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MEMORANDUM

April 20, 2010

**TO: BOARD(S) OF SUPERVISORS/FIDDLERS CREEK COMMUNITY
DEVELOPMENT DISTRICT 1 AND FIDDLERS CREEK COMMUNITY
DEVELOPMENT DISTRICT 2**
RE: RULES OF PROCEDURE/JOINT WORKSHOP OF APRIL 28, 2010.
FROM: Anthony P. Pires, Jr.

There have been recent discussions by the Boards of both Districts regarding amending various portions of the current adopted Rules of Procedure [the Rules]. In order to assist the Boards at their Joint Workshop, this Memorandum has been prepared to address certain issues that have been the primary focus of discussion.

Attached to this Memorandum is a copy of the current adopted Rules. See Exhibits "A-1" and "A-2".

There were two primary issues raised in prior Board discussions. One relates to whether or not the Rules should limit or restrict contact between a Board member and a party that performs services of a type that is utilized by or needed by the Districts. The other relates to whether the Boards should require, in the Rules, a competitive solicitation process for certain types of services, where competitive solicitation is not otherwise required by Florida law. Additionally, the Boards asked that the staff review the current Rules for any other areas that the staff believes may need to be revised or amended.

1. "NO-CONTACT" PROVISIONS/RULE

At the present time, when a solicitation is made for various District services, utilizing a formal competitive solicitation or bidding process, there is no language contained within the bid/proposal package stating that contact

between a bidder/proposer outside of a presentation at a public hearing, and any Supervisor is prohibited. Only in the case of a protest of award of a bid or contract, contact between the protesting party and the Supervisors, outside of a hearing, is prohibited by the Rules, Section A-1.10 E.¹

To provide consistency and clarity, the staff recommends that the Rules be amended to adopt a “No Contact” policy that would provide that in all instances when the District competitively solicits bids or proposals, once the decision is made to solicit bids or proposals, all contact or communication between any party [and its agents/representatives] that provides such services and Supervisors is prohibited; and that no business entity, including any agent of such entity, shall directly or indirectly contact or communicate with any Supervisor, except at a public hearing associated with such bid/proposal. Further the Boards may want to consider, as part of the “No Contact” policy, that any vendor violating this policy shall be deemed disqualified from bidding; and should such contact come to light after the bid is awarded and the entity was deemed the successful bidder, the Board reserves the right to cancel any contract awarded.

Additionally, to avoid appearance of partiality, Supervisors may want to consider adopting language in the Rules prohibiting any Supervisor from encouraging any particular individual vendor to submit a bid or proposal, in order to be sure that a fair and open competition is achieved; and, further, that in those instances when a vendor unilaterally approaches a Supervisor outside of the bidding or solicitation process, require the Supervisor to immediately direct such vendor to the District Manager.

2. PROCEDURE FOR CONTRACTING FOR SERVICES NOT REQUIRED BY FLORIDA LAW TO BE COMPETITIVELY PROCURED

Section 190.033, F.S.², requires that the District, in certain situations, competitively solicit or procure goods, materials, and certain services. Contracts for other services not listed in Section 190.033, F.S. [or elsewhere in the statutes] shall not be subject to competitive solicitation unless the District adopts a rule, policy or procedure applying competitive solicitation processes to said contracts. Examples of such services are contained within the current Rules, Section A-1.07, with regards to security and access control and assessment roll preparation services. The Boards have the discretion to add to or remove services from that list. If the Boards remove a service/services from that list, that does not preclude the Boards in the future from adopting a policy or procedure to utilize a competitive solicitation process, which process can be as or less formal than as provided in the Rules.

¹ Note that this prohibition does not relate to the filing of a protest under Section A-1.10B.1 and .2 as to the invitation to bid or request for proposals.

² See attached Exhibit “B”. Also, as noted in the Rules [see Section A-1.07], other statutes may also require a formal competitive process.

3. OTHER AREAS FOR CONSIDERATION OF REVISING/AMENDING

A. Based upon recent experience with another district, the Boards may want to consider adding language to Section A-1.02A of the Rules to require that the remaining Board members shall endeavor and use their best efforts to fill any such vacancy within sixty (60) calendar days of the creation of the vacancy. There is no Florida Statute applicable to community development districts that sets forth a specific time frame for the vacancy to be filled.

B. Suggest adding the phrase “..consistent with the requirements of law” at the end of the last sentence of Section A-1.03 to ensure that no such Resolution is contrary to law.

C. In Section A-1.04D, suggest adding a requirement that the secretary also keep the minutes of any committees or subcommittees of the Boards.

D. In Section A-1.04E, suggest adding the phrase “or email address” after “mailing address”.

E. In Section A-1.05, dealing with the Consultants’ Competitive Negotiations Act (“CCNA”):

1. delete the word “bid”, “bidder” or “bids” throughout as those terms are inapplicable in that context.
2. add language reference “study activity” consistent with the CCNA.

**CURRENT
RULES OF PROCEDURE
DISTRICT 1**

EXHIBIT "A-1"

**FIDDLER'S CREEK
COMMUNITY DEVELOPMENT
DISTRICT 1**

RULES OF PROCEDURE
[As Adopted, July 23, 2008]

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CHAPTER A-1
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT 1
GENERAL AND PROCEDURAL RULES

A-1.01 General

The Fiddler's Creek Community Development District 1 (the "District") was established pursuant to the provisions of Chapter 190, Florida Statutes to provide for the ownership, operation, maintenance, and provision of various capital facilities and services within its jurisdiction.

Specific Authority: 190.011, 120.53(1)(a)

Law Implemented 190.011, 120.53(1)(a)

A.1.02 Board of Supervisors; Officers; Voting.

A. Term of Officers; Vacancies.

Board members shall hold office pursuant to Section 190.006, Florida Statutes. If, during the term of office of any board member(s), one or more vacancies occur, the remaining member(s) of the Board shall fill the vacancies by appointment for the remainder of the unexpired term. If three or more vacancies occur at the same time, a quorum is not necessary to fill the vacancies.

B. Quorum.

A majority of the members of the Board physically present constitutes a quorum. Action taken by the Board shall be upon a vote of a majority of the members present, either in person and telephonically, unless otherwise provided in these rules or required by law.

C. Officers.

1. At the first Board meeting held after each election where the newly elected members take office, the Board shall select a chairperson, vice chairperson, secretary and treasurer, and if desired, an assistant treasurer.

2. The term of office of the chairperson shall be two years. The chairperson must be a member of the Board. If the chairperson resigns from that office or ceases to be a member of the Board, the Board shall select a chairperson to serve the remaining portion of the term, after filling the board vacancy. The chairperson shall convene and conduct all meetings of the Board. In the event the chairperson is unable to attend a given meeting, the vice chairperson shall

convene and conduct the meeting. In the event the chairperson and vice chairperson are unable to attend a given meeting, the members of the Board in attendance shall appoint one Board member as chair pro tem who shall convene and conduct the meeting.

3. The vice chairperson shall be a member of the Board and shall have such duties and responsibilities as specifically designated by the Board from time to time. The term of office for the vice chairperson shall be two years, coincident to that of the chairperson. If the vice chairperson resigns from that office or ceases to be a member of the Board, the Board shall select a vice chairperson to serve the remainder of the term, after filling the Board vacancy.

4. The secretary of the Board serves at the pleasure of the Board and need not be a member of the Board. The secretary shall be responsible for maintaining the minutes of Board meetings and may have other duties assigned by the Board from time to time. The District Manager may serve as secretary.

5. The treasurer shall serve at the pleasure of the Board and need not be a member of the Board but must be a resident of Florida. The treasurer shall perform duties described in Section 190.007(2) and (3), Florida Statutes, as well as those assigned by the Board from time to time.

D. Committees.

The Board may establish committees of the Board, either on a permanent or temporary basis, to perform specifically-designated functions. Such functions may include, but are not limited to, contract negotiations, personnel matters, and budget preparation.

E. Record Book.

The Board shall keep a permanent record book entitled "Record of Proceedings of the Fiddler's Creek Community Development District 1" in which shall be recorded minutes of all meetings, resolutions, proceedings, Board of Supervisor actions, agreements, certificates, and bonds given by all employees.

F. Meetings.

The Board shall establish a schedule of regular meetings and may also meet upon: 1) call of the chairperson or the District Manager in coordination with the chairperson; or, 2) three board members; or, 3) pursuant to the emergency meeting process outlined herein or in Florida Statutes. Except as otherwise may be provided by law, all meetings of the Board and its committees shall be open to the public in accordance with the provisions of Chapter 286, Florida Statutes.

