companies who might have that and see if they are available, timing, and cost. Spruce Creek in particular will have a problem especially their first game where they are playing Seabreeze high school and expecting at least 2000 fans. Our Capacity with the rented bleachers approximately 1700. Atlantic and NSB indicated that they will have to work with this but stressed that the press box is important. They asked when is the second opinion will be available and the answer is unknown at this point since we have not met with the structural engineer yet and don't know his time frame. They asked if we could work with them on the fee rate and I indicated that we'll be able to negotiate with them based on your direction . we'll keep you posted.

Fla. AGO 2011-21 (Fla.A.G.), 2011 WL 4643877

Office of the Attorney General

State of Florida
AGO 2011-21
October 4, 2011

RE: SPECIAL DISTRICTS - COMPETITIVE BIDS - PUBLIC CONSTRUCTION - WATER MANAGEMENT DISTRICTS - CONSULTANTS COMPETITIVE NEGOTIATION ACT - whether special district is authorized to develop hybrid bidding procedure for public construction projects. ss. 255.103, 255.20, and 287.055, Fla. Stat.

*1 Mr. H. Paul Senft, Jr
Chair
Southwest Florida Water
Management District
2379 Broad Street
Brooksville, Florida 34604-6899

Dear Mr. Senft:

On behalf of the governing board of the Southwest Florida Water Management District, you have requested my opinion concerning the application of sections 255.20 and 287.055, Florida Statutes (section 287.055 is known as the CCNA or the Consultants Competitive Negotiation Act), to the procurement of construction and construction management services. Your question is substantially as follows:

Whether the Southwest Florida Water Management District may lawfully use a “hybrid” process to award construction projects, including construction and construction management services, when that process combines a request for bids or proposals with competitive negotiation such that the lowest or best responsive bidder is selected and then competitive negotiations are begun in an effort to arrive at a final project or service cost?

In sum:

The Southwest Florida Water Management District is limited to utilizing the procedures set forth in the statutes for public construction works and for construction management services. The district has no authority to develop a “hybrid” model for awarding construction projects in the absence of statutory authority.

The Southwest Florida Water Management District was created by section 373.069(1)(d), Florida Statutes, as an independent special district¹ controlled by a governing board of 13 members.² Your letter advises that the governing board of the district has been reviewing the process the district uses to procure construction projects and construction management services. The district is considering adopting a policy which would combine sealed bids (or requests for proposals) and competitive negotiations in a process that would allow selection of the lowest responsive bidder and then authorize competitive negotiations to arrive at a final project or service cost.³ Your attorney has opined that the statutes governing procurement methods for construction projects and construction management services (sections 255.20 and 287.055, Florida Statutes), while containing provisions which would provide some flexibility in the process, would not allow competitive negotiations to be combined with another method of procurement such as requests for sealed bids. I concur in that conclusion.

It is the general rule with regard to competitive bidding by public agencies that, in the absence of any legislative requirements regarding the method of awarding public contracts, public officers may exercise reasonable discretion, and a contract may be made by any practicable method that will safeguard the public interest.⁴ The statutory directives requiring special districts to competitively award contracts for public construction projects are contained in sections 255.20 and 287.055, Florida Statutes.

*2 Section 255.20(1), Florida Statutes, provides that:

“A . . . special district as defined in chapter 189,⁵ or other political subdivision⁶ of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated in accordance with generally accepted cost-accounting principles to cost more than \$300,000.⁷ . . . As used in this section, the term ‘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 negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes the cost of all labor, except inmate labor, and the cost of equipment and materials to be used in the construction of the project. Subject to the provisions of subsection (3),⁸ the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.”

Section 255.20(1)(d), Florida Statutes, provides further direction:

“If the project:

1. Is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project, or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.
2. Uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.
3. Is subject to competitive negotiations, the contract must be awarded in accordance with s. 287.055.”

The statute requires that a special district “must” competitively award these contracts. The word “must” generally does not allow for any choice when used in a statute and denotes compulsion, obligation, or requirement.⁹ The general rule is that where language is unambiguous, the clearly expressed intent must be given effect, and there is no room for construction.¹⁰ Where the statutory language is plain, definite in meaning without ambiguity, it fixes the legislative intention and interpretation and construction are not needed.¹¹ Thus, the Southwest Florida Water Management District is required by statute to competitively award such contracts pursuant to the terms of section 255.20, Florida Statutes.

