

OKEECHOBEE UTILITY AUTHORITY
WORKSHOP AGENDA
November 14, 2022
2:00 P.M.

1. Call the Meeting to Order
 - Pledge of Allegiance
 - Roll Call
2. Project Financing
3. Advanced Metering Infrastructure
4. 66 Acre Property Sale
5. Building Rehabilitation/Property Purchase
6. Salary Review
7. Local Purchase Option
8. Public Comments

OKEECHOBEE UTILITY AUTHORITY

AGENDA ITEM NO. 1

NOVEMBER 14, 2022

Call Meeting to Order

Pledge of Allegiance
Roll Call

| | <u>Absent</u> | <u>Present</u> |
|---|---------------|----------------|
| Melanie Anderson – Board Member | _____ | _____ |
| Tommy Clay – Board Member | _____ | _____ |
| John Creasman – Chairperson | _____ | _____ |
| Jeff Fadley - Alternate | _____ | _____ |
| Harry Moldenhauer - Alternate | _____ | _____ |
| Steve Nelson – 2 nd Vice Chairperson | _____ | _____ |
| Tabitha Trent –Vice Chairperson | _____ | _____ |
| Glenn Sneider - Alternate | _____ | _____ |

OKEECHOBEE UTILITY AUTHORITY

AGENDA ITEM NO. 2

NOVEMBER 14, 2022

PROJECT FINANCING

A brief description of the projects under consideration follows:

Southwest Service Area (SWSA) project

PROJECT 1

Master Force Main (MFM) consists of approximately 27,000 LF of force main connecting the new SWSA MPS to the existing NW 15 pump station located near the airport.

Master Pump Station (MPS) consist of construction of a duplex pump station which receives wastewater flow from the Okee-Tantie project, SWSA Project 2 (vacuum collection system) and the SE2 Interconnect project.

SE2 Interconnect project connects an existing sanitary force main at SW 3rd Avenue and redirects flow westward towards the SWSA MPS.

PROJECT 2

This project includes the vacuum collection system piping, two vacuum/pump stations and a short connecting sanitary force main. Approximately 500 connections are anticipated with this project.

PROJECT 3

This project includes and sanitary force and two pump station connecting the former Okee-Tantie Campground Area to the SWSA MPS. This project includes approximately 27,000 LF of PVC force main, valves and many different fittings and appurtenances.

Pine Ridge Park Project

This project provides water and wastewater service approximately 100 new connections. The project will include new water mains, wastewater collection system and a vacuum/pump station.

Advanced Metering infrastructure

This project will provide real-time connectivity between the meter and OUA main office. The customer will have direct access to review data provided by this connectivity, primarily flow data. Alert notifications can be set by both the OUA and the customer. When completed, this project will connect approximated 9,850 meters.

SW 5th Avenue Wastewater Collection System

When completed, this project will provide approximately 150 connections to the OUA wastewater collection system. The Project 1 area does suffer from poor stormwater drainage leading to temporary septic tank drain field failures. In the Project 2 area, commercial properties lack appropriate wastewater service which limits development or expansion opportunities.

Treasure Island Septic to Sewer Project

Providing centralized wastewater collection to approximately 2,400 connections in this area is imperative to cleanup of surface waters in this area.

Please find attached to this project a spreadsheet that lists all projects identified above. For each project is the estimated construction costs, or in some cases, actual project bids are listed. With each project is one or more funding sources allocated for these expenses.

As noted in the text above, this Nov 2022 Workshop Item identified up to seven projects under construction or under consideration for construction. First, let us discuss those projects already under construction.

UNDER CONSTRUCTION

These projects should receive a slightly higher funding priority due to these projects being under construction.

Southwest Service Area projects (all of them) are necessary to serve septic to sewer project areas and to serve the commercial corridor along SR 78 West from SW 16th Blvd to the Kissimmee River.

Only a few of the projects are under construction and estimated costs have been in line with actual bid pricing. However, when all of the projects are considered and after use of all allocated state appropriations and USDA financial resources are applied, there appears to be a difference of close to \$4,000,000.

At this time, the OUA has filed an additional appropriation request and is awaiting an answer (an answer is expected soon), but if denied, then the OUA will proceed with an additional USDA loan/grant request. Should a USDA request be approved by both the OUA and FDEP, a not expected to exceed annual debt service payment would be around \$135,000.

Pine Ridge Park is a septic to sewer project which is already under construction. Initial funding support is offered under the LPQ0017 Appropriation in the amount of \$2,750,000. Of that amount, \$2,473,400 is available for construction.

In the original wastewater portion of the bid (total \$5,143,000 water & wastewater), a bid of \$4,303,464 was accepted by the OUA. Immediately following acceptance of the bid, a change order was issued removing four work items and reducing the wastewater work to approximately \$3,803,698. As noted in the following table, a total of \$3,803,968 minus the available appropriation money leaves \$1,330,568 as an unmet need.

The OUA has filed an additional appropriation request and is awaiting an answer (an answer is expected soon), but if denied, then the OUA will proceed with an SRF loan/grant request. Should a SRF request be approved by both the OUA and FDEP, a not to exceed expected annual debt service payment would be around \$115,000.

UNDER CONSIDERATION

Advance Metering Infrastructure is a project where all existing water meters will be connected to a server by means of radio connectivity. The software package on the server will allow for OUA personnel to read the meter in real-time. The software has the capability to provide preset alerts such as high read, any use or reverse flow as examples. Customers will have limited access to the flow records so that they can review this data, make payments or other such uses. These were presented last month to the OUA Board.

At the present time, the conducting a review of the bid items to reflect meter quantities, tower locations and equipment needs. Additionally, based upon SRF funding, the bidder is considering a phased program which will meet the current available funding with the second phase to be funded later.

Based upon the current bid price, the has SRF and SFWMD funding available as shown in the following table. The existing SRF note has an anticipated annual debt service payment of \$145,000. A second SRF request could be made, and without applying a loan forgiveness amount should that be offered, and expected not to exceed annual debt service payment on a \$1,500,000 loan is approximately \$115,000.

The bidder response is due for the Nov 15, 2022 OUA Board meeting. Until then, OUA staff does not know what the reduced bid will be nor do we know if the phased approach is possible.

SW 5th Avenue Wastewater Collection is a project to serve a few residential units experiencing drain field flooding during storm events. The project will also provide wastewater service to a commercial district along US 441SE (Parrott Avenue).

At this time, the OUA Board has directed the engineer to proceed with a project to serve just the residential housing area experiencing the flooding related issues. The design, which is at 90%, has a expected construction cost of \$2,080,000 which could change by the time the project is deemed at 100%. The OUA is currently funding the engineering design element. The OUA does not have an identified financial source for funding the project.

The OUA has filed an appropriation request and is awaiting an answer (an answer is expected soon), but if denied, then the OUA can proceed with an SRF loan/grant request. Should a SRF request be approved by both the OUA and FDEP, a not to exceed expected annual debt service payment would be around \$150,000.