G. Voting Conflict of Interest.

Each Board member shall abide by and comply with the applicable provisions of Florida law regarding voting conflicts of interest contained within Chapters 190 and 112, Florida Statutes.

Specific Authority: 190.001, 120.53(1)(d)

Law Implemented: 190.006(l), 190.006(4), 190.006(5), 190,006(6), 190.006(7), 190.006(9), 190.007, Chapter 112, F.S.

A-1.03 Public Information and Inspection of Records.

A. Public Records.

All District public records within the meaning of Chapter 119, Florida Statutes, and not otherwise exempt or confidential by law, including the "Record of Proceedings of the Fiddler's Creek Community Development District 1" may be copied or inspected at the local office of record of the District as designated by the Board from time to time, during regular business hours.

B. Copies.

Copies of public records not otherwise exempt or confidential shall be made available to the requesting person at a charge as established by Resolution of the Board.

Specific Authority: 190.011, 120.53(1)(a)

Law Implemented: 190.06(7), 119.07(1)(a), 119.07(1)(b), 120.53(1)(a)

A-1.04 Meetings and Workshops.

A. Notice.

Except in emergencies, or as otherwise provided in these rules or applicable law, at least seven days public notice shall be given of any meeting or workshop of the Board. Public notice shall be given as required by law.

B. Agenda.

The District Manager, under the supervision of the chairperson or those members calling for a Board meeting, shall prepare a notice of the meeting or workshop and an agenda.

C. Agenda Format.

The agenda shall follow the format adopted by the Board by Resolution. The Board may also adopt a Meeting Protocol.

D. Minutes.

The secretary shall be responsible for keeping the minutes of each meeting of the Board in a format as established by the Board. Minutes shall be corrected and approved by the Board at a subsequent meeting.

E. Receipt of Notice of Meeting, Agenda and Agenda Packages.

Persons wishing to receive notices of meetings or agendas or agenda packages of meetings, may so advise the District Manager or secretary in writing. Such persons shall furnish a mailing address in writing and may be required to pay the cost of the copying and mailing.

F. Emergency Meeting.

Whenever a bona fide emergency situation exists, a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as any action taken is subsequently ratified by the Board. The chairperson or the vice-chairperson if the chairperson is unavailable, may convene an emergency meeting of the Board to act on bona fide emergency situations. Whenever possible, the District Manager and the chairperson shall make reasonable efforts to notify all Board members of an emergency meeting 24 hours in advance. Reasonable efforts may include telephone notification. Actions taken at an emergency meeting shall be ratified by the Board at a regularly noticed meeting subsequently held.

G. Public Comment.

The Board may set aside a reasonable amount of time at each regular meeting for public comment.

H. Communications Media Technology.

A meeting of the Board may be conducted by or in conjunction with Communications Media Technology (CMT), including teleconferences or video conferences. All evidence, testimony and argument presented shall be afforded equal consideration, regardless of the method of communication.

1. Definitions.

A. "Access point" means a designated place where a person interested in attending a CMT meeting may go for purposes of attending such meeting.

B. "Attend" means having access to the communications media technology network being used to conduct a meeting, or being used to take evidence, testimony or argument relevant in any issue being considered at a meeting.

C. "CMT meeting" means a meeting that is conducted by means of or in conjunction with communications media technology.

D. "Communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.

E. "In conjunction with communications media technology" means that CMT access is being provided to a meeting otherwise being held with the collective, physical presence of the members of the Board in one place.

F. "By means of communication media technology" means that a meeting is being conducted entirely by means of communications media technology and that the members of the Board conducting such meeting may not be collectively, physically together in one place.

2. Nothing in this rule shall be construed to permit the District to conduct any meeting otherwise subject to the provisions of Section 286.011, Florida Statutes, by means of communications media technology without making provision for the attendance at that meeting or workshop of any member of the public who desires to attend.

3. The District may not limit the points of access provided to the public to places not normally open to the public. The District shall provide at least one access point in a location which is ordinarily open to the public.

4. No meeting shall be conducted entirely by means of communications media technology if the available technology is insufficient to permit all interested persons to attend. If, during the course of a CMT meeting, technical problems develop with the communications network that prevent interested persons from attending, the District shall terminate the meeting until such problems have been corrected.

5. Notice of a CMT meeting shall be in the same manner as a meeting without CMT. The notice shall plainly state that such a meeting is to be conducted by means of or in conjunction with CMT and identify the type of CMT to be used. The notice shall also describe how interested persons may attend, and include the address or addresses of all access points. Specific Authority: 190.011(5), 190.011(15), 120.53(1)(d); Ch. 189, F.S. Law Implemented: 190.007(l), 190.008, 120.53(1)(d), 286.0105, .120.54(l)

A-1.05 Consultants' Competitive Negotiations Act.

A. Applicability.

Pursuant to Section 190.033(2), Florida Statutes, the provisions of Section 287.055, Florida Statutes apply to contracts for architecture, engineering, landscape architecture or registered land surveying and mapping services ("Professional Services").

1. "District Representative" means the person or group designated by the Board of Supervisors to administer the solicitation process. The District Representative may be the chairperson, the Board, any member or committee of the Board, District Counsel, District Manager, or any other person.

2. "Emergency contract " is a contract necessitated by a sudden unexpected turn of events (e.g., acts of God, riot, fires, floods, hurricanes, accidents or any circumstances or cause beyond the control of the Board in the normal conduct of its business) where the Board finds that the delay incident to competitive solicitation would be detrimental to the interests of the District.

B. Qualifying Procedures.

In order to be eligible to submit a proposal for Professional Services, a firm or individual must, at the time of receipt of submittal to the District :

1. Hold all required applicable city, county and state professional license(s) and certifications in good standing.
2. Hold current occupational licenses or business tax receipts in Collier County.
3. Hold all required applicable federal licenses and certifications in good standing.
4. If the bidder/proposer is a corporation or other legal entity, possess and maintain a current and active status as such legal entity and, if organized and established in another state other than Florida be authorized to do business in

Florida in accordance with Florida law.

5. Meet any other prequalification requirements set forth in the project, bid or proposal specifications.

Proof and evidence of compliance with these requirements shall be submitted with the bid or proposal.

C. Public Announcement

Prior to a public announcement that Professional Services are required, the Board shall identify, if applicable, the project as meeting the threshold requirement. Except in cases of valid public emergencies, the District shall announce each occasion when Professional Services are required or desired by publishing a notice providing a general description of the project or the services desired and the method for interested consultants to apply for consideration. The notice shall appear in at least one newspaper of general circulation in the District and in such other places as the District deems appropriate. The District may maintain lists of persons interested in receiving such notices. Persons who, within the previous one (1) year, provided their name and address to the District office, in writing, for inclusion on the list, shall receive notices by mail. The Board has the right to reject any and all proposals, and such reservation shall be included in the public announcement. Proposers not receiving a contract award shall not be entitled to recover from the District any costs of proposal preparation or submittal.

D. Competitive Selection.

1. The Board shall review and evaluate the data submitted in response to the notice described above with respect to qualifications and performance ability, as well as any statements of qualifications on file. The District Representative shall conduct discussions with, and the Board may require public presentation by no less than three firms regarding their qualifications, approach to the project, and ability to furnish the required service.

2. The Board shall, following the review and/or public presentation, select and list not less than three firms, in order of preference, deemed to be the most highly capable and qualified to perform the required Professional Services, after considering these and other appropriate criteria:

- A. The ability and adequacy of the professional personnel.
- B. Past performance for the District and in other professional employment settings.
- C. Willingness to meet time and budget requirements.
- D. Geographic location of the firm's headquarters or office in relation to the District.

- E. Recent, current and projected workloads of the proposer.
- F. Whether the firm is a certified minority business enterprise.
- G. Volume of work previously awarded by the District to the proposer.

Nothing in these rules shall prevent the District from evaluating and eventually selecting a Professional Services provider in the event that less than three responses, including responses indicating a desire not to submit a formal proposal on a given project, are received.

3. If the selection process is administered by any person other than the full Board, the selection made will be presented to the full Board with a written recommendation that competitive negotiations be instituted with the selected firms in order of preference listed.

E. Competitive Negotiations.

1. After the Board has authorized the beginning of competitive negotiations, the District Representative shall begin such negotiations with the firm listed as most qualified to perform the required Professional Services, in an attempt to arrive at an agreed upon compensation which is deemed to be fair, competitive and reasonable.