*3 The statute contains flexibility within its terms regarding the type of procedure to be used in competitively awarding such contracts, that is, the definition of “competitively award” contains several options. In addition, section 255.20, Florida Statutes, authorizes a special district to establish procedures for conducting the bidding process, but the district is limited to using the competitive award process outlined in section 255.20, Florida Statutes, for construction works. The power of a special district to adopt such resolutions is limited by the nature of special districts to those powers and duties set forth by the Legislature in the enabling legislation of the district and the statutes.¹²

The Legislature has directed that these procedures are to be used separately and distinctly based on the type of negotiations involved in bidding the project: competitive negotiations, requests for proposal or requests for qualifications, or lowest qualified and responsive bidder. Except to the extent authorized by the statute itself, each of these distinct procedures for selecting a contractor for public construction works should be utilized to secure bids for the particular types of projects to be awarded, that is, contracts for professional services as described in section 287.055, Florida Statutes, are subject to competitive negotiations, while construction contracts for public works must be competitively awarded.

With regard to the selection of construction management or program management entities to provide services to a special district, section 255.103, Florida Statutes, states that

“A governmental entity¹³ may select a construction management entity, pursuant to the process provided by s. 287.055, which is to be responsible for construction project scheduling and coordination in both preconstruction and construction phases and generally responsible for the successful, timely, and economical completion of the construction project. The construction management entity must consist of or contract with licensed or registered professionals for the specific fields or areas of construction to be performed, as required by law. The construction management entity may retain necessary design professionals selected under the process provided in s. 287.055. At the option of the governmental entity, the construction management entity, after having been selected and after competitive negotiations, may be required to offer a guaranteed maximum price and a guaranteed completion date or a lump-sum price and a guaranteed completion date, in which case, the construction management entity must secure an appropriate surety bond pursuant to s. 255.05 and must hold construction subcontracts. If a project, as defined in s. 287.055(2)(f), solicited by a governmental entity under the process provided in s. 287.055 includes a grouping of substantially similar construction, rehabilitation, or renovation activities as permitted under s. 287.055(2)(f), the governmental entity, after competitive negotiations, may require the construction management entity to provide for a separate guaranteed maximum price or a separate lump-sum price and a separate guaranteed completion date for each grouping of substantially similar construction, rehabilitation, or renovation activities included within the project.”

*4 The statute also recognizes that “[t]his section does not prohibit a local government from procuring construction management services, including the services of a program management entity, pursuant to the requirements of s. 255.20.”

Sections 255.103, 255.20, and 287.055, Florida Statutes, must be read to work together to provide direction relating to the particular type of construction related service being bid. While these statutes provide flexibility within their terms as to procedures for conducting the bidding process, the district has no authority to develop a process for awarding public construction works outside the statutory direction of section 255.20, Florida Statutes, in the absence of any other statutory authority. It is the rule that a legislative direction as to how a thing shall be done is, in effect, a prohibition against its being done in any other way.¹⁴

As a statutorily created entity, the Southwest Florida Water Management District has only such power as is expressly or by necessary implication granted by the legislative enactment creating the district.¹⁵ Unlike counties or municipalities which have been granted home rule powers, special districts possess no inherent or home rule powers. Created by statute for a specific, limited purpose, the Southwest Florida Water Management District may exercise only such power and authority as it has been granted by law.¹⁶ Thus, the district is limited to utilizing the procedures outlined by the Legislature for public construction works in section 255.20, Florida Statutes, and to section 287.055, Florida Statutes, when proposing to acquire professional services. Section 255.103, Florida Statutes, contemplates the use of section 255.20 or 287.055, Florida Statutes, to select a construction management firm. While sections 255.20 and 255.103, Florida Statutes, both contemplate the use of the CCNA for certain construction projects, the statutory direction as to how the CCNA must be used in these circumstances would preclude the district from developing a hybrid model distinct from the statutory models.

Thus, it is my opinion that the Southwest Florida Water Management District has no authority to develop a “hybrid” model for awarding construction projects in the absence of statutory authority.