Treasure Island Septic to Sewer project is included in the following table. Since the engineering work is in the very early stages, money is available for design and initial construction costs. OUA staff have included an appropriation request for additional funding. OUA staff has not included any SRF/USDA loan money at this time.

| | Estimated Project Cost | OUA Budgeted | Federal Grant | SFWMD Grant | SRF | | SRF(Proposed) | | USDA | | USDA (Proposed) | | FDEP Appropriation | |
|--|------------------------|---------------|---------------|-------------|---------------|------------------|---------------|------------------|---------------|-------------|-----------------|-------|--------------------|-------------|
| | | | | | Loan | Loan Forgiveness | Loan | Loan Forgiveness | Loan | Grant | Loan | Grant | | |
| Southwest Service Area | | | | | | | | | | | | | | |
| Project 1 - Pumping | \$6,320,980 | | | | | | | | | | | | (\$6,320,980) | \$0 |
| Project 2 - Collection | \$16,232,273 | | | | | | | | (\$7,508,000) | (\$883,000) | | | (\$3,842,941) | \$3,998,332 |
| Project 3 - Okee-Tantie | \$8,336,079 | | | | | | | | | | | | (\$8,336,079) | \$0 |
| | | | | | | | | | | | | | \$18,500,000 | |
| Pine Ridge Park Project | | | | | | | | | | | | | | |
| Water | \$626,907 | (\$1,150,529) | | | | | | | | | | | | (\$523,622) |
| Wastewater | \$3,803,968 | | | | | | | | | | | | (\$2,473,400) | \$1,330,568 |
| Misc Projects | | | | | | | | | | | | | | |
| Advanced Mertering Infrastructure | \$3,662,821 | | | (\$100,000) | (\$1,861,048) | (\$457,796) | | | | | | | | \$1,243,977 |
| SW 5th Avenue Wastewater Collection System | \$2,080,000 | | | | | | | | | | | | | \$2,080,000 |
| Treasure Island Septic to Sewer Project | \$30,400,000 | | (\$1,000,000) | | | | | | | | | | (\$24,520,580) | \$4,879,420 |

FDEP Grant Portal Requests

Treasure Island Septic to Sewer Infrastructure, requested amount \$3,500,000
Pine Ridge Park Septic to Sewer, requested amount \$1,500,000
SWSA Septic to Sewer Project, requested amount \$3,500,000
Orange Loop Gravity Sewer Project, requested amount \$250,000
Southwest 5th Avenue Septic to Sewer Project, requested amount \$2,500,000
Connecting OSTDS to Central Sewer Project, requested amount \$2,500,000

AMI SRF debt \$1,861,048, estimated annual debt service at \$145,000
SRF Terms: 15 years at 1.64%

SWSA USDA requested amount \$7,508,000, estimated annual debt service at \$255,000
USDA Terms: 38 years at 1.375%

Proposed Additional SRF/USDA Loan/Grant Opportunities

Southwest Wastewater Service Area USDA requested amount \$4,000,000, estimated annual debt service at \$135,000
USDA Terms: 40 years at 1.375%

Pine Ridge Park WW SRF request for \$1,500,000, estimated annual debt service at \$115,000
SRF Terms: 15 years at 1.64%

AMI SRF request for \$1,500,000, estimated annual debt service at \$115,000
SRF Terms: 15 years at 1.64%

SW 5th Avenue WW SRF request for \$2,500,000, estimated annual debt service at \$150,000
SRF Terms: 20 years at 1.64%

| <u>Discretionary Capital Transfer</u> | FY 19 | FY 20 | FY 21 | FY 22 | FY 23 | Average |
|--|------------------|------------------|------------------|------------------|------------------|------------------|
| Transfer to Operating Fund | \$0 | \$0 | \$0 | \$0 | \$0 | \$0 |
| Transfer to Future CIP | \$0 | \$0 | \$50,000 | \$370,954 | \$230,207 | \$130,232 |
| Transfer to Rate Stabilization Fund | <u>\$231,421</u> | <u>\$0</u> | <u>\$232,658</u> | <u>\$40,493</u> | <u>\$491,073</u> | <u>\$199,129</u> |
| | \$231,421 | \$0 | \$282,658 | \$411,447 | \$721,280 | \$329,361 |
| Needed from Rate Stabilization Fund | \$0 | \$0 | (\$75,000) | \$0 | \$0 | |
| Prior Year Budget Surplus | <u>\$540,863</u> | <u>\$579,469</u> | <u>\$209,577</u> | <u>\$361,463</u> | | \$422,843 |
| Net Transfer | \$772,284 | \$579,469 | \$417,235 | \$772,910 | | \$635,475 |

In the preceding table, two entries should be noted, that at the beginning of the year some monies are transferred in to the rate stabilization or capital improvement project funds. Additionally, at the conclusion of a fiscal year, an audit by an outside professional auditing firm is conducted. Each fiscal year that has been a surplus due to anticipated expenses not reaching budgeted levels. On average, from FY 19 to FY 22, there is approximately \$635,000.

These monies do not represent a planned surplus, rather they represent a savings due to fiscal management during the year, lower than expected expenses or carry overs from the preceding year. All monies are usually put back in to rate stabilization or capital improvement funds for next year.

This anticipated \$635,000 could be pledged towards the following required projects.

Required because they are already under construction and due to projected cost overruns (COVID19, supply chain, trucking, etc.)

Required

| | |
|---------------------|------------------|
| SWSA USDA 1 | \$255,000 |
| SWSA USDA 2 | \$135,000 |
| Pine Ridge Park SRF | <u>\$115,000</u> |
| | \$505,000 |

Optional

| | |
|------------|-----------|
| AMI SRF 1 | \$145,000 |
| AMI SRF 2 | \$115,000 |
| SW 5th Ave | \$150,000 |

If the FDEP additional appropriation money requested for SWSA USDA 2 or Pine Ridge Park SRF become available, then one or more of the optional projects could be considered.

OKEECHOBEE UTILITY AUTHORITY

AGENDA ITEM NO. 3

NOVEMBER 14, 2022

ADVANCED METERING INFRASTRUCTURE

The OUA currently has funding from both the South Florida Water Management District (\$100,000 grant) and the State of Florida FDEP State Revolving Fund (\$1,861,048 loan & \$457,796 grant) for a total of \$2,418,844.

On October 4, 2022, the OUA received four sealed bids for the AMI project. Ms. Christine Miranda, P.E. of Holtz Consulting Engineers, Inc., conducted the bid opening. Ms. Miranda has prepared the attached bid recommendation for OUA Board review and will be present to discuss the bid, financing and project impacts.

In essence, the apparent low bid was disqualified due to errors in bidding. The next lowest bid by Vanguard Utility Service, Inc. was reviewed and accepted as the lowest, most responsive bid (\$3,662,820.50). Vanguard will be present at the meeting today to do a short presentation on their services, bid package and installation moving forward.

As noted above, the OUA has in place \$2,418,844, in consideration of the lowest accepted bid (\$3,662,820.50), there is a difference of \$1,243,976.50 to be funded from additional resources.

To meet this unfunded allocation, OUA staff will review several different options. The OUA/HCE team will contact the FDEP SRF staff to discuss additional funding opportunities. In previous discussions, OUA would be able to get additional loan money and possibly grant monies to complete the project. Currently, there is nothing contractually supporting this issue, but FDEP is optimistic. Additionally, OUA staff will reach out to SFWMD to investigate any additional funding opportunities. Thirdly, the OUA /HCE team will reach out to Vanguard/Master Meter team to see if there are funding reduction options in this project. At the very least, they should be able to develop a plan to meet the existing funding with an additional phase of work to complete the project once additional funding has been acquired.

The OUA received by mid-morning an AMI updated proposal lowering the net proposed bid price from \$3,662,820.50 to \$3,265,316.93. OUA staff and HCE staff did not have enough time to evaluate this proposal prior to the Workshop and OUA Board meeting agendas going out. This will be done and submitted prior to the meeting dates.

OKEECHOBEE UTILITY AUTHORITY

AGENDA ITEM NO. 4

NOVEMBER 14, 2022

66 ACRE PROPERTY SALE

Conceptually, the project involves the potential split of two OUA owned parcels into four parcels. Upon completion, the OUA will retain one 12 acre parcel and sell the three other parcels.

At the last OUA Board meeting, a potential change was put up for consideration in that the existing pond could be moved to the SWTP site freeing up this acreage for sale. If the sales price for the 12 acre parcel was \$25,000 per acre, then this would generate around \$300,000, or nearly the preliminary estimated construction cost of \$300,000.