2. Should the District Representative be unable to negotiate a satisfactory agreement with the firm determined to be the most qualified at a price deemed by the District to be fair, competitive and reasonable, within 10 business days unless modified by the Board, negotiations with that firm shall be terminated and the District Representative shall immediately begin negotiations with the second most qualified firm. If a satisfactory agreement with the second firm cannot be reached within 10 business days unless modified by the Board, those negotiations shall be terminated and negotiations with the third most qualified firm shall be undertaken.

3. Should the District Representative be unable to negotiate a satisfactory agreement with any of the selected firms within 30 business days unless modified by the Board, additional firms shall be selected by the District, in order of their competence and qualifications. Negotiations shall continue, beginning with the first-named firm on the list, until an agreement is reached or the list of firms is exhausted.

F. Emergency Contract.

In cases of valid public emergencies certified by the District Manager to the Board, the District, through its District Manager, may enter into an emergency contract for Professional Services without complying with these rules. The fact that an emergency contract has occurred or is necessary shall be noted in the minutes of the next Board meeting and ratified by the Board.

Specific Authority: 190.011(5), 287.055(3)(d)

Law Implemented: 190.011(3), 287.055, 190.011(2), 190.033

A-1 .06 Procedure for Contracting For Maintenance Services

A. Scope.

All contracts for maintenance services for any District facility or project exceeding the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY FOUR shall be made by competitive solicitation. The maintenance of District facilities or projects may involve the purchase of contractual services and/or goods, supplies or materials as defined in Section A-1.08. Where a contract for such maintenance services includes goods, supplies or materials, the District may, in its sole discretion, award the contract according to the rules in this subsection in lieu of separately bidding for maintenance, goods, supplies or materials. However, a project shall not be divided solely in order to avoid the threshold bidding requirements.

B. Definitions for this section:

1. "District Representative" means the person or group designated by the Board of Supervisors to administer the solicitation process. The District Representative may be the chairperson, the Board, any member or committee of the Board, District Counsel, District Manager, or any other person.

2. "Emergency contract" is a contract necessitated by a sudden unexpected turn of events (e.g., acts of God, riot, fires, floods, hurricanes, accidents or any circumstances or cause beyond the control of the Board in the normal conduct of its business) where the Board finds that the delay incident to competitive solicitation would be detrimental to the interests of the District.

3. "Invitation to Bid" is a solicitation for sealed bids with the title, date and hour of the public bid opening designated specifically. It includes a description of the services sought, applicable terms and conditions, evaluation criteria, including but not limited to price, and provides for a manual signature of an authorized representative.

4. "Request for Proposal" is a solicitation for sealed proposals with the title, date and hour of the public opening designated and requiring the manual signature of an authorized representative. It provides a statement for services sought, applicable terms and conditions, and evaluation criteria, including but not limited to price.

5. "Responsive bid or proposal" means a bid or proposal which conforms in

all material respects to the specifications and conditions in the invitation to bid or request for proposals and these rules, and whose cost components are appropriately balanced. A bid or proposal is not responsive if the person or firm submitting the bid or proposal fails to meet any requirement relating to the qualifications, financial stability, or licensing of the bidder or proposer.

6. "Lowest, most responsive, responsible and best bid or proposal" means, in the sole discretion of the Board, the lowest cost bid or proposal that is: (A) submitted by a competent, responsible person or firm capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure full performance and timely completion; and, (B) most responsive to the invitation to bid or request for proposals, as determined by the Board. Minor variations in the bid may be waived by the Board. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified after opening.

C. Procedure.

The following procedure shall be followed:

1. The Board shall cause its staff to prepare a notice of invitation to bid or request for proposals, as appropriate.
2. Notice of invitation to bid or request for proposals shall be advertised at least once in a newspaper of general circulation in the District. The notice shall allow at least seven (7) days for submittal of bids or proposals unless the Board, for good cause, determines a shorter period of time is appropriate. Prior to the submittal date, to assure full understanding of the responsiveness to the solicitation requirements, discussions may be held with the District Representative by qualified offerers. The offerors shall be accorded fair and equal treatment prior to the submittal date with respect to any opportunity for discussion and revision of proposals or bids.
3. The District may maintain a list of persons interested in receiving notices of invitations to bid or requests for proposals. Persons who, within the previous one (1) year, provided their name and address to the District office, in writing, for inclusion on the list, shall receive notices by mail.
4. Bids and proposals shall be opened at the time and place noted on the invitation to bid and request for proposals. Bids and proposals shall be evaluated in accordance with the invitation or request and these rules.
5. If only one response to an invitation to bid or request for proposals is received, the District may proceed with the procurement for maintenance services. If no response to an invitation to bid or request for proposals is received, the District may take

whatever steps are reasonably necessary in order to proceed with the procurement of maintenance services.

6. In determining the lowest, most responsive, responsible and best bid or proposal, the Board may consider, in addition to factors described in the invitation to bid or request for proposals, the following:

- A. The ability and adequacy of the professional personnel.
- B. Past performance for the District and in other professional employment settings.
- C. Willingness to meet time and budget requirements.
- D. Geographic location of the firm headquarters or office in relation to the District.
- E. Recent, current and projected workloads of the bidder or proposer.
- F. Whether the firm is a certified minority business enterprise.
- G. Volume of work previously awarded by the District to the bidder or proposer.
- H. Whether the cost components of the bid submittal or proposal are appropriately balanced.

7. The Board has the right to reject any or all bids or proposals and such reservation shall be included in all solicitations and advertisements. In the event the bids or proposals exceed the amount of funds available to or allocated by the District for said purpose, the bids and proposals may be rejected. Bidders and proposers not receiving a contract award shall not be entitled to recover from the District any costs of bid or proposal preparation or submittal.

8. The lowest, most responsive, responsible and best bid or proposal most advantageous to the District, as appropriate, shall be accepted. The Board may require bidders and proposers to furnish performance and/or other bonds with a responsible surety approved by the Board.

D. Notice.

Notice of award or intent to award a contract, including the rejection of some or all bids or proposals, shall be provided in writing to all bidders and proposers by facsimile transmittal, electronic transmittal, United States Mail or by hand delivery.

E. Contract Renewal.

Renewal of a contract for maintenance services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. Renewal shall be contingent upon satisfactory performance evaluations by the District. The costs of any contemplated renewals shall be included in the invitation to bid or request for proposals and in all events contracts shall not be renewed for more than two years unless competitively procured.

F. Contract Manager and Contract Administrator.

The Board may designate a representative to function as contract manager, who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. The Board may also designate a representative to function as contract administrator, who shall be responsible for maintaining all contract files and financial information. One person may serve as both contract manager and administrator.

G. Emergency Contract

In cases of valid public emergencies certified by the District Manager to the Board, the District, through its District Manager, may enter into an emergency contract for maintenance services without complying with these rules. The fact that an emergency contract has occurred or is necessary shall be noted in the minutes of the next Board meeting and ratified by the Board.

Specific Authority: 190.011(5)

Law Implemented: 190.011(3), 190.033

A-1 .07 Procedure for Contracting For Other Services

Applicability

Contracts for the following services shall be subject to competitive solicitation utilizing the process and procedures outlined in Section A-1.06:

1. Security and access control.
2. Assessment Roll preparation.

Contracts for all other services shall not be subject to the competitive solicitation process unless:

1. otherwise required by law [i.e. external auditors retained to perform annual audit, see Section 218.391, F.S.], and then in accordance with the required procedures; or,

2. the Board affirmatively directs that a particular service shall be competitively solicited, in which event the District shall utilize the competitive solicitation process and procedures outlined in either Section A-1.06.

Specific Authority: 190.011(5)

Law Implemented: 190.011(3), 190.033

A-1.08 Purchase of Goods, Supplies or Materials.

A. Scope.

All purchases of goods, supplies or materials that exceed the amount provided in Section. 287.017, Florida Statutes. for CATEGORY FOUR shall be purchased under the terms of these rules. Contracts for purchases of goods, supplies, or materials shall not be divided solely in order to avoid the requirements of these rules. "Goods, supplies and materials" do not include printing, insurance, advertising or legal notices.

B. Definitions.

1. "District Representative" means the person or group designated by the Board of Supervisors to administer the solicitation process. The District Representative may be the chairperson, the Board, any member or committee of the Board, District Counsel, District Manager, or any other person.

2. "Emergency purchase" means a purchase necessitated by a sudden unexpected turn of events (e.g., acts of God, riot, fires, floods, hurricanes, accidents, or any circumstances or cause beyond the control of the Board in the normal conduct of its business), where the Board finds that the delay incident to competitive solicitation would be detrimental to the interests of the District.

3. "Invitation to Bid" is a solicitation for sealed bids with the title, date and hour of the public bid opening designated specifically and defining the commodity involved. It includes printed instructions prescribing conditions for bidding, evaluation criteria, and provides for a manual signature of an authorized representative.

