

**MINUTES OF WORKSHOP
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT #1 &
FIDDLER'S CREEK COMMUNITY DEVELOPMENT DISTRICT #2**

A Joint Workshop of the Boards of Supervisors of the Fiddler's Creek Community Development District #1 and Fiddler's Creek Community Development District #2 was held on **Wednesday, April 28, 2010 at 10:00 a.m.**, at the **Fiddler's Creek Club and Spa, 3470 Club Center Boulevard, Naples, Florida 34114.**

Present at the workshop were:

For Fiddler's Creek CDD #1:

Phillip Brougham	Chairman
James Curland	Vice Chairman
Jim Schutt	Assistant Secretary
James Robertson	Assistant Secretary
Robert Slater	Assistant Secretary

For Fiddler's Creek CDD #2:

James Robertson	Chair
Manuel Correia	Vice Chair
Victoria DiNardo	Assistant Secretary
Gretchen Scott	Assistant Secretary
Peggy Schmitt	Assistant Secretary

Also present were:

Chuck Adams	District Manager
Cleo Crismond	Operations Manager
Tony Pires	District Counsel
Ron Albeit	Fiddler's Creek Foundation

FIRST ORDER OF BUSINESS

Call to Order/Roll Call

Mr. Adams called the workshop to order at 10:40 a.m., and noted, for the record, that all CDD #1 and CDD #2 Supervisors were present.

Mr. Brougham suggested public input only be allowed at the beginning of the workshop.

On MOTION for Fiddler's Creek CDD #1 by Mr. Brougham and seconded by Mr. Robertson, with all in favor, allowing public input only at the beginning of the workshop was approved.

On MOTION for Fiddler's Creek CDD #2 by Mr. Robertson and seconded by Mr. Correia, with all in favor, allowing public input only at the beginning of the workshop was approved.

SECOND ORDER OF BUSINESS

Rules of Procedure

Mr. Albeit indicated the Rules of Procedure contain a provision for bidding out security access control services and he proposed that the Boards consider removing that as a mandatory competitive bid item. He noted, from previous meetings and discussion by Mr. Pires, it does not appear to be a legal requirement. Mr. Albeit suggested the Districts could save money by doing so because, as contractors must bid out several years, costs are speculated; the actual costs may be less, from year to year. He proposed that Fiddler's Creek Foundation could bill the Districts, based on actual costs, rather than contract amounts. He pointed out that the Districts would have saved approximately \$80,000 last year, by paying the actual costs, rather than the contracted amount. Discussion ensued regarding these suggestions, the current contract and future options.

Mr. Pires presented a memorandum regarding the Rules of Procedure and suggested changes. He indicated the primary issues raised in prior Board discussions related to whether the Rules should limit or restrict contact between a Board Member and a party that performs services. The other issue relates to whether the Rules should require a competitive solicitation process for certain types of services, where competitive solicitation is not otherwise required by Florida Law.

1. "No Contact" Provision/Rule

Mr. Pires' memo indicated the Rules do not currently contain a "No Contact" provision or rule. At the present time, when a solicitation is made for District services, utilizing a formal competitive solicitation or bidding process, there is no language within the bid or proposal package prohibiting contact between the bidder/proposer and Board Members. Only in the case of a protest of award of contract, is contact between the protesting party and the Supervisors, outside of a hearing, prohibited by the current Rules of Procedure.

Mr. Pires' recommended the Rules of Procedure be amended to adopt a "No Contact" policy providing that, in all instances when the District competitively solicits bids or proposals, all contact or communication between Board Members and any party and its agents or representatives that provide such services 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. Mr. Pires stated the Boards may also wish to consider including a statement that any vendor violating this policy shall be deemed disqualified from bidding; and, should the contact come to light after the bid is awarded and the entity was the successful bidder, the Board reserves the right to cancel any contract awarded.

Discussion ensued regarding the level of contact that should or should not be allowed and the manner of the contact. Mr. Adams clarified that the discussion and proposed restriction is related to contact during the bidding process, not once a contractor is in place.

Mr. Schutt reminded the Boards this issue came about because he contacted a vendor, after the bids came in, to see why that vendor chose not to bid on the contract. He clarified, in contacting that vendor, he was not dealing with a bidder, nor was he soliciting a bid, he was simply asking why they did not submit a bid. Mr. Schutt indicated that Mr. Correia took umbrage with him making that contact. He indicated this brought about these discussions about contact with a bidder or potential bidder. Mr. Schutt indicated the problem becomes, there are all kinds of potential bidders who they do not know about, making it a nightmare to control; if a Board Member ever spoke to contractor X, then would that contractor be eliminated from bidding. Mr. Schutt pointed out that Mr. Albeit initiated contact with at least two (2) Supervisors, when Fiddler's Creek Foundation was not initially awarded the contract. Mr. Schutt noted that, under Mr. Pires' suggested changes, it would appear that Mr. Albeit's action would automatically void the contract. He concluded there are many things to determine.

Mr. Brougham outlined the current bid process, noting he feels it is a solid process. He felt, relating to the bid process, the Boards may wish to add a few more restrictions and disclosure requirements by Supervisors. Mr. Brougham suggested, once the bid process begins, interaction should be inhibited or prohibited, individually, between Supervisors and any bidders who have elected to receive the bid package. He felt, if any Supervisor is approached by anyone who has received the bid package, the Supervisor should be required to not respond and disclose that contact at the next Board meeting. Mr. Adams suggested modifying the restrictions to

include anyone who is in the business of providing the services that are currently out for a bid request and, if a Supervisor is contacted, he/she should refer them to the District Manager.