On average, it appears that the OUA uses up to 100,0000 gallons per day in plant use water. An engineering proposal is required which will include a soils report, hydraulic analysis at minimum to design a retention pond. Preliminary estimates size the pond at 7-8 acres.

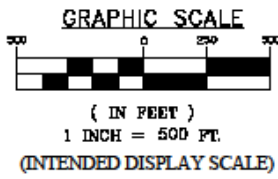
A potential split was proposed at last months meeting followed by several Board member corrections.

If the OUA keeps the pond where it is (Parcel B), what changes does the OUA Board want to see on the other three sales parcels?

If the pond is to be moved, does the OUA Board want Parcel B joined with Parcel A and then Parcel C & D as proposed?

Is the OUA Board still interested in selling?

**SKETCH AND LEGAL DESCRIPTION
(THIS IS NOT A SURVEY)
O.U.A. PROPERTY REDISTRIBUTION**

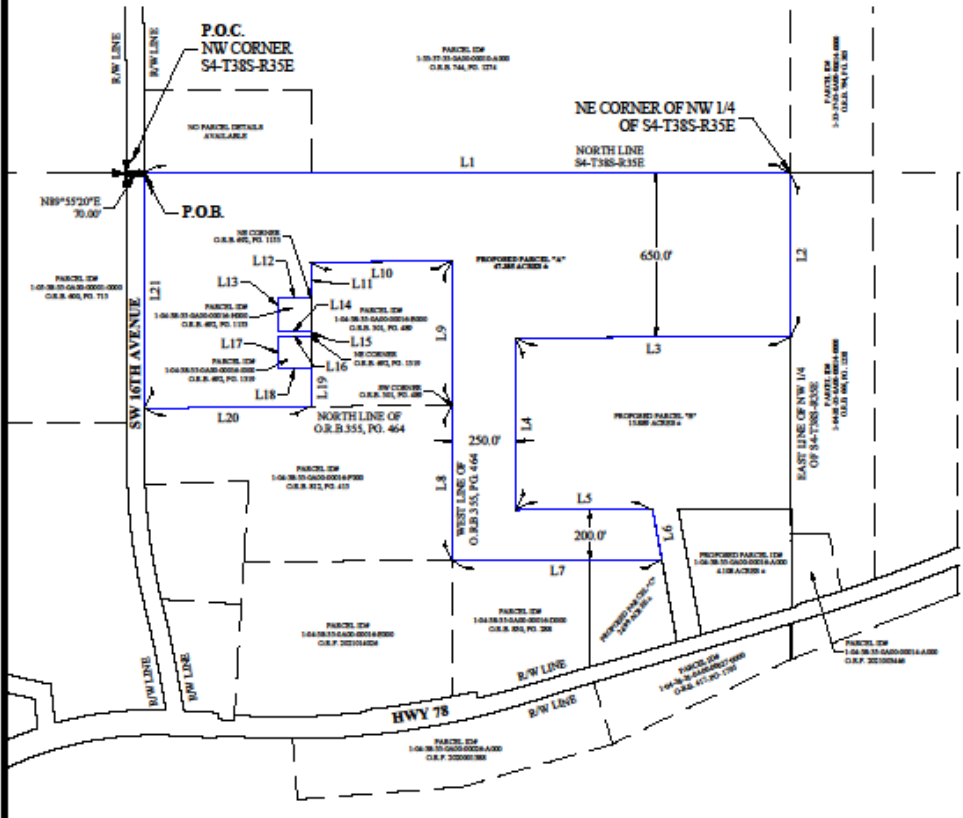


**PROPOSED PARCEL "A"
SKETCH**



| LINE # | TO BECOME | TO BECOME |
|--------|-------------|-----------|
| L1 | N89°28'32"E | 250.00' |
| L2 | S89°28'32"E | 650.00' |
| L3 | S00°00'00"W | 1000.00' |
| L4 | S00°00'00"W | 650.00' |
| L5 | S89°28'32"E | 250.00' |
| L6 | S89°28'32"E | 200.00' |
| L7 | S89°28'32"E | 250.00' |
| L8 | S89°28'32"E | 650.00' |
| L9 | S89°28'32"E | 250.00' |
| L10 | S89°28'32"E | 250.00' |
| L11 | S89°28'32"E | 250.00' |
| L12 | S89°28'32"E | 250.00' |
| L13 | S89°28'32"E | 250.00' |
| L14 | S89°28'32"E | 250.00' |
| L15 | S89°28'32"E | 250.00' |
| L16 | S89°28'32"E | 250.00' |
| L17 | S89°28'32"E | 250.00' |
| L18 | S89°28'32"E | 250.00' |
| L19 | S89°28'32"E | 250.00' |
| L20 | S89°28'32"E | 250.00' |
| L21 | S89°28'32"E | 250.00' |
| L22 | S89°28'32"E | 250.00' |
| L23 | S89°28'32"E | 250.00' |
| L24 | S89°28'32"E | 250.00' |

| LINE # | TO BECOME | TO BECOME |
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| L27 | S89°28'32"E | 250.00' |
| L28 | S89°28'32"E | 250.00' |
| L29 | S89°28'32"E | 250.00' |
| L30 | S89°28'32"E | 250.00' |
| L31 | S89°28'32"E | 250.00' |
| L32 | S89°28'32"E | 250.00' |
| L33 | S89°28'32"E | 250.00' |
| L34 | S89°28'32"E | 250.00' |
| L35 | S89°28'32"E | 250.00' |
| L36 | S89°28'32"E | 250.00' |
| L37 | S89°28'32"E | 250.00' |
| L38 | S89°28'32"E | 250.00' |
| L39 | S89°28'32"E | 250.00' |
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| L60 | S89°28'32"E | 250.00' |
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| L69 | S89°28'32"E | 250.00' |
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| L71 | S89°28'32"E | 250.00' |
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| L73 | S89°28'32"E | 250.00' |
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| L88 | S89°28'32"E | 250.00' |
| L89 | S89°28'32"E | 250.00' |
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| L92 | S89°28'32"E | 250.00' |
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| L95 | S89°28'32"E | 250.00' |
| L96 | S89°28'32"E | 250.00' |
| L97 | S89°28'32"E | 250.00' |
| L98 | S89°28'32"E | 250.00' |
| L99 | S89°28'32"E | 250.00' |
| L100 | S89°28'32"E | 250.00' |

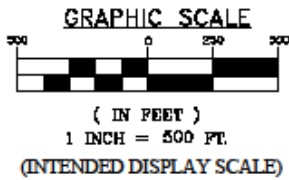


BSM & ASSOCIATES
 ARLIN S. BRYAN, P.E., S.F.P.C.
 80 W. 11st Lane, Okeechobee, FL 34917-4
 nsky_jarvis@bryansurvey.com
 882.464.6224 LD 3152