4. "Lowest, most responsive, responsible and best bid or proposal" means, in the sole discretion of the Board, the lowest cost bid or proposal that is: (A) submitted by a competent, responsible person or firm capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure full performance and timely completion; and, (B) most responsive to the invitation to bid or request for proposals, as determined by the Board. Minor variations in the bid may be waived by the Board. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified after opening.

5. "Purchase" means acquisition by sale. It does not include transfer, sale or exchange of goods, supplies or materials between the District and any federal, state regional or local governmental entity or political subdivision of the state, including special districts, either independent or dependent. It does not include the acquisition by rent, lease, lease/purchase or

installment sale.

6. "Request for Proposals" is a solicitation for sealed proposals with the title, date and hour of the public opening designated and requiring the manual signature of an authorized representative. It may provide general information, applicable laws and rules, statement of work, functional or general specifications, proposal instructions, work detail analysis and evaluation criteria as deemed appropriate by the District Representative.

7. "Responsive bid or proposal" means a bid or proposal which conforms in all material respects, to the specifications and conditions in the invitation to bid or request for proposals and these rules; and whose cost components are appropriately balanced. A bid or proposal is not responsive if the person or firm submitting the bid fails to meet any requirement relating to the Lowest, most responsive, responsible and best bid or proposal" means, in the sole discretion of the Board, the lowest cost bid or proposal that is: (A) submitted by a competent, responsible person or firm capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure full performance and timely completion; and, (B) most responsive to the invitation to bid or request for proposals, as determined by the Board. Minor variations in the bid may be waived by the Board. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified after opening.

C. Procedure.

When a purchase of goods, supplies or materials is within the scope of this rule, the following is appropriate:

1. The Board shall cause its staff to prepare a notice of invitation to bid or request for proposals, as appropriate.

2. Notice of invitation to bid or request for proposal shall be advertised at least once in a newspaper of general circulation in the County and in the District. The notice shall allow at least seven days for submittal of bids or proposals, unless the Board, for good cause, determines a shorter period of time is appropriate. Prior to the submittal date, to assure full understanding of the responsiveness to the solicitation requirements, discussions may be held with the District Representative by qualified offerers. The offerors shall be accorded fair and equal treatment prior to the submittal date with respect to any opportunity for discussion and revision of proposals or bids.

3. The District may maintain lists of persons interested in receiving notices of invitations to bid or requests for proposals. Persons who, within the previous one (1) year, provided their name and address to the District office, in writing, for inclusion on the list, shall receive notices by mail.

4. Bids and proposals shall be opened at the time and place noted on the invitation to bid or request for proposals. Bids and proposals shall be evaluated in accordance with the invitation or request and these rules.

5. The lowest, most responsive, responsible and best bid or proposal most advantageous to the District shall be accepted; however, the Board shall have the right to reject all bids, either because they are too high or because the Board determines it is in the best interests of the District. In the event the bids or proposals exceed the amount of funds available to or allocated by the District, the bids and proposals may be rejected. The Board may require bidders and proposers to furnish performance and/or other bonds with a responsible surety to be approved by the Board. Bidders and proposers not receiving a contract award shall not be entitled to recover from the District any costs of bid or proposal preparation or submittal.

6. Notice of award or intent to award, including rejection of some or all bids or proposals, shall be provided in writing to all bidders by facsimile transmittal, electronic transmittal, United States Mail or by hand delivery.

D. Limited Response

If only one response to an invitation to bid or request for proposals is received, the District may proceed with the procurement for goods, supplies or materials. If no response to an invitation to bid or request for proposals is received, the District may take whatever steps are reasonably necessary in order to proceed with the procurement of goods, supplies or materials.

E. Emergency Contract

In cases of valid public emergencies certified by the District Manager to the Board, when the situation warrants an emergency purchase, the District, through its District Manager, may enter into an emergency contract for goods, supplies or materials without complying with these rules. The fact that an emergency contract has occurred or is necessary shall be noted in the minutes of the next Board meeting and ratified by the Board.

F. "Piggybacking"

Nothing in this section shall preclude the "piggybacking" of the purchase of goods, supplies or materials pursuant to state or other governmental agency contract, to the extent authorized by law.

Specific Authority: 190.011(5)

Law Implemented: 190.033

A-1.09 Contracts for Construction of Authorized Projects

Scope.

All contracts or agreements for the construction of any project authorized by Chapter 190, Florida Statutes, shall be pursuant to the requirements of state law.

Specific Authority: 190.011(5)

Law Implemented: 190.033

A-1.10 Bid or Proposal Protests

Unless otherwise provided herein, the resolution of any protests regarding the decision to solicit or award a contract for a bid or proposal shall be in accordance with this section. The purpose of this section is to accommodate legitimate written, timely filed protests concerning formal competitive invitations and recommended contract awards.

A. Notice.

The District shall give all bidders and proposers that timely submitted a bid or proposal written notice of its decision to award or intent to award a contract, including rejection of same or all bids or proposals, by facsimile transmittal, electronic transmittal, United States Mail or by hand delivery. The notice shall include the following statement: "Failure to file a written notice of intent to protest or a notice of protest within the times prescribed herein, shall constitute a waiver of all proceedings."

B. Filing.

1. Any actual or prospective bidder or respondent to an invitation for bids or a request for proposals, who alleges to be aggrieved in connection with the solicitation or award of a contract, (hereafter referred to as "the protesting party") may protest in writing to the District Manager as the recipient of any and all notices of intent to protest and all formal protests [with a copy to District Counsel].

2. All formal protests with respect to an invitation for bids or a request for proposals shall be submitted to the District Manager in writing not less than four (4) hours prior to the opening of bids or the closing time for acceptance of proposals. The District Manager, in consultation with the District Counsel, shall have the authority to address all such timely filed protests received and to determine whether postponement of the bid opening or proposal

closing time is appropriate. The District Manager's decision shall be considered final and conclusive unless the protesting party files a subsequent formal protest of the recommended contract award as described hereunder.

3. Any actual bidder or respondent to an invitation for bids or a request for proposals who desires to formally protest a recommended contract award shall file a written notice of intent to protest to the District Manager within two (2) calendar days, excluding weekends and District holidays, from the date of the notification of the recommended award and shall file a formal written protest with the District Manager [with a copy to District Counsel] within five (5) calendar days, excluding weekends and District holidays, from the date that a timely filed notice of intent to protest is received by the District Manager.

4. The formal written protest shall contain, but not be limited to the following information:

- A. the bid or proposal number and title.
- B. the name and address of the protesting party.
- C. a statement of disputed issues of material fact. If there are no disputed material facts, the written protest must so indicate.
- D. a concise statement of the ultimate facts alleged and of any relevant rules, regulations, statutes, case law and constitutional provisions entitling the protesting party to relief.
- E. A demand for the relief to which the protesting party deems himself entitled.
- F. Such other information as the protesting party deems to be material to the issue.

5. Failure to timely and properly file a written notice of protest or failure to timely and properly file a formal written protest shall constitute a waiver of all further proceedings. Once filed, no supplementing of the notice of intent to protest or formal written protest shall be permitted.

C. Award Process.

Upon receipt of a properly filed notice of protest which has been timely filed, the District shall stop the solicitation process or the contract and award process until the subject of the protest is resolved. However, if the District sets forth in writing particular facts and circumstances which require the continuance of the process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare, the award process may continue.

D. District Manager Decision

The District Manager shall review the merits of each timely filed written protest [for which a timely filed written notice of intent of intent to protest was filed] and in consultation with the District Counsel; issue a decision in writing within ten (10) business days stating the reasons for the decision and the protesting party's rights of appeal under this Section. Said decision shall be in writing and shall be furnished to the protesting party by facsimile transmittal, electronic transmittal, United States Mail or by hand delivery. The decision of the District Manager shall be final and conclusive unless the protesting party timely and properly files a subsequent written objection with the District Manager [with a copy to District Counsel] within two (2) calendar days, excluding weekends and District holidays, from the date of receipt of the decision.

E. Hearing By Board of Supervisors

In the event of the timely filing of an objection pursuant to subsection D above, and in the event that the protest cannot be resolved by mutual consent, the matter will be referred to the Board of Supervisors for final resolution. Neither the protesting party, nor anyone on their behalf, including their agents or their representatives shall have any private contact or discussions with individual Supervisors regarding the protest prior to the protest being heard or reviewed by the Board of Supervisors unless requested in writing to do so by the District Manager. At the hearing, the chairperson shall conduct the hearing, with the assistance of the District Manager, District Counsel, or other person as designated by the chairperson.

