

1 **LELY COMMUNITY DEVELOPMENT DISTRICT**
2 **NAPLES, FLORIDA**
3 **Minutes of the Board of Supervisors Workshop**
4 **February 19, 2020**

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6 A workshop of the Supervisors of Lely Community Development District was held on
7 Wednesday, February 19, 2020 at 1:00 p.m. at the LCDD Maintenance Building.

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9 **SUPERVISORS PRESENT:** Gerry Campkin, Chairman
10 William Lee, Vice-Chairman
11 Harold Ousley, Treasurer
12 Kenneth Drum, Secretary
13 Ann Marie Bularzik, Supervisor, Assistant Secretary

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15 **ALSO PRESENT:** W. Neil Dorrill, Dorrill Management Group, Manager and
16 Assistant Secretary/Treasurer
17 Kevin Carter, Operations Manager
18 Tony Pires, District Counsel
19 Freddy Bowers, Director of Community Patrol

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23 **WORKSHOP – ADMINISTRATION RULES – PART 2**

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25 Mr. Pires reminded the Board that many of these rules were suggestions, and that the
26 Board had a lot of discretion as to what they wished to adopt.

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28 In Chapter 190 of the Statutes it speaks about constructing buildings, and states that the
29 Board, when seeking to construct or improve a public building, has to comply with the
30 bidding procedure outlined in another statute, as well as the Consultants Competitive
31 Negotiation Act. As far as maintenance services, it says that the District shall adopt
32 rules, policies or procedures establishing competitive solicitation procedures for
33 maintenance services. Shall means mandatory.

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35 Mr. Pires noted that a tremendous amount of discretion is vested in the Board as to
36 awarding public contracts on a competitive basis. In order to exercise that discretion, you
37 must have objective criteria. Otherwise, decisions can be construed as being arbitrary
38 and capricious.

39 A phrase often seen in this regard is lowest and most responsive bidder that is most
40 advantageous to the District. When reviewing bids, it must be determined if they are
41 responsible, responsive, competent, and is the most advantageous to the District.

1 *Lely Community Development District – Minutes*
2 *February 29, 2020*
3 *Page 2*

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5 One other aspect of this is the phrase indicating that if all bids are rejected, and the
6 District is going to reissue the bids, the numbers provided in those first bids can be kept
7 confidential and exempt for a period of time, no more than 12 months after the initial bid.
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9 9-105 is the Consultants Competitive Negotiation Act, and again, that requires
10 competitive solicitation, and there is a ranking system and the Board authorizes staff to
11 negotiate with the top ranked firms. If the negotiations don't resolve either a dollar
12 number or what the contract provides, you go to the next one on the list. This applies to
13 engineers, landscape architects, surveyors and mappers, but does not apply to attorneys,
14 district managers or auditors, as there is a separate statute for them.

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16 Mr. Pires referred to an emergency contract, which provides a mechanism in situations
17 such as Hurricane Irma. If a contractor, for instance, needed to be hired, the manager
18 could go ahead and do it, and then come back and ratify it with the Board.

19

20 A lot of the public qualifications come from the statutory scheme. Dr. Bularzik noted
21 that she did not see anything regarding requiring a contractor's liability insurance or
22 workman's comp policies. Mr. Pires noted that he could add those.

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24 Another section indicates that once the Board decides to go out for solicitation, no
25 member of the Board can have contact with any vendor. If the Board decides that they do
26 not want that provision, it can be deleted. It was asked if an association has a contract
27 with a company bidding, for example, a CDD contract, could a board member have a
28 discussion with residents about the association contract but not the CDD contract. Mr.
29 Pires noted that this issue could be carved out, and the no contact would only relate to the
30 CDD's bid.

31

32 During the presentation process or selection process, as a matter of courtesy some
33 professionals will step out of the room, but as a matter of law they can stay in the room.

34

35 Maintenance services is a similar process, but Mr. Pires felt what was important was
36 defining what constitutes a responsive bidder. This gives guidance to the contractor to
37 make sure that they have a responsive bid. The lowest, most responsible and responsive
38 and best bid was defined, indicating that they must be licensed, competent and responsive
39 to the proposal.