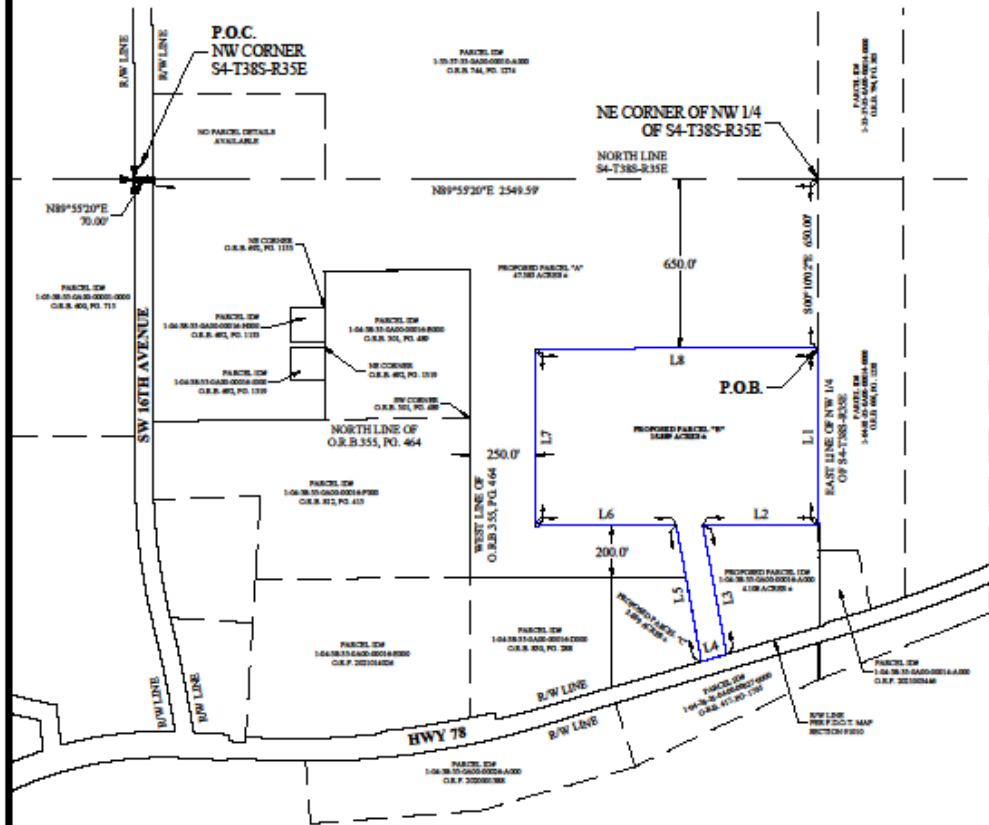
| SKETCH AND LEGAL DESCRIPTION (THIS IS NOT A SURVEY) O.U.A. PROPERTY REDISTRIBUTION OKEECHOBEE COUNTY, FLORIDA | | |
|--|-----------------------|-------------------|
| SCALE: 1" = 500' | PROJECT NO: 22-319 | REVISION: |
| DATE: 7/25/22 | CAD FILE: 22-319 | SHEET: 7 OF 13 |

SKETCH AND LEGAL DESCRIPTION
(THIS IS NOT A SURVEY)
 O.U.A. PROPERTY REDISTRIBUTION

PROPOSED PARCEL "B"
SKETCH



| LINE # | TO ADJACENT | TO CORNER |
|--------|-------------------------|-----------|
| L1 | 200' 0" N 89° 52' 20" E | 476.00' |
| L2 | 200' 0" N 89° 52' 20" E | 444.00' |
| L3 | 200' 0" N 89° 52' 20" E | 401.00' |
| L4 | 200' 0" N 89° 52' 20" E | 358.00' |
| L5 | 200' 0" N 89° 52' 20" E | 315.00' |
| L6 | 200' 0" N 89° 52' 20" E | 272.00' |
| L7 | 200' 0" N 89° 52' 20" E | 229.00' |
| L8 | 200' 0" N 89° 52' 20" E | 186.00' |



BSM & ASSOCIATES

ARCHITECTS, ENGINEERS & SURVEYORS

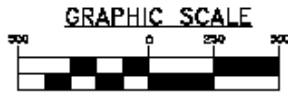
82 St. 21st Lane, Okeechobee, FL 34974
 P.O. Box 100, Okeechobee, FL 34974
 888.463.8354 LD 8352

SKETCH AND LEGAL DESCRIPTION
(THIS IS NOT A SURVEY)
 O.U.A. PROPERTY REDISTRIBUTION
 OKEECHOBEE COUNTY, FLORIDA

| | | |
|-----------|--------------|-----------|
| SCALE: | PROJECT NO.: | REVISION: |
| 1" = 500' | 22-319 | |
| DATE: | CAD FILE: | SHEET: |
| 7/25/22 | 22-319 | 9 OF 13 |

**SKETCH AND LEGAL DESCRIPTION
(THIS IS NOT A SURVEY)
D.U.A. PROPERTY REDISTRIBUTION**

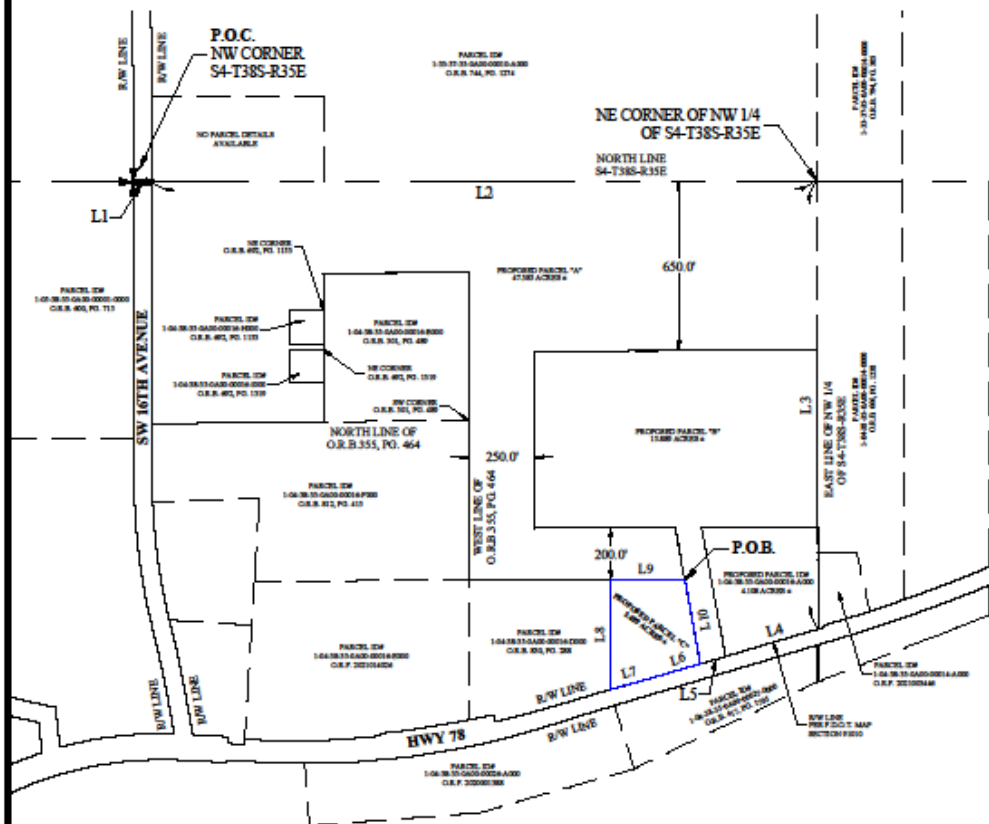
**PROPOSED PARCEL "C"
SKETCH**



(IN FEET)
1 INCH = 500 FT.
(INTENDED DISPLAY SCALE)



| LINE # | CU. BEARING | PD. DISTANCE |
|--------|-------------|--------------|
| L1 | S89°02'00"W | 76.00' |
| L2 | S89°02'00"W | 1772.00' |
| L3 | S72°00'00"W | 206.01' |
| L4 | S72°00'00"W | 192.00' |
| L5 | S72°00'00"W | 192.00' |
| L6 | S72°00'00"W | 192.00' |
| L7 | S72°00'00"W | 192.00' |
| L8 | S72°00'00"W | 428.00' |
| L9 | S89°02'00"W | 200.00' |
| L10 | S72°00'00"W | 236.47' |



BSM & ASSOCIATES
ARTHUR, REED, YING, & WICKLE
92 St 41st Lane, Ocoee, FL 34774
mkj@bsm.com | bsm.com | 407-883-4433 | LD 9152