Sincerely,

Pam Bondi
Attorney General

Footnotes

- ¹ See Florida Department of Community Affairs, Official List of Special Districts Online, Southwest Florida Water Management District.
- ² Section 373.073(1)(a), Fla. Stat.
- ³ This opinion is expressly limited to a consideration of your authority as a special district to develop a bidding process involving the procedures you have described in your opinion request. While you have provided this office with a copy of an article from a business publication discussing a bidding procedure utilized by another governmental entity, nothing in this opinion should be understood to address or comment on the bidding process utilized by another agency.

- 4 See, e.g., *Volume Services Division of Interstate United Corporation v. Canteen Corporation*, 369 So. 2d 391 (Fla. 2d DCA 1979) (in the absence of specific constitutional or statutory requirements, a public agency has no obligation to establish a bidding procedure and may contract in any manner not arbitrary or capricious), and see *Ops. Att’y Gen. Fla. 96-28 (1996)*, *93-28 (1993)*, and *93-83 (1993)* and the cases cited therein.
- 5 Section 189.403(1), Fla. Stat., defines “special district” as “a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. For the purpose of s. 196.199(1), special districts shall be treated as municipalities. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality.” The Southwest Florida Water Management District would fall within the scope of this definition.
- 6 A “political subdivision” is defined in section 1.01(8), Fla. Stat., as follows: “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.”
- 7 As you have cited specifically to section 255.20, Fla. Stat., in your letter I assume that the projects proposed to be awarded are within the financial amounts described in the statute.
- 8 Section 255.20(3), Fla. Stat., requires the use of Florida forest products and timber for construction projects if such products are available and their price, fitness, and quality “are equal.”
- 9 See *Mallory v. Harkness*, 895 F.Supp. 1556 (S.D. Fla. 1995); *Op. Att’y Gen. Fla. 07-42 (2007)*.
- 10 *Fine v. Moran*, 77 So. 533, 536 (Fla. 1917); *M.W. v. Davis*, 756 So. 2d 90 (Fla. 2000).
- 11 *McLaughlin v. State*, 721 So. 2d 1170 (Fla. 1998); *Osborne v. Simpson*, 114 So. 543 (Fla. 1927); *Ops. Att’y Gen. Fla. 00-46 (2000)* (where language of statute is plain and definite in meaning without ambiguity, it fixes the legislative intention such that interpretation and construction are not needed); *99-44 (1999)*; and *97-81 (1997)*.
- 12 See *State ex rel. Vans Agnew v. Johnson*, 150 So. 111 (Fla. 1933), for the proposition that the powers of a water control district are restricted to those deemed essential by the Legislature to effect its purpose; *State ex rel. Davis v. Jumper Creek Drainage District*, 14 So. 2d 900 (Fla. 1943), affirmed, 21 So. 2d 459 (Fla. 1945); *Rabin v. Lake Worth Drainage District*, 82 So. 2d 353 (Fla. 1955), cert. denied, 350 U.S. 958 (1956); *Roach v. Loxahatchee Groves Water Control District*, 417 So. 2d 814 (Fla. 4th DCA 1982), affirmed, 421 So. 2d 49 (Fla. 4th DCA 1982), indicating that a water control district has only those powers which the Legislature has delegated to it by statute. Cf. *Ops. Att’y Gen. Fla. 04-48 (2004)* (as entity created pursuant to legislative act, water control districts may only exercise such powers as have been expressly granted by that act or must necessarily be exercised in order to carry out an express power); and *83-44 (1983)*.
- 13 See s. 255.103(1), Fla. Stat., defining “governmental entity” to include special districts as defined in Ch. 189, Fla. Stat., or political subdivisions of the statute.
- 14 *Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976). In this regard you have cited Attorney General Opinion 96-28, in which this office concluded that the provisions of s. 255.20, Fla. Stat., should be read together with the minimum procedures for letting contracts for works and improvements by drainage and water control districts set forth in s. 298.35, Fla. Stat. However, s. 298.35, Fla. Stat., was repealed in 1997 and no provision of Ch. 373, Fla. Stat., establishes bidding requirements for the Southwest Florida Water Management District.
- 15 See *Lee v. Division of Florida Land Sales and Condominiums*, 474 So. 2d 282 (Fla. 5th DCA 1985); *Ops. Att’y Gen. Fla. 09-40 (2009)* and *91-93 (1991)*.
- 16 Cf. *Op. Att’y Gen. Fla. 90-63 (1990)*. And see *Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 346 (Fla. 1919).