1. The person conducting the hearing shall:
 - A. Administer oaths and affirmations;
 - B. Regulate the course of the hearing, including any prehearing matters.
2. The Board shall:
 - A. Rule upon offers of proof and receive relevant evidence.
 - B. Enter orders.
 - C. Make or receive offers of settlement, stipulation, and adjustment.
3. At the conclusion of the hearing the Board shall decide the matter and render a written decision.

F. Waiver

Failure to file a timely written notice of intent to file protest or failure to file a timely, complete formal protest within the time and manner prescribed herein shall constitute a complete waiver and bar of the right to protest by any protesting party as defined by subsection A of this section.

G. Mutual Agreement.

The District, on its own initiative or upon the request of a protester, may provide an opportunity to resolve the protest by mutual agreement.

Specific Authority : 120.53 (5), 190.011 (5)

A-1.11 Effective Date

These rules shall be effective immediately upon adoption, as evidenced by a Resolution of the Board of Supervisors.

**CURRENT
RULES OF PROCEDURE
DISTRICT 2**

EXHIBIT "A-2"

**FIDDLER'S CREEK
COMMUNITY DEVELOPMENT
DISTRICT 2**

RULES OF PROCEDURE
[As Adopted, July 23, 2008]

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CHAPTER A-1
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT 2
GENERAL AND PROCEDURAL RULES

A-1.01 General

The Fiddler's Creek Community Development District 2 (the "District") was established pursuant to the provisions of Chapter 190, Florida Statutes to provide for the ownership, operation, maintenance, and provision of various capital facilities and services within its jurisdiction.

Specific Authority: 190.011, 120.53(1)(a)

Law Implemented 190.011, 120.53(1)(a)

A.1.02 Board of Supervisors; Officers; Voting.

A. Term of Officers; Vacancies.

Board members shall hold office pursuant to Section 190.006, Florida Statutes. If, during the term of office of any board member(s), one or more vacancies occur, the remaining member(s) of the Board shall fill the vacancies by appointment for the remainder of the unexpired term. If three or more vacancies occur at the same time, a quorum is not necessary to fill the vacancies.

B. Quorum.

A majority of the members of the Board physically present constitutes a quorum. Action taken by the Board shall be upon a vote of a majority of the members present, either in person and telephonically, unless otherwise provided in these rules or required by law.

C. Officers.

1. At the first Board meeting held after each election where the newly elected members take office, the Board shall select a chairperson, vice chairperson, secretary and treasurer, and if desired, an assistant treasurer.

2. The term of office of the chairperson shall be two years. The chairperson must be a member of the Board. If the chairperson resigns from that office or ceases to be a member of the Board, the Board shall select a chairperson to serve the remaining portion of the term, after filling the board vacancy. The chairperson shall convene and conduct all meetings of the Board. In the event the chairperson is unable to attend a given meeting, the vice chairperson shall

convene and conduct the meeting. In the event the chairperson and vice chairperson are unable to attend a given meeting, the members of the Board in attendance shall appoint one Board member as chair pro tem who shall convene and conduct the meeting.

3. The vice chairperson shall be a member of the Board and shall have such duties and responsibilities as specifically designated by the Board from time to time. The term of office for the vice chairperson shall be two years, coincident to that of the chairperson. If the vice chairperson resigns from that office or ceases to be a member of the Board, the Board shall select a vice chairperson to serve the remainder of the term, after filling the Board vacancy.

4. The secretary of the Board serves at the pleasure of the Board and need not be a member of the Board. The secretary shall be responsible for maintaining the minutes of Board meetings and may have other duties assigned by the Board from time to time. The District Manager may serve as secretary.

5. The treasurer shall serve at the pleasure of the Board and need not be a member of the Board but must be a resident of Florida. The treasurer shall perform duties described in Section 190.007(2) and (3), Florida Statutes, as well as those assigned by the Board from time to time.

D. Committees.

The Board may establish committees of the Board, either on a permanent or temporary basis, to perform specifically-designated functions. Such functions may include, but are not limited to, contract negotiations, personnel matters, and budget preparation.

E. Record Book.

The Board shall keep a permanent record book entitled "Record of Proceedings of the Fiddler's Creek Community Development District 2" in which shall be recorded minutes of all meetings, resolutions, proceedings, Board of Supervisor actions, agreements, certificates, and bonds given by all employees.

F. Meetings.

The Board shall establish a schedule of regular meetings and may also meet upon: 1) call of the chairperson or the District Manager in coordination with the chairperson; or, 2) three board members; or, 3) pursuant to the emergency meeting process outlined herein or in Florida Statutes. Except as otherwise may be provided by law, all meetings of the Board and its committees shall be open to the public in accordance with the provisions of Chapter 286, Florida Statutes.

G. Voting Conflict of Interest.

Each Board member shall abide by and comply with the applicable provisions of Florida law regarding voting conflicts of interest contained within Chapters 190 and 112, Florida Statutes.

Specific Authority: 190.001, 120.53(1)(d)

Law Implemented: 190.006(1), 190.006(4), 190.006(5), 190.006(6), 190.006(7), 190.006(9), 190.007, Chapter 112, F.S.

A-1.03 Public Information and Inspection of Records.

A. Public Records.

All District public records within the meaning of Chapter 119, Florida Statutes, and not otherwise exempt or confidential by law, including the "Record of Proceedings of the Fiddler's Creek Community Development District 2" may be copied or inspected at the local office of record of the District as designated by the Board from time to time, during regular business hours.

B. Copies.

Copies of public records not otherwise exempt or confidential shall be made available to the requesting person at a charge as established by Resolution of the Board.

Specific Authority: 190.011, 120.53(1)(a)

Law Implemented: 190.06(7), 119.07(1)(a), 119.07(1)(b), 120.53(1)(a)

A-1.04 Meetings and Workshops.

A. Notice.

Except in emergencies, or as otherwise provided in these rules or applicable law, at least seven days public notice shall be given of any meeting or workshop of the Board. Public notice shall be given as required by law.

B. Agenda.

The District Manager, under the supervision of the chairperson or those members calling for a Board meeting, shall prepare a notice of the meeting or workshop and an agenda.

C. Agenda Format.

The agenda shall follow the format adopted by the Board by Resolution. The Board may also adopt a Meeting Protocol.

D. Minutes.

The secretary shall be responsible for keeping the minutes of each meeting of the Board in a format as established by the Board. Minutes shall be corrected and approved by the Board at a subsequent meeting.

E. Receipt of Notice of Meeting, Agenda and Agenda Packages.

Persons wishing to receive notices of meetings or agendas or agenda packages of meetings, may so advise the District Manager or secretary in writing. Such persons shall furnish a mailing address in writing and may be required to pay the cost of the copying and mailing.

F. Emergency Meeting.

Whenever a bona fide emergency situation exists, a meeting to deal with the emergency may be held as necessary, with reasonable notice, so long as any action taken is subsequently ratified by the Board. The chairperson or the vice-chairperson if the chairperson is unavailable, may convene an emergency meeting of the Board to act on bona fide emergency situations. Whenever possible, the District Manager and the chairperson shall make reasonable efforts to notify all Board members of an emergency meeting 24 hours in advance. Reasonable efforts may include telephone notification. Actions taken at an emergency meeting shall be ratified by the Board at a regularly noticed meeting subsequently held.

G. Public Comment.

The Board may set aside a reasonable amount of time at each regular meeting for public comment.

H. Communications Media Technology.

A meeting of the Board may be conducted by or in conjunction with Communications Media Technology (CMT), including teleconferences or video conferences. All evidence, testimony and argument presented shall be afforded equal consideration, regardless of the method of communication.

1. Definitions.

A. "Access point" means a designated place where a person interested in attending a CMT meeting may go for purposes of attending such meeting.

B. "Attend" means having access to the communications media technology network being used to conduct a meeting, or being used to take evidence, testimony or argument relevant in any issue being considered at a meeting.

C. "CMT meeting" means a meeting that is conducted by means of or in conjunction with communications media technology.

D. "Communications media technology" means the electronic transmission of printed matter, audio, full-motion video, freeze frame video, compressed video, and digital video by any method available.

E. "In conjunction with communications media technology" means that CMT access is being provided to a meeting otherwise being held with the collective, physical presence of the members of the Board in one place.

F. "By means of communication media technology" means that a meeting is being conducted entirely by means of communications media technology and that the members of the Board conducting such meeting may not be collectively, physically together in one place.

2. Nothing in this rule shall be construed to permit the District to conduct any meeting otherwise subject to the provisions of Section 286.011, Florida Statutes, by means of communications media technology without making provision for the attendance at that meeting or workshop of any member of the public who desires to attend.