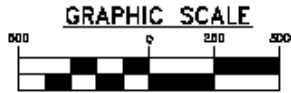
**SKETCH AND LEGAL DESCRIPTION
(THIS IS NOT A SURVEY)
D.U.A. PROPERTY REDISTRIBUTION
OSCEOLA COUNTY, FLORIDA**

| | | |
|---------------------|-----------------------|--------------------|
| SCALE: 1" = 500' | PROJECT NO: 22-319 | REVISION: |
| DATE: 7/25/22 | CAD FILE: 22-319 | SHEET: 11 OF 13 |

SKETCH AND LEGAL DESCRIPTION
(THIS IS NOT A SURVEY)
 O.U.A. PROPERTY REDISTRIBUTION

PROPOSED PARCEL
ID# 1-04-38-35-0A00-00016-A000

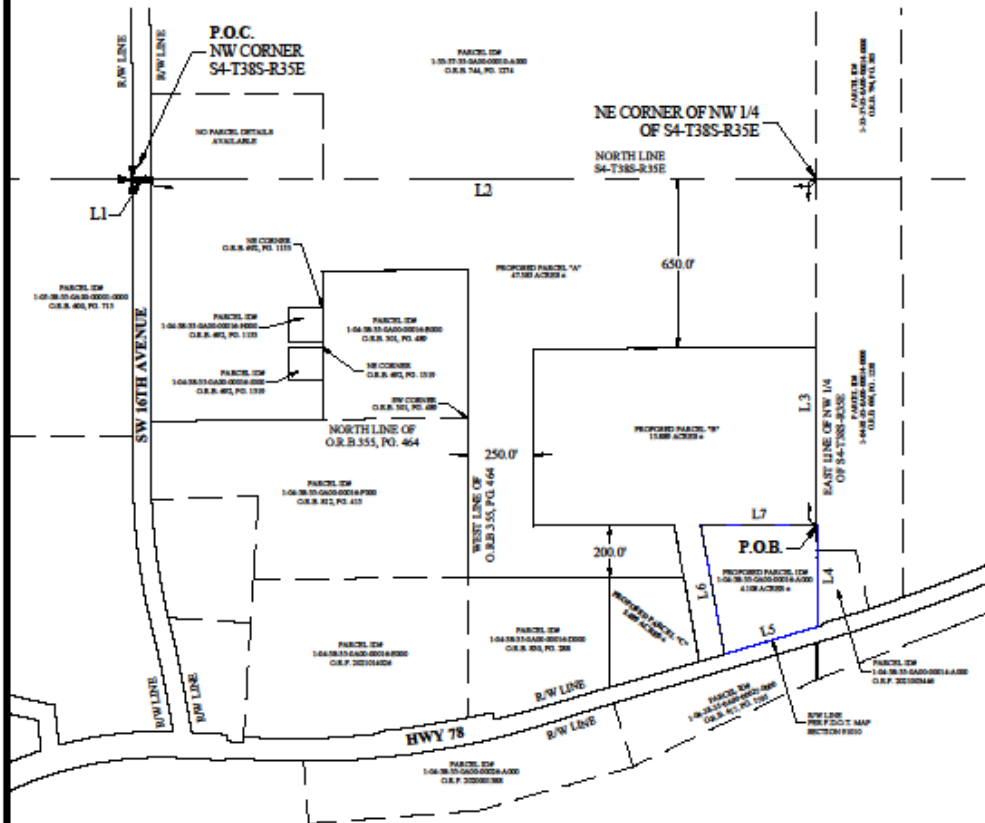
SKETCH



(IN FEET)
1 INCH = 500 FT.
 (INTENDED DISPLAY SCALE)



| LINE # | BEARING | CU DISTANCE |
|--------|-------------|-------------|
| L1 | N00°00'00"W | 20.00' |
| L2 | S00°00'00"W | 20.00' |
| L3 | S00°00'00"W | 100.00' |
| L4 | S00°00'00"W | 200.00' |
| L5 | S00°00'00"W | 200.00' |
| L6 | S00°00'00"W | 200.00' |
| L7 | S00°00'00"W | 200.00' |



BSM & ASSOCIATES
 AN ENGINEERING FIRM
 80 SE 21st Lane, Okeechobee, FL 34974
 P.O. Box 1000, Okeechobee, FL 34901
 888.454.8324 LD 5155

SKETCH AND LEGAL DESCRIPTION
(THIS IS NOT A SURVEY)
 O.U.A. PROPERTY REDISTRIBUTION
 OKEECHOBEE COUNTY, FLORIDA

| SCALE: | PROJECT NO.: | REVISION: |
|-----------|--------------|-----------|
| 1" = 500' | 22-319 | |
| DATE: | CAD FILE: | SHEET: |
| 7/2/22 | 22-319 | 13 OF 13 |

OKEECHOBEE UTILITY AUTHORITY

AGENDA ITEM NO. 5

NOVEMBER 14, 2022

BUILDING REHABILITATION/PROPERTY PURCHASE

Currently, the building utilized for the OUA Main Administration office is in need of at least some minor improvements (painting, roofing, minor interior improvements). However, since the building is at least 80 years old, a complete makeover should be considered rather than just minor improvements.

In lieu of the major renovation, as an option, purchase of an existing building was identified and considered.

During the last OUA Board meeting, two voting members stated that they would never be in favor of purchasing the Big Lake/Seacoast building. If so, could there at least be confirmation of this understanding. It will take some action at the November OUA Board meeting to confirm the “no sale” purchase of this building.

Discussion from OUA Board members as to what direction staff should take from this point forward.

OKEECHOBEE UTILITY AUTHORITY

AGENDA ITEM NO. 6

NOVEMBER 14, 2022

SALARY REVIEW

Florida's 2020 minimum wage (\$8.56) starting in 2021 reaching a \$15.00 per hour minimum in 2026. The required minimum wage increases are as follows:

- \$10.00 on September 30, 2021;
- \$11.00 on September 30, 2022;
- \$12.00 on September 30, 2023;
- \$13.00 on September 30, 2024;
- \$14.00 on September 30, 2025;
- \$15.00 on September 30, 2026.

The following table labeled "OUA SALARY & HOURLY PAY PLAN" depicts 2019 through 2023 OUA pay scale by job classification. This pay scale shows the impacts of COLA, merit, bonus and minimum wage increases over the last five years. At the bottom of the table is a listing of those wage increases.

The OUA minimum wage has gone from \$11.85 per hour to \$14.44 over this time frame. The State minimum wage has gone from \$8.56 per hour to \$11.00. The last line shows that the differential between minimum wages has stayed on average at \$3.40 per hour. The planned increase by the OUA should maintain this differential. At this time, OUA staff have projected \$1.00 per hour increases each year.

The second table, labeled "OUA RATE COMPARISON" reviews the current year OUA pay scale by position to other surrounding employers. Some of these employers were public utilities while others were not utilities, but all of them, were governmental agencies.

In review of this table, the upper wage scales were the City of Vero Beach and Loxahatchee River District. All other entities pay scales were close in most cases. As noted, many of the entities only reported to the OUA their FY22 rates. All that considered, there were a few that were either slightly higher or lower than the OUA rates. It is noted that a few more entities could be added and actual job descriptions could be obtained to confirm a match of job titles. Additionally, a firm that specializes in wage comparisons could be engaged to conduct an in depth study.

For discussion today, it might be suggested to compare OUA with Fort Pierce Utility Authority (FPUA) because they are the nearest publicly owned utility to the OUA and each provide water and wastewater services, they are both governmental units and they each utilize the same market area for employees.