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5 The prequalification process involves those bidding to submit proposals to be on a list of
6 prequalified vendors. When the Board does go out to solicit proposals for a particular
7 type of work, they will only send them to those on the prequalified list. It is the Board's
8 decision as to whether they prefer to send it only to the listed vendors, or to everyone
9 who offers a particular service.

10 If something needs to be repaired, it is considered as maintenance, and vendors can be
11 prequalified. If it is a major change, then it would be more like a capital project,
12 Mr. Drum wondered if there would be a threshold with vendors that are on a retainer,
13 such as a District engineer, and you need them to do something in particular. Mr. Pires
14 advised that if a vendor is on a continuing contract, there can be supplemental task
15 authorizations and a continuing contract allows them to do several discrete, or separate,
16 projects as long as this study or activity does not exceed \$2,000,000, which is the
17 statutory threshold. For clarification, Mr. Pires indicated that management services,
18 access control, legal services and the like do not fall under this statute.

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20 Mr. Dorrill noted that the only formal, sealed bid process the District currently employs is
21 the combined fertilizer and chemicals bid that is awarded annually. For items such as
22 street light repairs, for instance, the threshold that would obligate the Board to solicit bids
23 is \$195,000, which they are nowhere near. Mr. Pires added that the Board has the
24 discretion to set the amount of the threshold where it most go out to competitive bids.

25 At Dr. Bularzik's request, a table will be prepared for the various categories and the bid
26 limit for attachment to the Rules for reference. Mr. Dorrill noted that almost all of those
27 items would be anything in excess of \$195,000 a year. The state has predetermined the
28 thresholds where you are obligated to get bids, and maintenance, operational and service
29 repairs are \$195,000.

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31 Mr. Pires agreed that a table is a good idea, as it can get confusing, The Legislature has
32 scattered these different items throughout the chapters, and in the chapter dealing with the
33 construction of public works and utilities, it lists what constitutes a repair, In the chapter
34 dealing with maintenance, however ,it does not define what maintenance is.

35

36 The concept of piggybacking was also addressed, and Mr. Dorrill noted as an example
37 that the District purchases its fleet and utility vehicles off of the State of Florida's motor
38 pool bid. When piggybacking, however, you cannot radically change the terms of the
39 transaction or contract.

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5 In A-107, which is any other services other than the ones previously discussed, it notes
6 that they need not be subject to the competitive solicitation process unless there is a very
7 specific statute that applies. For example, there is a separate statute that deals with
8 auditors. The bidding process is outlined in that chapter, as it is important to get the best
9 contract. Mr. Pires also pointed out that a project cannot be split in order to avoid the
10 bidding process.

11

12 8.109 relates to capital projects, and the numbers listed in this chapter are according to
13 the Statute. It also references how those numbers can change, based on several things,
14 including the building cost index. These costs were from 11 years ago, and the Statute
15 will be updated, but what it is saying is if you are going to do a capital project for more
16 than \$300,000, as adjusted by this percentage increase, then you need to go through the
17 solicitation process. The threshold for electrical work is \$75,000.

18 In certain cases you cannot go through the bidding process, such as when the State has
19 very specific requirements because they are funding a particular item, or if it is Federal
20 funding.

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22 If there is an objection filed, there is a process for that which an unsuccessful bidder must
23 follow. Included in that objection process are some very strict time limitations on the
24 steps that are to be taken.

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26 The Board and Mr. Pires discussed the fact that another workshop would need to be held
27 to finish this process, and once Mr. Pires has completed those he will provide the Board
28 with a complete packet for their approval. At that point the Board will advertize a public
29 hearing and adoption of the Rules. From the standpoint of getting this information out to
30 the various vendors, staff can do a courtesy email blast advising them of it.

31

32 Mr. Drum asked if there had been any suits filed by an unsuccessful vendor, and Mr.
33 Pires indicated that he had no knowledge of any, but he was aware of one protest in
34 another district where there was no standing. It is important, however, that the Board has
35 criteria in place to follow should it occur.

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37 It was agreed that the final workshop on the Administrative Rules will be set later in the
38 year, and a five minute break was taken.

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