3. The District may not limit the points of access provided to the public to places not normally open to the public. The District shall provide at least one access point in a location which is ordinarily open to the public.

4. No meeting shall be conducted entirely by means of communications media technology if the available technology is insufficient to permit all interested persons to attend. If, during the course of a CMT meeting, technical problems develop with the communications network that prevent interested persons from attending, the District shall terminate the meeting until such problems have been corrected.

5. Notice of a CMT meeting shall be in the same manner as a meeting without CMT. The notice shall plainly state that such a meeting is to be conducted by means of or in conjunction with CMT and identify the type of CMT to be used. The notice shall also describe how interested persons may attend, and include the address or addresses of all access points. Specific Authority: 190.011(5), 190.011(15), 120.53(1)(d); Ch. 189, F.S. Law Implemented: 190.007(l), 190.008, 120.53(1)(d), 286.0105, 120.54(l)

A-1.05 Consultants' Competitive Negotiations Act.

A. Applicability.

Pursuant to Section 190.033(2), Florida Statutes, the provisions of Section 287.055, Florida Statutes apply to contracts for architecture, engineering, landscape architecture or registered land surveying and mapping services ("Professional Services").

1. "District Representative" means the person or group designated by the Board of Supervisors to administer the solicitation process. The District Representative may be the chairperson, the Board, any member or committee of the Board, District Counsel, District Manager, or any other person.

2. "Emergency contract" is a contract necessitated by a sudden unexpected turn of events (e.g., acts of God, riot, fires, floods, hurricanes, accidents or any circumstances or cause beyond the control of the Board in the normal conduct of its business) where the Board finds that the delay incident to competitive solicitation would be detrimental to the interests of the District.

B. Qualifying Procedures.

In order to be eligible to submit a proposal for Professional Services, a firm or individual must, at the time of receipt of submittal to the District :

1. Hold all required applicable city, county and state professional license(s) and certifications in good standing.
2. Hold current occupational licenses or business tax receipts in Collier County.
3. Hold all required applicable federal licenses and certifications in good standing.
4. If the bidder/proposer is a corporation or other legal entity, possess and maintain a current and active status as such legal entity and, if organized and established in another state other than Florida be authorized to do business in

Florida in accordance with Florida law.

5. Meet any other prequalification requirements set forth in the project, bid or proposal specifications.

Proof and evidence of compliance with these requirements shall be submitted with the bid or proposal.

C. Public Announcement

Prior to a public announcement that Professional Services are required, the Board shall identify, if applicable, the project as meeting the threshold requirement. Except in cases of valid public emergencies, the District shall announce each occasion when Professional Services are required or desired by publishing a notice providing a general description of the project or the services desired and the method for interested consultants to apply for consideration. The notice shall appear in at least one newspaper of general circulation in the District and in such other places as the District deems appropriate. The District may maintain lists of persons interested in receiving such notices. Persons who, within the previous one (1) year, provided their name and address to the District office, in writing, for inclusion on the list, shall receive notices by mail. The Board has the right to reject any and all proposals, and such reservation shall be included in the public announcement. Proposers not receiving a contract award shall not be entitled to recover from the District any costs of proposal preparation or submittal.

D. Competitive Selection.

1. The Board shall review and evaluate the data submitted in response to the notice described above with respect to qualifications and performance ability, as well as any statements of qualifications on file. The District Representative shall conduct discussions with, and the Board may require public presentation by no less than three firms regarding their qualifications, approach to the project, and ability to furnish the required service.

2. The Board shall, following the review and/or public presentation, select and list not less than three firms, in order of preference, deemed to be the most highly capable and qualified to perform the required Professional Services, after considering these and other appropriate criteria:

- A. The ability and adequacy of the professional personnel.
- B. Past performance for the District and in other professional employment settings.
- C. Willingness to meet time and budget requirements.
- D. Geographic location of the firm's headquarters or office in relation to the District.

- E. Recent, current and projected workloads of the proposer.
- F. Whether the firm is a certified minority business enterprise.
- G. Volume of work previously awarded by the District to the proposer.

Nothing in these rules shall prevent the District from evaluating and eventually selecting a Professional Services provider in the event that less than three responses, including responses indicating a desire not to submit a formal proposal on a given project, are received.

3. If the selection process is administered by any person other than the full Board, the selection made will be presented to the full Board with a written recommendation that competitive negotiations be instituted with the selected firms in order of preference listed.

E. Competitive Negotiations.

1. After the Board has authorized the beginning of competitive negotiations, the District Representative shall begin such negotiations with the firm listed as most qualified to perform the required Professional Services, in an attempt to arrive at an agreed upon compensation which is deemed to be fair, competitive and reasonable.

2. Should the District Representative be unable to negotiate a satisfactory agreement with the firm determined to be the most qualified at a price deemed by the District to be fair, competitive and reasonable, within 10 business days unless modified by the Board, negotiations with that firm shall be terminated and the District Representative shall immediately begin negotiations with the second most qualified firm. If a satisfactory agreement with the second firm cannot be reached within 10 business days unless modified by the Board, those negotiations shall be terminated and negotiations with the third most qualified firm shall be undertaken.

3. Should the District Representative be unable to negotiate a satisfactory agreement with any of the selected firms within 30 business days unless modified by the Board, additional firms shall be selected by the District, in order of their competence and qualifications. Negotiations shall continue, beginning with the first-named firm on the list, until an agreement is reached or the list of firms is exhausted.

F. Emergency Contract.

In cases of valid public emergencies certified by the District Manager to the Board, the District, through its District Manager, may enter into an emergency contract for Professional Services without complying with these rules. The fact that an emergency contract has occurred or is necessary shall be noted in the minutes of the next Board meeting and ratified by the Board.

Specific Authority: 190.011(5), 287.055(3)(d)

Law Implemented: 190.011(3), 287.055, 190.011(2), 190.033

A-1 .06 Procedure for Contracting For Maintenance Services

A. Scope.

All contracts for maintenance services for any District facility or project exceeding the threshold amount provided in Section 287.017, Florida Statutes for CATEGORY FOUR shall be made by competitive solicitation. The maintenance of District facilities or projects may involve the purchase of contractual services and/or goods, supplies or materials as defined in Section A-1.08. Where a contract for such maintenance services includes goods, supplies or materials, the District may, in its sole discretion, award the contract according to the rules in this subsection in lieu of separately bidding for maintenance, goods, supplies or materials. However, a project shall not be divided solely in order to avoid the threshold bidding requirements.

B. Definitions for this section:

1. "District Representative" means the person or group designated by the Board of Supervisors to administer the solicitation process. The District Representative may be the chairperson, the Board, any member or committee of the Board, District Counsel, District Manager, or any other person.
2. "Emergency contract" is a contract necessitated by a sudden unexpected turn of events (e.g., acts of God, riot, fires, floods, hurricanes, accidents or any circumstances or cause beyond the control of the Board in the normal conduct of its business) where the Board finds that the delay incident to competitive solicitation would be detrimental to the interests of the District.
3. "Invitation to Bid" is a solicitation for sealed bids with the title, date and hour of the public bid opening designated specifically. It includes a description of the services sought, applicable terms and conditions, evaluation criteria, including but not limited to price, and provides for a manual signature of an authorized representative.
4. "Request for Proposal" is a solicitation for sealed proposals with the title, date and hour of the public opening designated and requiring the manual signature of an authorized representative. It provides a statement for services sought, applicable terms and conditions, and evaluation criteria, including but not limited to price.

5. "Responsive bid or proposal" means a bid or proposal which conforms in all material respects to the specifications and conditions in the invitation to bid or request for proposals and these rules, and whose cost components are appropriately balanced. A bid or proposal is not responsive if the person or firm submitting the bid or proposal fails to meet any requirement relating to the qualifications, financial stability, or licensing of the bidder or proposer.

6. "Lowest, most responsive, responsible and best bid or proposal" means, in the sole discretion of the Board, the lowest cost bid or proposal that is: (A) submitted by a competent, responsible person or firm capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure full performance and timely completion; and, (B) most responsive to the invitation to bid or request for proposals, as determined by the Board. Minor variations in the bid may be waived by the Board. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified after opening.

C. Procedure.

The following procedure shall be followed:

1. The Board shall cause its staff to prepare a notice of invitation to bid or request for proposals, as appropriate.

2. Notice of invitation to bid or request for proposals shall be advertised at least once in a newspaper of general circulation in the District. The notice shall allow at least seven (7) days for submittal of bids or proposals unless the Board, for good cause, determines a shorter period of time is appropriate. Prior to the submittal date, to assure full understanding of the responsiveness to the solicitation requirements, discussions may be held with the District Representative by qualified offerers. The offerers shall be accorded fair and equal treatment prior to the submittal date with respect to any opportunity for discussion and revision of proposals or bids.