OUA SALARY & HOURLY PAY PLAN

| OUA Classification (Position) | 2019 Hourly Rate | | 2020 Hourly Rate | | 2021 Hourly Rate | | 2022 Hourly Rate | | 2023 Hourly Rate | |
|---|------------------|---------|------------------|---------|------------------|---------|------------------|---------|------------------|------------------------|
| | Min | Max | Min | Max | Min | Max | Min | Max | Min | Max |
| WATER TREATMENT PLANT | | | | | | | | | | |
| Plant Supervisor A | \$21.85 | \$36.05 | \$22.07 | \$36.42 | \$22.29 | \$36.78 | \$23.64 | \$39.01 | \$24.64 | \$40.66 |
| Plant Supervisor B | \$19.85 | \$32.75 | \$20.05 | \$33.08 | \$20.25 | \$33.41 | \$21.60 | \$35.64 | \$22.60 | \$37.29 |
| Plant Operator A | \$18.04 | \$29.77 | \$18.22 | \$30.06 | \$18.40 | \$30.36 | \$19.75 | \$32.59 | \$20.75 | \$34.24 |
| Plant Operator B | \$16.35 | \$26.98 | \$16.51 | \$27.24 | \$16.68 | \$27.52 | \$18.03 | \$29.75 | \$19.03 | \$31.39 |
| Plant Operator C | \$15.38 | \$25.38 | \$15.53 | \$25.62 | \$15.69 | \$25.89 | \$17.04 | \$28.12 | \$18.04 | \$29.76 |
| Plant Operator Non-Certified | \$13.09 | \$21.60 | \$13.22 | \$21.81 | \$13.35 | \$22.03 | \$14.70 | \$24.26 | \$15.70 | \$25.91 |
| Plant Maintenance I | \$11.85 | \$19.55 | \$11.97 | \$19.75 | \$12.09 | \$19.95 | \$13.44 | \$22.18 | \$14.44 | \$23.83 |
| Sludge Press Operator | \$11.85 | \$19.55 | \$11.97 | \$19.75 | \$12.09 | \$19.95 | \$13.44 | \$22.18 | \$14.44 | \$23.83 |
| WASTEWATER TREATMENT PLANT | | | | | | | | | | |
| Plant Supervisor A | \$21.85 | \$36.05 | \$22.07 | \$36.42 | \$22.29 | \$36.78 | \$23.64 | \$39.01 | \$24.64 | \$40.66 |
| Plant Supervisor B | \$19.85 | \$32.75 | \$20.05 | \$33.08 | \$20.25 | \$33.41 | \$21.60 | \$35.64 | \$22.60 | \$37.29 |
| Plant Operator A | \$18.04 | \$29.77 | \$18.22 | \$30.06 | \$18.40 | \$30.36 | \$19.75 | \$32.59 | \$20.75 | \$34.24 |
| Plant Operator B | \$16.35 | \$26.98 | \$16.51 | \$27.24 | \$16.68 | \$27.52 | \$18.03 | \$29.75 | \$19.03 | \$31.39 |
| Plant Operator C | \$15.38 | \$25.38 | \$15.53 | \$25.62 | \$15.69 | \$25.89 | \$17.04 | \$28.12 | \$18.04 | \$29.76 |
| Plant Operator Non-Certified | \$13.09 | \$21.60 | \$13.22 | \$21.81 | \$13.35 | \$22.03 | \$14.70 | \$24.26 | \$15.70 | \$25.91 |
| Plant Maintenance I | \$11.85 | \$19.55 | \$11.97 | \$19.75 | \$12.09 | \$19.95 | \$13.44 | \$22.18 | \$14.44 | \$23.83 |
| Sludge Press Operator | \$11.85 | \$19.55 | \$11.97 | \$19.75 | \$12.09 | \$19.95 | \$13.44 | \$22.18 | \$14.44 | \$23.83 |
| MAINTENANCE | | | | | | | | | | |
| Maintenance Supervisor A | \$21.64 | \$35.71 | \$21.86 | \$36.07 | \$22.08 | \$36.43 | \$23.43 | \$38.66 | \$24.43 | \$40.31 |
| Maintenance Foreman | \$17.18 | \$28.35 | \$17.35 | \$28.63 | \$17.52 | \$28.91 | \$18.87 | \$31.14 | \$21.69 | \$35.79 ⁽¹⁾ |
| Construction Foreman | \$18.96 | \$31.28 | \$19.15 | \$31.60 | \$19.34 | \$31.91 | \$20.69 | \$34.14 | \$21.69 | \$35.79 |
| Distribution Operator 1 | \$18.57 | \$30.64 | \$18.76 | \$30.95 | \$18.95 | \$31.27 | \$20.30 | \$33.50 | \$21.30 | \$35.14 |
| Distribution Operator 2 | \$15.95 | \$26.32 | \$16.11 | \$26.58 | \$16.27 | \$26.85 | \$17.62 | \$29.07 | \$18.62 | \$30.72 |
| Distribution Operator 3 | \$15.18 | \$25.05 | \$15.33 | \$25.29 | \$15.48 | \$25.54 | \$16.83 | \$27.77 | \$17.83 | \$29.42 |
| Distribution Operator, Non-Certified | \$13.09 | \$21.60 | \$13.22 | \$21.81 | \$13.35 | \$22.03 | \$14.70 | \$24.26 | \$15.70 | \$25.91 |
| Distribution Operator, Trainee | \$12.45 | \$20.54 | \$12.57 | \$20.74 | \$12.70 | \$20.96 | \$14.05 | \$23.18 | \$15.05 | \$24.83 |
| Construction Inspector | \$19.85 | \$32.75 | \$20.05 | \$33.08 | \$20.25 | \$33.41 | \$21.60 | \$35.64 | \$22.60 | \$37.29 |
| Vehicle Mechanic | \$15.67 | \$25.86 | \$15.83 | \$26.12 | \$15.99 | \$26.38 | \$17.34 | \$28.61 | \$18.34 | \$30.26 |
| Pump Station Technician | \$15.95 | \$26.32 | \$16.11 | \$26.58 | \$16.27 | \$26.85 | \$17.62 | \$29.07 | \$21.30 | \$35.15 ⁽²⁾ |
| Purchasing/Inventory Control Specialist | \$17.06 | \$28.15 | \$17.23 | \$28.43 | \$17.40 | \$28.71 | \$18.75 | \$30.94 | \$19.75 | \$32.59 |
| ADMINISTRATIVE | | | | | | | | | | |
| Finance Director | \$33.32 | \$54.98 | \$33.65 | \$55.52 | \$33.99 | \$56.08 | \$35.34 | \$58.31 | \$36.34 | \$59.96 |
| Director of Operations/Engineer | \$35.14 | \$57.98 | \$35.49 | \$58.56 | \$35.84 | \$59.14 | \$37.19 | \$61.36 | \$38.19 | \$63.02 |
| Assistant Finance Director | \$23.60 | \$38.94 | \$23.84 | \$39.34 | \$24.08 | \$39.73 | \$25.43 | \$41.96 | \$26.43 | \$43.61 |
| Office Manager | \$18.83 | \$31.07 | \$19.02 | \$31.38 | \$19.21 | \$31.70 | \$20.56 | \$33.92 | \$21.56 | \$35.57 |
| Senior Clerk/Finance | \$16.84 | \$27.79 | \$17.01 | \$28.07 | \$17.18 | \$28.35 | \$18.53 | \$30.57 | \$19.53 | \$32.22 |
| Human Resources Manager | \$17.04 | \$28.12 | \$17.21 | \$28.40 | \$17.38 | \$28.68 | \$18.73 | \$30.90 | \$19.73 | \$32.56 |
| Assistant Office Manager | \$14.82 | \$24.45 | \$14.97 | \$24.70 | \$15.12 | \$24.95 | \$16.47 | \$27.18 | \$17.47 | \$28.83 |
| Executive Secretary | \$14.82 | \$24.45 | \$14.97 | \$24.70 | \$15.12 | \$24.95 | \$16.47 | \$27.18 | \$17.47 | \$28.83 |
| Accounts Payable Clerk/Payroll Clerk | \$12.45 | \$20.54 | \$12.57 | \$20.74 | \$12.70 | \$20.96 | \$14.05 | \$23.18 | \$15.05 | \$24.83 |
| Customer Service Clerk II | \$12.45 | \$20.54 | \$12.57 | \$20.74 | \$12.70 | \$20.96 | \$14.05 | \$23.18 | \$15.05 | \$24.83 |
| Customer Service Clerk I | \$11.85 | \$19.55 | \$11.97 | \$19.75 | \$12.09 | \$19.95 | \$13.44 | \$22.18 | \$14.44 | \$23.83 |
| Special Projects Clerk | \$11.85 | \$19.55 | \$11.97 | \$19.75 | | | | | | |
| Fixed Asset Clerk | \$11.85 | \$19.55 | \$11.97 | \$19.75 | | | | | | |
| Meter Reader Supervisor | \$15.54 | \$25.64 | \$15.70 | \$25.91 | \$15.86 | \$26.17 | \$17.21 | \$28.40 | \$18.21 | \$30.04 |
| Meter Reader Tech/Backflow Tester | \$13.09 | \$21.60 | \$13.22 | \$21.81 | \$13.35 | \$22.03 | \$14.70 | \$24.26 | \$15.70 | \$25.91 |
| Meter Reader Technician | \$13.09 | \$21.60 | \$13.22 | \$21.81 | \$13.35 | \$22.03 | \$14.70 | \$24.26 | \$15.70 | \$25.91 |
| Meter Service Technician Trainee | \$12.45 | \$20.54 | \$12.57 | \$20.74 | \$12.70 | \$20.96 | \$14.05 | \$23.18 | \$15.05 | \$24.83 |

