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Statutory language requirements you do not want to miss!

Public entities enter into numerous contracts for goods and services and should be aware of required contractual language prescribed by Florida Statutes.



- Section 119.0701, Florida Statutes - Contracts; public records; request for contractor records; civil action.
- Section 287.133, Florida Statutes - Public Entity Crime; denial or revocation of the right to transact business with public entities.
- Section 287.135, Florida Statutes - Prohibition Against Contracting with Scrutinized Companies

Our Contract Oversight and Evaluations Division found instances where some public entities did not include language required by the Florida Statutes in contracts and/or solicitation documents. This information is provided to increase awareness of these requirements, where applicable.

Public Records and Private Contractors



Section 119.0701, Florida Statutes, provides that contracts for services between a public agency¹ and a contractor “acting on behalf of”² the agency must include a provision requiring the contractor to comply with public records laws. Specifically, the provision must require the contractor to:

- Keep and maintain public records required by the public agency to perform the service;

¹ For the purposes of section 119.0701, “public agency” means a state, county, district, authority, or municipal officer, or department, division, board, bureau, commission, or other separate unit of government created or established by law.

² When determining whether a private entity is acting on behalf of a public agency, the courts have relied on a “totality of factors” analysis. The factors include, but are not limited to, the level of public funding, whether the services contracted for are an integral part of the public agency’s decision-making process, whether the private entity is performing a governmental function or a function that the public agency otherwise would perform, and the extent of the public agency’s involvement with, regulation of, or control over the private entity. See, e.g., *News and Sun-Sentinel Co. v. Schwab, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

“Enhancing Public Trust in Government”

- Upon request from the public agency's custodian of public records, provide the public agency with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in chapter 119, Florida Statutes, or as otherwise provided by law;
- Ensure that exempt or confidential records are not disclosed except as authorized by law;
- Upon completion of the contract, either transfer, at no cost, to the public agency all public records in possession of the contractor and destroy duplicates of exempt or confidential and exempt records, or keep and maintain public records in compliance with all applicable requirements for retaining public records; and
- When providing records stored electronically to the public agency, provide such records in a format that is compatible with the agency's information technology systems.

Additionally, section 119.0701(2), requires that each contract for services must include the following statement, in substantially the following form, identifying the contact information of the public agency's custodian of public records in at least 14-point boldfaced type:

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (telephone number, e-mail address, and mailing address).

If a contractor does not comply with the public agency's request for records, the public agency shall enforce the contract provisions in accordance with the contract. This means not only the risk of termination or default, but also potential financial penalties.

Prohibitions Relating to Persons Convicted of Public Entity Crimes

Section 287.133(2)(a), Florida Statutes, states

A person or affiliate who has been placed on the convicted vendor list³ following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity⁴; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier, subcontractor, or consultant with any public entity; and may

³ The "convicted vendor list" refers to the list required to be kept by the Florida Department of Management Services. §287.133(1)(c), F.S.

⁴ Public entity" means the State of Florida, any of its departments or agencies, or any political subdivision. §287.133(1)(f), F.S.

not transact business with any public entity in excess of the threshold amount provided in s.287.017 for CATEGORY TWO⁵, for a period of 36 months following the date of being placed on the convicted vendor list.

Additionally, section 287.133(3)(a), states that all invitations to bid, requests for proposals, and invitations to negotiate and any contract documents, as defined in section 287.058, shall contain a statement informing persons of the prohibition against accepting bids, proposals, or replies from, awarding contracts to, or transacting business in excess of \$35,000 with any person or affiliate on the convicted vendor list.

Prohibition Against Contracting with Scrutinized Companies

Section 287.135(2) and (3) specifies prohibitions against contracting with scrutinized companies. A company is ineligible to, and may not, bid on, submit a proposal for, or enter into or renew a contract with an agency or local governmental entity for goods or services of:

- Any amount if the company is on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel, effective July 1, 2018;
- One million dollars or more if the company is on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List;
- One million dollars or more if the company is engaged in business operations in Cuba or Syria.

Additionally, any contract with an agency or local governmental entity for goods or services entered into or renewed on or after July 1, 2018, must contain a provision that allows for the termination of the contract at the option of the awarding body:

- for contracts of a million dollars or more, the company is found to have submitted a false certification that the company is not on the Scrutinized Companies with Activities in Sudan List, not on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, and is not engaged in business operations in Cuba or Syria;
- for contracts of a million dollars or more, the company has been placed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List; or been engaged in business operations in Cuba or Syria; or
- for a contract in any amount, is found to have been placed on the Scrutinized Companies that Boycott Israel List or engaged in a boycott of Israel.

Notwithstanding the contractual provisions allowing for termination of contracts, an agency or local governmental entity, on a case-by-case basis, may permit an ineligible

⁵ Currently \$35,000. §287.017(2), F.S.

scrutinized company to be eligible for, bid on, submit a proposal for, or enter into or renew a contract for goods or services if certain conditions specified in the statute are met, including a determination that the contract with the company is in the best interests of the state or local community and that certain public findings are made.

Suggestions

Public entities should review applicable statutory provisions associated with solicitations and contracts for goods and services to ensure compliance. Public entities should ensure that procurement personnel, managers, and/or administrators are adequately trained in the requirements of Florida law for Public Records, Public Entity Crimes, and Scrutinized Companies.



Review policies and procedures to ensure written guidance is available regarding the inclusion of the required language in the agency's solicitation documents and contracts, where applicable. Furthermore, public entities should seek guidance from their legal counsel to ensure compliance with applicable laws.