

County fair association, competitive bids, records

Number: INFORMAL

Date: December 17, 2003

Subject:
County fair association, competitive bids, records

The Honorable Lisa Carlton
Senator, District 23
2127 South Tamiami Trail
Osprey, Florida 34229-9695

Dear Senator Carlton:

You ask whether a county fair board is subject to competitive bidding in entering into a long-term lease for use of a portion of the fairgrounds.

As you note, this office previously advised you that any such long term lease of a portion of the fairgrounds would have to necessarily be related to the fair association's purpose.[1] As this office noted in that informal opinion, section 616.01, Florida Statutes, authorizes the creation of a not-for-profit association within a county for the purpose of conducting public fairs and expositions. While each fair association has the power to hold property for the sale or renting of space for exhibitions or for other privileges, nothing in Chapter 616, Florida Statutes, imposes a bidding requirement on such associations.

The courts of this state have generally recognized that in the absence of a statute requiring competitive bids, a public body has no legal obligation to let a contract under competitive bids or to award the contract to the lowest bidder.[2] In such cases, the public body is required only to act in good faith and in the best interests of the public and it is within its discretion whether to let the contract by competitive bid or not.[3]

This office has also recognized this principle.[4] In Attorney General Opinion 83-20 this office considered whether the state fair authority was required to take competitive bids. This office stated that the authority, whether designated as an "agency of the state," or as an "instrumentality of the state", was not under any statutory requirement to award authorized contracts for the purchase of equipment or the construction or repair of buildings pursuant to competitive bidding procedures although in the acquisition of professional architectural, engineering, landscape architectural or land-surveying services in connection with any of its authorized projects, the authority was subject to and must comply with the Consultant's Competitive Negotiation Act, section 287.055, Florida Statutes.

As noted above, Chapter 616, Florida Statutes, does not impose a bidding requirement on county fair associations. This office has no information whether the charter or bylaws of such an association require bids. In the absence of a statute or rule or regulation of the association imposing such a bidding requirement, the association would not appear to be required to submit

a lease to competitive bids.

You also ask about the applicability of the Public Records Law, Chapter 119, Florida Statutes, to such fair associations. You note that Attorney General Opinion 95-17 concluded that fair associations are subject to the provisions of the Public Records Law. As noted in that opinion, the term "Agency" is defined for purposes of Chapter 119 to include private corporations acting on behalf of any public agency.[5] Based upon this office's review of the provisions of Chapter 616, Florida Statutes, and the relationship of such associations with the state, this office concluded that the fair association was an agency for purposes of Chapter 119, Florida Statutes, and thus subject to the provisions of that chapter. You ask about section 119.07(3)(ee), Florida Statutes, which creates an exemption for certain records held by an agency subject to the Public Records Law. Section 119.07(3)(ee) provides:

"Building plans, blueprints, schematic drawings and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency as defined in s. 119.011 are exempt from the provisions of subsection (1) and s. 24(a), Art. I of the State Constitution. This exemption applies to building plans, blueprints, schematic drawings, and diagrams, including draft, preliminary, and final formats, which depict the internal layout and structural elements of a building, arena, stadium, water treatment facility, or other structure owned or operated by an agency before, on, or after the effective date of this act. Information made exempt by this paragraph may be disclosed to another governmental entity if disclosure is necessary for the receiving entity to perform its duties and responsibilities; to a licensed architect, engineer; or contractor who is performing work on or related to the building, arena, stadium, water treatment facility, or other structure owned or operated by an agency; or upon a showing of good cause before a court of competent jurisdiction. The entities or persons receiving such information shall maintain the exempt status of the information. This paragraph is subject to the Open Government Sunset Review Act of 1995 in accordance with s. 119.15, and shall stand repealed on October 2, 2007, unless reviewed and reenacted by the Legislature."

The creation of an exemption for certain building plans, blueprints, schematic drawings and diagrams of building or other structures owned by an agency is not inconsistent with this office's conclusion that an entity is an agency for purposes of Chapter 119, Florida Statutes. As noted above, this office has concluded that fair associations created pursuant to Chapter 616, Florida Statutes, are agencies for purposes of the Public Records Law. Section 119.07(3)(ee), Florida Statutes, does not alter such a conclusion; rather, the statute only means that those records referred to in section 119.07(3)(ee) held by a fair association are exempt from disclosure. Other records of the association not made confidential or exempt by statute would be subject to the disclosure provisions of Chapter 119.

I trust that the above informal advisory comments may be of assistance. Thank you for contacting this office on this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

[1] See Inf. Op. to the Hon. Lisa Carlton from Attorney General Robert Butterworth, dated January 12, 2000.

[2] See, e.g., *Brown v. City of St. Petersburg*, 153 So. 140 (Fla. 1933) (authority granted by city charter to city manager to make purchases could be exercised without competitive bidding in the absence of an ordinance, rule or regulation so requiring); *Volume Services Division of Interstate United Corporation v. Canteen Corporation*, 369 So. 2d 391 (Fla. 2d DCA 1979) (in the absence of specific constitutional or statutory requirements, a public agency has no obligation to establish a bidding procedure and may contract in any manner not arbitrary or capricious); *Ackman v. Dade County*, 308 So. 2d 622 (Fla. 3d DCA 1975); *William A. Berbusse, Jr., Inc. v. North Broward Hospital District*, 117 So. 2d 550 (Fla. 2d DCA 1960) (a public body is not required unqualifiedly to award the contract to the lowest bidder unless there exists a statutory requirement in this respect). *Accord Marriott Corp. v. Metropolitan Dade County*, 383 So. 2d 662 (Fla. 3d DCA 1980).

[3] See *State ex rel. Roberts v. Knox*, 14 So. 2d 262 (Fla. 1943) (discretion conferred by law on an officer must be exercised according to established rules of law, and not in an arbitrary or capricious manner or for personal, selfish, or fraudulent motives or for any reason or reasons not supported by the discretion conferred); *Volume Services Division of Interstate United Corporation v. Canteen Corporation*, *supra*; *Mayes Printing Company v. Flowers*, 154 So. 2d 859 (Fla. 1st DCA 1963); Op. Att'y Gen. Fla. 78-122 (1978).

[4] See, e.g., Ops. Att'y Gen. Fla. 93-28 (1993) (highway and port authority not required to competitively bid in absence of statute or rule or regulation of authority); 84-29 (1984) (in absence of a special law or county ordinance so requiring, a noncharter county is not required to take competitive bids prior to hiring a county attorney); 80-49 (1980) (city may establish a procedure for direct negotiation and contracting for residential garbage collection and disposal services without competitive bids); 78-122 (1978) (in absence of statutory requirement for competitive bidding, sheriff is not required to enter into competitive bidding in purchasing commodities); 77-140 (1977) (city not required to take competitive bids in purchase of commodities in absence of charter provision or ordinance); and 71-366 (1971).

[5] Section 119.011(2), Fla. Stat.