| | | | | | |
|--------------------|---------|---------|---------|---------|---------|
| OUA Minimum Wage | \$11.85 | \$11.97 | \$12.09 | \$13.44 | \$14.44 |
| State Minimum Wage | | \$8.56 | \$8.56 | \$10.00 | \$11.00 |
| Difference | | \$3.41 | \$3.53 | \$3.44 | \$3.44 |

FY 2019 includes a 1.0% COLA, plus 1.5% merit and 1.5% bonus

FY 2020 includes a 1.0% COLA, plus 1.5% merit and 1.5% bonus

FY 2021 includes a 1.0% COLA, plus 0% merit and 2.0% bonus

FY 2022 includes a 0% COLA, plus 0% merit and 1.5% bonus (plus \$1.35 per hour wage increase across the board)

FY 2023 includes a 0% COLA, plus 0% merit and 1.5% bonus (plus \$1.00 per hour wage increase across the board)

⁽¹⁾ A new pay scale for FY23

⁽²⁾ A new name & pay scale for FY23

| OUA Classification (Position) | OUA FY23 Rates | | Okeechobee BOCC FY23 Rates | | City of Sebring FY22 Rates | | Indian River BOCC FY22 Rates | | Loxahatchee Riv Dist FY22 Rates | | City of Vero Beach FY22 Rates | | FPUA FY23 Rates | |
|---|------------------------|------------------------|-------------------------------|------------------------|-------------------------------|------------------------|---------------------------------|------------------------|------------------------------------|------------------------|----------------------------------|------------------------|------------------------|------------------------|
| | Hourly Rate Minimum | Hourly Rate Maximum | Hourly Rate Minimum | Hourly Rate Maximum | Hourly Rate Minimum | Hourly Rate Maximum | Hourly Rate Minimum | Hourly Rate Maximum | Hourly Rate Minimum | Hourly Rate Maximum | Hourly Rate Minimum | Hourly Rate Maximum | Hourly Rate Minimum | Hourly Rate Maximum |
| WATER TREATMENT PLANT | | | | | | | | | | | | | | |
| Plant Supervisor A | \$24.64 | \$40.66 | | | \$24.98 | \$38.72 | \$25.08 | \$37.60 | \$32.00 | \$51.19 | \$34.40 | \$36.31 | \$26.04 | \$42.14 |
| Plant Supervisor B | \$22.60 | \$37.29 | | | | | | | | | | | \$23.74 | \$38.32 |
| Plant Operator A | \$20.75 | \$34.24 | | | | | \$23.89 | \$35.81 | \$26.87 | \$42.98 | \$28.64 | \$30.41 | \$21.57 | \$34.81 |
| Plant Operator B | \$19.03 | \$31.39 | | | \$19.82 | \$30.96 | \$22.75 | \$34.11 | \$25.34 | \$40.55 | \$25.94 | \$27.64 | \$19.61 | \$31.68 |
| Plant Operator C | \$18.04 | \$29.76 | | | \$18.64 | \$28.89 | \$20.61 | \$30.93 | \$22.56 | \$36.09 | \$23.20 | \$24.83 | \$17.80 | \$28.80 |
| Plant Operator Non-Certified | \$15.70 | \$25.91 | | | \$16.10 | \$24.96 | \$17.82 | \$26.70 | \$20.08 | \$32.12 | \$20.85 | \$22.42 | \$16.19 | \$26.20 |
| Plant Maintenance I | \$14.44 | \$23.83 | \$14.60 | \$21.90 | | | | | | | | | \$14.71 | \$23.85 |
| Sludge Press Operator | \$14.44 | \$23.83 | | | | | | | | | | | \$16.19 | \$26.20 |
| WASTEWATER TREATMENT PLANT | | | | | | | | | | | | | | |
| Plant Supervisor A | \$24.64 | \$40.66 | | | \$24.98 | \$38.72 | \$25.08 | \$37.60 | \$32.00 | \$51.19 | \$34.40 | \$36.31 | \$26.04 | \$42.14 |
| Plant Supervisor B | \$22.60 | \$37.29 | | | | | | | | | | | \$23.74 | \$38.32 |
| Plant Operator A | \$20.75 | \$34.24 | | | | | \$23.89 | \$35.81 | \$26.87 | \$42.98 | \$28.64 | \$30.41 | \$21.57 | \$34.81 |
| Plant Operator B | \$19.03 | \$31.39 | | | \$19.82 | \$30.96 | \$22.75 | \$34.11 | \$25.34 | \$40.55 | \$25.94 | \$27.64 | \$19.61 | \$31.68 |
| Plant Operator C | \$18.04 | \$29.76 | | | \$18.64 | \$28.89 | \$20.61 | \$30.93 | \$22.56 | \$36.09 | \$23.20 | \$24.83 | \$17.80 | \$28.80 |
| Plant Operator Non-Certified | \$15.70 | \$25.91 | | | \$16.10 | \$24.96 | \$17.82 | \$26.70 | \$20.08 | \$32.12 | \$20.85 | \$22.42 | \$16.19 | \$26.20 |
| Plant Maintenance I | \$14.44 | \$23.83 | \$14.60 | \$21.90 | | | | | | | | | \$14.71 | \$23.85 |
| Sludge Press Operator | \$14.44 | \$23.83 | | | | | | | | | | | \$16.19 | \$26.20 |
| MAINTENANCE | | | | | | | | | | | | | | |
| Maintenance Supervisor A | \$24.43 | \$40.31 | \$25.28 | \$37.92 | \$24.98 | \$38.72 | | | | | \$35.83 | \$37.77 | \$26.06 | \$42.14 |
| Maintenance Foreman | \$21.69 | \$35.79 | \$20.78 | \$31.17 | | | | | | | \$31.02 | \$32.85 | \$21.57 | \$34.81 |
| Construction Foreman | \$21.69 | \$35.79 | \$20.78 | \$31.17 | | | | | \$28.48 | \$45.56 | \$29.26 | \$31.05 | \$21.57 | \$34.81 |
| Distribution Operator 1 | \$21.30 | \$35.14 | | | | | | | \$25.34 | \$40.55 | \$20.85 | \$22.42 | | |
| Distribution Operator 2 | \$18.62 | \$30.72 | | | | | | | \$22.56 | \$36.09 | \$19.45 | \$20.98 | | |
| Distribution Operator 3 | \$17.83 | \$29.42 | | | \$16.91 | \$26.21 | | | \$21.28 | \$34.04 | \$18.06 | \$19.56 | \$17.80 | \$28.80 |
| Distribution Operator, Non-Certified | \$15.70 | \$25.91 | | | \$16.10 | \$24.96 | | | \$20.08 | \$32.12 | \$16.18 | \$17.64 | \$16.19 | \$26.20 |
| Distribution Operator, Trainee | \$15.05 | \$24.83 | \$14.60 | \$21.90 | \$15.34 | \$23.77 | | | \$20.08 | \$32.12 | \$16.18 | \$17.64 | \$14.71 | \$23.85 |
| Construction Inspector | \$22.60 | \$37.29 | | | | | \$22.75 | \$34.11 | \$30.19 | \$48.29 | | | \$17.80 | \$28.80 |
| Vehicle Mechanic | \$18.34 | \$30.26 | \$17.08 | \$25.62 | \$18.64 | \$28.89 | \$18.69 | \$28.06 | \$22.56 | \$36.09 | \$24.99 | \$26.67 | \$19.61 | \$31.68 |
| Lift Station Technician | \$21.30 | \$35.15 | \$21.61 | \$32.42 | | | \$21.66 | \$32.49 | | | \$24.99 | \$26.67 | \$21.57 | \$34.81 |
| Purchasing/Inventory Control Specialist | \$19.75 | \$32.59 | \$21.61 | \$32.42 | | | \$18.69 | \$28.06 | | | \$24.02 | \$25.67 | \$16.19 | \$26.20 |
| ADMINISTRATIVE | | | | | | | | | | | | | | |
| Finance Director | \$36.34 | \$59.96 | \$35.77 | \$53.66 | \$35.15 | \$54.48 | | | \$54.38 | \$87.01 | | | \$50.76 | \$82.88 |
| Director of Operations/Engineer | \$38.19 | \$63.02 | \$45.06 | \$67.59 | \$33.48 | \$51.89 | | | | | | | \$50.76 | \$82.88 |
| Assistant Finance Director | \$26.43 | \$43.61 | | | | | | | \$35.95 | \$57.52 | | | \$28.71 | \$46.85 |
| Office Manager | \$21.56 | \$35.57 | \$19.98 | \$29.97 | \$24.98 | \$38.72 | | | \$22.56 | \$36.09 | \$19.28 | \$21.31 | \$21.57 | \$34.81 |
| Senior Clerk/Finance | \$19.53 | \$32.22 | \$17.76 | \$26.64 | \$21.58 | \$33.45 | \$18.69 | \$28.06 | \$25.34 | \$40.55 | \$20.94 | \$23.06 | \$19.61 | \$31.68 |
| Human Resources Manager | \$19.73 | \$32.56 | | | \$21.58 | \$33.45 | \$23.89 | \$35.81 | \$26.87 | \$42.98 | | | \$19.61 | \$31.68 |
| Assistant Office Manager | \$17.47 | \$28.83 | | | | | | | | | | | \$17.80 | \$28.80 |
| Executive Secretary | \$17.47 | \$28.83 | \$21.61 | \$32.42 | | | | | \$25.34 | \$40.55 | | | \$19.61 | \$31.68 |
| Accounts Payable Clerk/Payroll Clerk | \$15.05 | \$24.83 | \$13.50 | \$20.25 | \$14.61 | \$22.64 | \$16.14 | \$24.23 | | | \$14.48 | \$16.25 | \$16.19 | \$26.20 |
| Customer Service Clerk II | \$15.05 | \$24.83 | | | \$14.61 | \$22.64 | \$16.96 | \$25.43 | \$21.28 | \$34.04 | \$17.47 | \$19.40 | \$14.71 | \$23.85 |
| Customer Service Clerk I | \$14.44 | \$23.83 | | | \$13.91 | \$21.56 | \$15.39 | \$23.08 | \$17.87 | \$28.58 | \$15.84 | \$17.69 | \$13.36 | \$21.71 |
| | | | | | | | | | | | | | | |
| Meter Reader Supervisor | \$18.21 | \$30.04 | | | \$16.10 | \$24.96 | \$18.69 | \$28.06 | | | | | \$19.61 | \$31.68 |
| Meter Reader Tech/Backflow Tester | \$15.70 | \$25.91 | | | | | | | | | | | \$16.19 | \$26.20 |
| Meter Reader Technician | \$15.70 | \$25.91 | | | \$14.61 | \$22.64 | \$14.66 | \$21.98 | | | | | \$14.71 | \$23.85 |
| Meter Service Technician Trainee | \$15.05 | \$24.83 | | | | | | | | | | | \$13.36 | \$21.71 |