3. The District may maintain a list of persons interested in receiving notices of invitations to bid or requests for proposals. Persons who, within the previous one (1) year, provided their name and address to the District office, in writing, for inclusion on the list, shall receive notices by mail.

4. Bids and proposals shall be opened at the time and place noted on the invitation to bid and request for proposals. Bids and proposals shall be evaluated in accordance with the invitation or request and these rules.

5. If only one response to an invitation to bid or request for proposals is received, the District may proceed with the procurement for maintenance services. If no

response to an invitation to bid or request for proposals is received, the District may take whatever steps are reasonably necessary in order to proceed with the procurement of maintenance services.

6. In determining the lowest, most responsive, responsible and best bid or proposal, the Board may consider, in addition to factors described in the invitation to bid or request for proposals, the following:

- A. The ability and adequacy of the professional personnel.
- B. Past performance for the District and in other professional employment settings.
- C. Willingness to meet time and budget requirements.
- D. Geographic location of the firm headquarters or office in relation to the District.
- E. Recent, current and projected workloads of the bidder or proposer.
- F. Whether the firm is a certified minority business enterprise.
- G. Volume of work previously awarded by the District to the bidder or proposer.
- H. Whether the cost components of the bid submittal or proposal are appropriately balanced.

7. The Board has the right to reject any or all bids or proposals and such reservation shall be included in all solicitations and advertisements. In the event the bids or proposals exceed the amount of funds available to or allocated by the District for said purpose, the bids and proposals may be rejected. Bidders and proposers not receiving a contract award shall not be entitled to recover from the District any costs of bid or proposal preparation or submittal.

8. The lowest, most responsive, responsible and best bid or proposal most advantageous to the District, as appropriate, shall be accepted. The Board may require bidders and proposers to furnish performance and/or other bonds with a responsible surety approved by the Board.

D. Notice.

Notice of award or intent to award a contract, including the rejection of some or all bids or proposals, shall be provided in writing to all bidders and proposers by facsimile transmittal, electronic transmittal, United States Mail or by hand delivery.

E. Contract Renewal.

Renewal of a contract for maintenance services shall be in writing and shall be subject to the same terms and conditions set forth in the initial contract. Renewal shall be contingent upon satisfactory performance evaluations by the District. The costs of any contemplated renewals shall be included in the invitation to bid or request for proposals and in all events contracts shall not be renewed for more than two years unless competitively procured.

F. Contract Manager and Contract Administrator.

The Board may designate a representative to function as contract manager, who shall be responsible for enforcing performance of the contract terms and conditions and serve as a liaison with the contractor. The Board may also designate a representative to function as contract administrator, who shall be responsible for maintaining all contract files and financial information. One person may serve as both contract manager and administrator.

G. Emergency Contract

In cases of valid public emergencies certified by the District Manager to the Board, the District, through its District Manager, may enter into an emergency contract for maintenance services without complying with these rules. The fact that an emergency contract has occurred or is necessary shall be noted in the minutes of the next Board meeting and ratified by the Board.

Specific Authority: 190.011(5)

Law Implemented: 190.011(3), 190.033

A-1 .07 Procedure for Contracting For Other Services

Applicability

Contracts for the following services shall be subject to competitive solicitation utilizing the process and procedures outlined in Section A-1.06:

1. Security and access control.
2. Assessment Roll preparation.

Contracts for all other services shall not be subject to the competitive solicitation process unless:

1. otherwise required by law [i.e. external auditors retained to perform annual audit, see Section 218.391, F.S.], and then in accordance with the required procedures; or,
2. the Board affirmatively directs that a particular service shall be competitively solicited, in which event the District shall utilize the competitive solicitation process and procedures outlined in either Section A-1.06.

Specific Authority: 190.011(5)

Law Implemented: 190.011(3), 190.033

A-1.08 Purchase of Goods, Supplies or Materials.

A. Scope.

All purchases of goods, supplies or materials threshold amount provided in Section 287.017, Florida Statutes for CATEGORY FOUR shall be purchased under the terms of these rules. Contracts for purchases of goods, supplies, or materials shall not be divided solely in order to avoid the requirements of these rules. "Goods, supplies and materials" do not include printing, insurance, advertising or legal notices.

B. Definitions.

1. "District Representative" means the person or group designated by the Board of Supervisors to administer the solicitation process. The District Representative may be the chairperson, the Board, any member or committee of the Board, District Counsel, District Manager, or any other person.

2. "Emergency purchase" means a purchase necessitated by a sudden unexpected turn of events (e.g., acts of God, riot, fires, floods, hurricanes, accidents, or any circumstances or cause beyond the control of the Board in the normal conduct of its business), where the Board finds that the delay incident to competitive solicitation would be detrimental to the interests of the District.

3. "Invitation to Bid" is a solicitation for sealed bids with the title, date and hour of the public bid opening designated specifically and defining the commodity involved. It includes printed instructions prescribing conditions for bidding, evaluation criteria, and provides for a manual signature of an authorized representative.

4. "Lowest, most responsive, responsible and best bid or proposal" means, in the sole discretion of the Board, the lowest cost bid or proposal that is: (A) submitted by a competent, responsible person or firm capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure full performance and timely completion; and, (B) most responsive to the invitation to bid or request for proposals, as determined by the Board. Minor variations in the bid may be waived by the Board. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified after opening.

5. "Purchase" means acquisition by sale. It does not include transfer, sale or exchange of goods, supplies or materials between the District and any federal, state regional or local governmental entity or political subdivision of the state, including special districts, either independent or dependent. It does not include the acquisition by rent, lease, lease/purchase or

installment sale.

6. "Request for Proposals" is a solicitation for sealed proposals with the title, date and hour of the public opening designated and requiring the manual signature of an authorized representative. It may provide general information, applicable laws and rules, statement of work, functional or general specifications, proposal instructions, work detail analysis and evaluation criteria as deemed appropriate by the District Representative.

7. "Responsive bid or proposal" means a bid or proposal which conforms in all material respects, to the specifications and conditions in the invitation to bid or request for proposals and these rules; and whose cost components are appropriately balanced. A bid or proposal is not responsive if the person or firm submitting the bid fails to meet any requirement relating to the Lowest, most responsive, responsible and best bid or proposal" means, in the sole discretion of the Board, the lowest cost bid or proposal that is: (A) submitted by a competent, responsible person or firm capable and qualified in all respects to perform fully the contract requirements and with the integrity and reliability to assure full performance and timely completion; and, (B) most responsive to the invitation to bid or request for proposals, as determined by the Board. Minor variations in the bid may be waived by the Board. Mistakes in arithmetic extension of pricing may be corrected by the Board. Bids and proposals may not be modified after opening.

C. Procedure.

When a purchase of goods, supplies or materials is within the scope of this rule, the following is appropriate:

1. The Board shall cause its staff to prepare a notice of invitation to bid or request for proposals, as appropriate.

2. Notice of invitation to bid or request for proposal shall be advertised at least once in a newspaper of general circulation in the County and in the District. The notice shall allow at least seven days for submittal of bids or proposals, unless the Board, for good cause, determines a shorter period of time is appropriate. Prior to the submittal date, to assure full understanding of the responsiveness to the solicitation requirements, discussions may be held with the District Representative by qualified offerers. The offerors shall be accorded fair and equal treatment prior to the submittal date with respect to any opportunity for discussion and revision of proposals or bids.

3. The District may maintain lists of persons interested in receiving notices of invitations to bid or requests for proposals. Persons who, within the previous one (1) year, provided their name and address to the District office, in writing, for inclusion on the list, shall receive notices by mail.

4. Bids and proposals shall be opened at the time and place noted on the invitation to bid or request for proposals. Bids and proposals shall be evaluated in accordance with the invitation or request and these rules.

5. The lowest, most responsive, responsible and best bid or proposal most advantageous to the District shall be accepted; however, the Board shall have the right to reject all bids, either because they are too high or because the Board determines it is in the best interests of the District. In the event the bids or proposals exceed the amount of funds available to or allocated by the District, the bids and proposals may be rejected. The Board may require bidders and proposers to furnish performance and/or other bonds with a responsible surety to be approved by the Board. Bidders and proposers not receiving a contract award shall not be entitled to recover from the District any costs of bid or proposal preparation or submittal.

