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MEMORANDUM

To: Harmony Board of Supervisors
From: Young, van Assenderp & Qualls, P.A.
Date: March 11, 2016
Re: Piggybacking for Maintenance Services

Questions Presented

1. May the CDD use piggybacking to procure lawn maintenance services?
2. What other community development district has procured a landscape maintenance contract recently with substantially similar terms using a procedure that would satisfy the CDD's competitive procurement requires?

Answers

1. Yes, provided that the contract that the CDD is piggybacking off of was competitively procured by a process that would meet the procurement requirements of the CDD.
2. The Ave Maria Stewardship Community Development District has recently used competitive procurement procedures which would satisfy the CDD's requirements when procuring landscaping services that are substantially similar to those sought by the CDD.

Discussion

The CDD's contract with The Davey Tree Expert Company ("Davey") for landscape maintenance services expires on September 30, 2016. Thus, the CDD will be required to enter into a subsequent contract for these services following this expiration date. Chapter 287, Florida Statutes, requires governmental entities to use the competitive bidding process for

contracts reaching a specific price range. Additionally, the CDD Rules and Policies Chapter 1-10 and Fla. Stat § 190.033 require the District to subject contracts for the maintenance of District facilities to competitive solicitation requirements when the amount of the contract exceeds the amount provided for in Fla. Stat. §287.017 Category Four, which is currently \$195,000. This process can be time consuming and costly. However, in 2009 the Legislature enacted Fla. Stat. §189.053¹ which allows a district to utilize the competitive procurement of another entity rather than undergoing the process itself, and states:

Special districts may purchase commodities and contractual services, other than services the acquisition of which is governed by s. 287.055, from the purchasing agreements of other special districts, municipalities, or counties which have been procured pursuant to competitive bid, requests for proposals, requests for qualifications, competitive selection, or competitive negotiations, and which are otherwise in compliance with general law if the purchasing agreement of the other special district, municipality, or county was procured by a process that would have met the procurement requirements of the purchasing special district.

Under this statute, the CDD may “piggyback” on another government’s competitive negotiation process and purchase contractual services using the agreements that other districts have signed provided that: 1. the other district procured its services using competitive bidding process; and 2. the other district’s procedures meet the procurement requirements of the CDD.

In evaluating the procurement process of other community development districts that have undergone competitive procurement for landscape services to determine whether the CDD may piggyback off that district’s procurement, Ave Maria Stewardship Community Development District competitively procured landscape maintenance services. In seeking bids for these services, Ave Maria undertook a procurement process that satisfies the CDD’s requirements as set forth in Chapter 1 of the CDD rules. Attached to this document the request for proposal packet used by Ave Maria in obtaining these landscaping services.

Specifically, Chapter 1, Rule 10.2 of the CDD Rules and Procedures governs the procedures that must be taken when the CDD contracts for maintenance services.

¹ This statute was originally enacted as Fla. Stat. §189.4221 but was re-codified in 2014. However, the language has remained the same since its enactment.

- Rule 10.2.1 requires that the Request for Proposal be advertised in the newspaper and that the notice allow at least seven days for the submittal of proposals. Ave Maria advertised in a newspaper of general circulation and allowed one month for companies to submit their proposals.
- Rule 10.2.3 requires that companies submitting the proposal to hold the applicable state and federal licenses, to be authorized to do business in Florida, and to meet any special qualifications set forth in the bid proposal. The Ave Maria request for proposal required that all bidders must be licensed in the state of Florida and in Collier County as a landscaping contractor and as a sprayer of pesticides, in addition to imposing further requirements.
- Rule 10.2.4 requires that proposals be opened on the time or place set forth in the request for proposal and that the bids be evaluated in accordance with the request. Ave Maria prescribed a deadline for submitting bids and a place to submit the bids as well as a timetable for interviews and a process for evaluating the bids.
- Rule 10.2.5 allows, but does not require, the CDD to invite public presentations to assist in determining the lowest responsive and responsible bidder. Ave Maria allowed for such presentations when determining the lowest responsive and responsible bidder.
- Rule 10.2.6 provides certain criteria that the Board may consider when determining the lowest responsive and responsible bidder. Ave Maria contained similar criteria including, but not limited to, the number of large scale community associations the company currently maintained, the experience of the company, the qualifications of the company, any accreditations of the company and of the company's manager, references from other communities, price and payment terms.

Ave Maria followed these steps as evidenced in the attached competitive procurement documents.

Additionally, though not required by the language of Section 189.053, Florida Statutes, the services provided to Ave Maria are very similar in price and scope to those that the CDD sought proposals for in 2012. The contract between Ave Maria and Davey provides the following services:

- Mowing, edging, string trimming, and blowing hard surfaces and debris
- Bed weed control
- Pruning shrubs and groundcover
- Turf fertilization, insect and weed control
- Shrub and groundcover fertilization and control
- Monthly visual inspection of all irrigation heads, controllers, valves and sensors
- Monthly cleaning of irrigation heads as needed
- Monthly written irrigation report
- Litter control
- Tree care
- Total cost= \$464,751.00

In the CDD's previous request for proposal for landscape maintenance, and after the addendum providing for these services in neighborhoods F and H2, the CDD sought the following services:

- Turf Care
- Sport turf
- Shrubs/Groundcover care
- Tree Care
- Irrigation system maintenance
- Litter Removal
- District/District Manager awareness
- Total cost (including recent addendum)= \$434,253.60

As this shows, in addition to Ave Maria utilizing competitive procurement procedures that would satisfy the CDD's requirements, the terms of the contract are substantially similar.

Conclusion

Therefore, the CDD may utilize the piggybacking method authorized by Fla. Stat. §189.053 to enter into a contract for landscape maintenance services with The Davey Tree Expert Company using the Ave Maria Stewardship Community Development District's

competitive procurement because Ave Maria's procurement procedures meet the procurement requirements of the CDD. The next steps for the CDD are as follows:

- Review the attached competitive procurement documents.
- Consider and make a determination at the next Board meeting whether:
 - The Board finds that Ave Maria utilized a competitive procurement process that meets the requirements of the CDD as provided by Section 189.053.
 - The scope of services in the recent contract competitively procured by Ave Maria is substantially similar to the CDD's
- If so determined, a Board member and professional staff to negotiate with Davey to procure the landscape maintenance services.

Caveat: Note that even though piggybacking is statutorily authorized, there is always the possibility of a bid protest just like any other competitive procurement