1-C-11 | PURCHASING MEETINGS

a. Application of Sunshine Law

A committee appointed by a public college's purchasing director to consider proposals submitted by contractors was held to be subject to the Sunshine Law because its function was to "weed through the various proposals, to determine which were acceptable and to rank them accordingly." Silver Express Company v. District Board of Lower Tribunal Trustees, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997). Accord Inf. Op. to Lewis, March 15, 1999 (panels established by state agency to create requests for proposals and evaluate vendor responses are subject to the Sunshine Law), and AGO 80-51 (Sunshine Law applicable to city selection committee screening proposals from consultants and audit firms). And see Leach-Wells v. City of Bradenton, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999) (selection committee created by city council to evaluate proposals violated the Sunshine Law when the city clerk unilaterally ranked the proposals based on the committee members' individual written evaluations; the court held that "the short-listing was formal action that was required to be taken at a public meeting"); and Schweickert v. Citrus County Port Authority, No. 12-CA-1339 (Fla. 5th Cir. Ct. September 30, 2013), , available online in the Cases database at the open government site at myfloridalegal.com (ad hoc committee appointed by board violated the Sunshine Law when the members submitted individual written evaluations of the proposals to the staff, which then compiled the scores and ranked the proposals for submission to the board; the committee should have ranked the proposals at a public meeting). Compare Carlson v. Florida Department of Revenue, 227 So. 3d 1261 (Fla. 1st DCA 2017) (state agency "Evaluation Team" members who individually evaluated the competitors' proposals, individually assigned scores, and individually submitted their scores for consideration by the "Negotiation Team" were not required to conduct a public meeting to perform these functions because "the Evaluation Team [or more accurately, its individual members] neither ranked the competitors nor excluded any from consideration of the ultimate decider, the Negotiation Team").

In Port Everglades Authority v. International Longshoremen's Association, Local 1922-1, 652 So. 2d 1169, 1170 (Fla. 4th DCA 1995), the court ruled that a board's selection and negotiation committee violated the Sunshine Law when competing bidders were requested to excuse themselves from the public committee meeting during presentations by competitors. Cf. Pinellas County School Board v. Suncam, Inc., 829 So. 2d 989 (Fla. 2d DCA 2002) (school board violated the Sunshine Law when it refused to permit videotaping of a public meeting held to evaluate general contractor construction proposals). See now s. 286.0113(2)(b), F.S., discussed below, providing an exemption from the Sunshine Law for protions of certain competitive solicitation meetings and requiring a complete recording of the exempt portions.

b. Recording Requirement for Exempt Meetings

Section 286.0113(2)(b)1. and 2., F.S., provide that any portion of a meeting at which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation, is exempt from the Sunshine Law. In addition, any portion of a team meeting at which negotiation strategies are discussed is also exempt. See Carlson v. Florida Department of Revenue, 227 So. 3d 1261 (Fla. 1st DCA 2017), in which the court rejected the agency’s argument that the exemption applies to the entirety of any meeting at which negotiation strategies are discussed, even those portions that have nothing to do with procurement. However, the court also said that “the exempted ‘portion’ includes not only the negotiation-strategies discussions themselves, but also meeting activities inextricably intertwined with those discussions.” Id. at 1269. Cf. s. 255.0518, F.S. (sealed bids received pursuant to a competitive solicitation for construction or repairs of a public building or public work must be opened at a public meeting conducted in compliance with the Sunshine Law).

The term “[c]ompetitive solicitation” means “the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement.” Section 286.0113(2)(a)1., F.S.

The term “team” means a group of members established by an agency for the purpose of conducting negotiations as part of a competitive solicitation. Section 286.0113(2)(a)2., F.S.

A complete recording must be made of the exempt meeting; no portion of the exempt meeting may be held off the record. Section 286.0113(2)(c), F.S. Cf. AGO 10-42 (where statute required that closed proceedings of state committee be recorded and that no portion be off the record, audio recording of the proceedings "would appear to be the most expedient and cost-efficient manner to ensure that all discussion is recorded").

The recording and any records presented at the exempt meeting are exempt from public disclosure until the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier. Section 286.0113(2) (c)1. and 2., F.S. And see s. 286.0113(2)(c)3., F.S. (exempt status of recording if the agency rejects all bids, proposals, or replies, and concurrently provides notice of its intent to reissue a competitive solicitation).

(Florida Office of the Attorney General // © March 9, 2023)