6. Notice of award or intent to award, including rejection of some or all bids or proposals, shall be provided in writing to all bidders by facsimile transmittal, electronic transmittal, United States Mail or by hand delivery.

D. Limited Response

If only one response to an invitation to bid or request for proposals is received, the District may proceed with the procurement for goods, supplies or materials. If no response to an invitation to bid or request for proposals is received, the District may take whatever steps are reasonably necessary in order to proceed with the procurement of goods, supplies or materials.

E. Emergency Contract.

In cases of valid public emergencies certified by the District Manager to the Board, when the situation warrants an emergency purchase, the District, through its District Manager, may enter into an emergency contract for goods, supplies or materials without complying with these rules. The fact that an emergency contract has occurred or is necessary shall be noted in the minutes of the next Board meeting and ratified by the Board.

F. "Piggybacking".

Nothing in this section shall preclude the "piggybacking" of the purchase of goods, supplies or materials pursuant to state or other governmental agency contract, to the extent authorized by law.

Specific Authority: 190.011(5)

Law Implemented: 190.033

A-1.09 Contracts for Construction of Authorized Projects

Scope.

All contracts or agreements for the construction of any project authorized by Chapter 190, Florida Statutes, shall be pursuant to the requirements of state law.

Specific Authority: 190.011(5)

Law Implemented: 190.033

A-1.10 Bid or Proposal Protests

Unless otherwise provided herein, the resolution of any protests regarding the decision to solicit or award a contract for a bid or proposal shall be in accordance with this section. The purpose of this section is to accommodate legitimate written, timely filed protests concerning formal competitive invitations and recommended contract awards.

A. Notice.

The District shall give all bidders and proposers that timely submitted a bid or proposal written notice of its decision to award or intent to award a contract, including rejection of same or all bids or proposals, by facsimile transmittal, electronic transmittal, United States Mail or by hand delivery. The notice shall include the following statement: "Failure to file a written notice of intent to protest or a notice of protest within the times prescribed herein, shall constitute a waiver of all proceedings."

B. Filing.

1. Any actual or prospective bidder or respondent to an invitation for bids or a request for proposals, who alleges to be aggrieved in connection with the solicitation or award of a contract, (hereafter referred to as "the protesting party") may protest in writing to the District Manager as the recipient of any and all notices of intent to protest and all formal protests [with a copy to District Counsel].

2. All formal protests with respect to an invitation for bids or a request for proposals shall be submitted to the District Manager in writing not less than four (4) hours prior to the opening of bids or the closing time for acceptance of proposals. The District Manager, in consultation with the District Counsel, shall have the authority to address all such timely filed protests received and to determine whether postponement of the bid opening or proposal

closing time is appropriate. The District Manager's decision shall be considered final and conclusive unless the protesting party files a subsequent formal protest of the recommended contract award as described hereunder.

3. Any actual bidder or respondent to an invitation for bids or a request for proposals who desires to formally protest a recommended contract award shall file a written notice of intent to protest to the District Manager within two (2) calendar days, excluding weekends and District holidays, from the date of the notification of the recommended award and shall file a formal written protest with the District Manager [with a copy to District Counsel] within five (5) calendar days, excluding weekends and District holidays, from the date that a timely filed notice of intent to protest is received by the District Manager.

4. The formal written protest shall contain, but not be limited to the following information:

- A. the bid or proposal number and title.
- B. the name and address of the protesting party.
- C. a statement of disputed issues of material fact. If there are no disputed material facts, the written protest must so indicate.
- D. a concise statement of the ultimate facts alleged and of any relevant rules, regulations, statutes, case law and constitutional provisions entitling the protesting party to relief.
- E. A demand for the relief to which the protesting party deems himself entitled.
- F. Such other information as the protesting party deems to be material to the issue.

5. Failure to timely and properly file a written notice of protest or failure to timely and properly file a formal written protest shall constitute a waiver of all further proceedings. Once filed, no supplementing of the notice of intent to protest or formal written protest shall be permitted.

C. Award Process.

Upon receipt of a properly filed notice of protest which has been timely filed, the District shall stop the solicitation process or the contract and award process until the subject of the protest is resolved. However, if the District sets forth in writing particular facts and circumstances which require the continuance of the process without delay in order to avoid an immediate and serious danger to the public health, safety, or welfare, the award process may continue.

D. District Manager Decision

The District Manager shall review the merits of each timely filed written protest [for which a timely filed written notice of intent of intent to protest was filed] and in consultation with the District Counsel; issue a decision in writing within ten (10) business days stating the reasons for the decision and the protesting party's rights of appeal under this Section. Said decision shall be in writing and shall be furnished to the protesting party by facsimile transmittal, electronic transmittal, United States Mail or by hand delivery. The decision of the District Manager shall be final and conclusive unless the protesting party timely and properly files a subsequent written objection with the District Manager [with a copy to District Counsel] within two (2) calendar days, excluding weekends and District holidays, from the date of receipt of the decision.

E. Hearing By Board of Supervisors

In the event of the timely filing of an objection pursuant to subsection D above, and in the event that the protest cannot be resolved by mutual consent, the matter will be referred to the Board of Supervisors for final resolution. Neither the protesting party, nor anyone on their behalf, including their agents or their representatives shall have any private contact or discussions with individual Supervisors regarding the protest prior to the protest being heard or reviewed by the Board of Supervisors unless requested in writing to do so by the District Manager. At the hearing, the chairperson shall conduct the hearing, with the assistance of the District Manager, District Counsel, or other person as designated by the chairperson.

1. The person conducting the hearing shall:
 - A. Administer oaths and affirmations;
 - B. Regulate the course of the hearing, including any prehearing matters.
2. The Board shall:
 - A. Rule upon offers of proof and receive relevant evidence.
 - B. Enter orders.
 - C. Make or receive offers of settlement, stipulation, and adjustment.
3. At the conclusion of the hearing the Board shall decide the matter and render a written decision.

F. Waiver

Failure to file a timely written notice of intent to file protest or failure to file a timely, complete formal protest within the time and manner prescribed herein shall constitute a complete waiver and bar of the right to protest by any protesting party as defined by subsection A of this section.

G. Mutual Agreement

The District, on its own initiative or upon the request of a protester, may provide an opportunity to resolve the protest by mutual agreement.

Specific Authority : 120.53 (5), 190.011 (5)

A-1.11 Effective Date

These rules shall be effective immediately upon adoption, as evidenced by a Resolution of the Board of Supervisors.

**SECTION 190.033, FLORIDA
STATUTES**

EXHIBIT "B"

The 2009 Florida Statutes

[Title XIII](#)[Chapter 190](#)[View Entire Chapter](#)

PLANNING AND DEVELOPMENT COMMUNITY DEVELOPMENT DISTRICTS

190.033 Bids required.--

(1) No contract shall be let by the board for any goods, supplies, or materials to be purchased when the amount thereof to be paid by the district shall exceed the amount provided in s. [287.017](#) for category four, unless notice of bids or other competitive solicitation, including requests for proposals or qualifications, is advertised once in a newspaper in general circulation in the county and in the district. Any board seeking to construct or improve a public building, structure, or other public works shall comply with the bidding procedures of s. [255.20](#) and other applicable general law. In each case, the bid of the lowest responsive and responsible bidder shall be accepted unless all bids are rejected because the bids are too high, or the board determines it is in the best interests of the district to reject all bids. In each case in which requests for proposals, qualifications, or other competitive solicitations are used, the district shall determine which response is most advantageous for the district and award the contract to that proposer. The board may require the bidders or proposers to furnish bond with a responsible surety to be approved by the board. If the district does not receive a response to its competitive solicitation, the district may proceed to purchase such goods, supplies, materials, or construction services in the manner it deems in the best interests of the district. Nothing in this section shall prevent the board from undertaking and performing the construction, operation, and maintenance of any project or facility authorized by this act by the employment of labor, material, and machinery.

(2) The provisions of the Consultants' Competitive Negotiation Act, s. [287.055](#), apply to contracts for engineering, architecture, landscape architecture, or registered surveying and mapping services let by the board.

(3) Contracts for maintenance services for any district facility or project shall be subject to competitive solicitation requirements when the amount thereof to be paid by the district exceeds the amount provided in s. [287.017](#) for category four. The district shall adopt rules, policies, or procedures establishing competitive solicitation procedures for maintenance services. Contracts for other services shall not be subject to competitive solicitation unless the district adopts a rule, policy, or procedure applying competitive solicitation procedures to said contracts.

History.--s. 2, ch. 80-407; s. 9, ch. 91-308; s. 113, ch. 94-119; s. 42, ch. 99-378; s. 12, ch. 2007-160.