A Board Member asked if the current bid packages identify a restriction on contacting Supervisors. Mr. Adams indicated there is only a provision restricting contact in a protest situation, because the Districts have yet to adopt a policy.

The consensus was to revise the Rules of Procedure, adding language such that future bid packages state lobbying by any contractor is strictly prohibited, from the date of advertisement to the date the contract is awarded. Any contact must be brought before the Boards for a determination of whether the contractor is disqualified. The language will restrict Supervisor contact with anyone who is in the business of providing the services currently out for bid.

Mr. Pires indicated the Boards 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 ensure 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, the Supervisor is required to immediately direct such vendor to the District Manager. Mr. Adams felt the provision should commence from the time Staff announces the bidding process, rather than prior to advertisement. A Board Member summarized, once Staff announces that an ad will be placed to solicit services, Supervisors should have no further contact with potential contractors, until the contract is awarded. Mr. Adams confirmed Staff will advise Supervisors when the bid process commences.

Mr. Adams confirmed that any changes to the Rules of Procedure will be presented to the Boards for approval, by resolution, at a regular meeting. He explained the process will also include a public hearing for rule making. A Board Member suggested including the proposed changes as a discussion item on the next agenda and, once the Boards are in agreement, then setting the public hearing for a subsequent meeting.

2. Procedure For Contracting For Services Not Required By Florida Law To Be Competitively Procured

Mr. Pires indicated that Section 190.033, F.S., requires that the Districts, in certain situations, competitively solicit or procure goods, materials and certain services. He noted that contracts for other services not listed in the statute, or elsewhere in the statutes, are not subject to competitive solicitation, unless the District has adopted a rule, policy or procedure applying competitive solicitation processes to those contracts. Mr. Pires indicated the Rules of Procedure

currently require security and access control services and assessment roll preparation to be competitively bid. He advised that the Boards have the discretion to add or remove services from the list; however, if the Boards remove a service from the list, it does not preclude them, in the future, from adopting a policy or procedure to utilize a competitive solicitation process, which can be as or less formal than as provided in the Rules.

3. Other Areas For Consideration Of Revising/Amending

Mr. Pires made the following additional suggestions:

A. Section A-1.02A

Consider additional language to Section A-102.A requiring that remaining Board Members endeavor and use their best efforts to fill any vacancy within 60 calendar days of the creation of the vacancy. He noted Florida statutes do not set forth a specific timeframe for filling vacancies.

Mr. Adams suggested including flexibility, in special circumstances; for example, in the event an election is in the near future, such as within six (6) months, the Board could choose to defer appointment within the 60 calendar day time period.

Mr. Adams indicated District Counsel will draft language for further discussion and consideration by the Boards.

B. Section A-1.03

Consider 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. Section A-1.04D

Consider adding a requirement that the Secretary also keep the minutes of any committees or subcommittees of the Boards.

D. Section A-1.04E

Consider adding the phrase "or email address" after "mailing address"

E. Section A-1.05

Dealing with the Consultants' Competitive Negotiations Act (CCNA), consider deleting the word "bid", "bidder" or "bids" throughout, as those terms are inapplicable in that context. Consider addition of language reference "study activity" consistent with the CCNA.

Mr. Schutt wished to discuss whether Supervisors can send email blasts or letters to their constituents seeking input on various issues. Mr. Schutt also wished to discuss the ramifications

of a Supervisor disseminating misleading or incorrect information to the constituents. For example, a Supervisor sent an email implying that there would be chaos if Fiddler's Creek Foundation was not awarded the security access contract. Furthermore, it included a statement that, with Fiddler's Creek Foundation, the costs are pass-through costs; however, today, Mr. Albeit indicated that Fiddler's Creek Foundation profited by \$80,000 on this year's contract. Mr. Pires suggested, if a Supervisor should receive information they believe to be incorrect or misleading, the Supervisor should contact the District Manager and request that the item be included on the upcoming Agenda.

******Discussion returned to Item 2.******

A Board Member pointed out that security and access control services accounts for ¼ of the Fiddler's Creek CDD #1 budget and felt taking it out of the competitive bid process is inappropriate. Mr. Brougham indicated, under the proposed revision, removing the item from the requirement of the competitive bid process does not mean it would never be bid, nor would it preclude the Boards from adopting a policy to utilize a competitive bid process, should they wish. The Board Member felt the current Board would never utilize the competitive bid process for security and access control services, if it were not required to do so.

Discussion ensued regarding whether assessment roll preparation and security and access control services should be removed from the competitive bid process requirement. Discussion took place regarding including not-to-exceed parameters, so that contractors would not have carte blanche.

Ms. DiNardo supported removing security and access control services from the competitive bid requirement, with the option to renegotiate, at the end of the current contract and, if necessary, go out to bid. Ms. Scott and Ms. Schmitt voiced support for removing the requirement, while keeping the options open. Mr. Robertson stated the consensus of CDD #2 is to remove the competitive bid requirement for security and access control services.

Mr. Adams advised the Boards that the proposed language will be presented at the May meeting for final revisions. Once the Boards are in agreement, he will proceed with advertisement for the Rules adoption public hearing at the June meeting.

THIRD ORDER OF BUSINESS

Adjournment

The workshop adjourned at 11:40 a.m.

**FIDDLER'S CREEK CDD #1 &
FIDDLER'S CREEK CDD #2**

April 28, 2010

Fiddler's Creek CDD #1


Secretary/Assistant Secretary


Chairman/Vice Chairman

Fiddler's Creek CDD #2


Secretary/Assistant Secretary


Chair/Vice Chair