At OUA Board direction, OUA staff could advertise an RFP to select qualified firms for a pay scale analysis of the OUA pay scale and make recommendations as necessary.

During the last OUA Board meeting, a member stated that the OUA wage rates should be adjusted to keep up with the job market, hiring practices and/or cost of living. To that end, OUA staff examined what a \$1.00 per hour to \$5.00 per hour wage increase and how it might impact the annual budget. OUA staff utilized a spreadsheet that took in to account the raw labor, COLA, paid time off expense, Worker’s Comp, life insurance, AD&D insurance, pension expense, health insurance and a few other expenses. The following table compares the different possible increases.

OUA FY23 Hourly Increase Comparison

| | TOTAL | NET |
|--------|----------------|--------------|
| FY23 | \$4,174,148.53 | |
| \$1.00 | \$4,329,951.59 | \$155,803.06 |
| \$2.00 | \$4,485,657.22 | \$311,508.69 |
| \$3.00 | \$4,641,351.35 | \$467,202.82 |
| \$4.00 | \$4,797,032.96 | \$622,884.43 |
| \$5.00 | \$4,952,671.13 | \$778,522.59 |

OUA staff examined the current insurance/health care contribution by the OUA to OUA employees. Each month the OUA provides up to \$750.00 towards an employee’s insurance benefits. The initial expense covered by the \$750 is health insurance. The employee must, at a minimum, elect personal health care for themselves. As an option, the employee may instead elect to cover employee/spouse, employee/children or they may elect employee/family. Each of these choices can be elected under several different insurance programs and expense. Money from the \$750 must be used for insurance costs, all unused proceeds remain with the OUA.

Staff reviewed current insurance use by the employees which is shown in the following table listed “OUA Insurance Cost”. Staff compared how an employee (FY23 insurance) may benefit if the \$750 stipend is increased. By increasing the stipend means less money from the employee to meet insurance fees. Two totals per raise are shown at the bottom of the table: one if in the following year employees change their coverage options to use maximize the stipend and the second number what it would cost the OUA based upon current coverage claims. Please note that coverage claimed by the employee at the beginning of a plan year can only change during the year if a qualified event happens.

- At \$800, all employees - \$31,200
- At \$800, this plan year - \$21,600 (benefit 36 employees)

- At \$850, all employees - \$62,400
- At \$850, this plan year - \$37,800 (fully benefit an additional 27 employees)

- At \$900, all employees - \$93,600
- At \$900, this plan year - \$49,400 (fully benefit an additional 19 employees)

Another option to consider would be to allow for a one time mid-year employee bonus based upon mid-year performance review. Currently, staff is to receive a year end performance bonus (1 ½%) next month at an approximate cost of nearly \$50,000. As an example, a \$30,000 a year employee would see a net \$450 bonus before taxes. If a mid-year bonus is considered, the percentage would also need to be stated.

As a suggestion, since annual pay raises for the next three years are under consideration due to the \$15.00 minimum wage, should the OUA accelerate a planned \$1.00 per hour raise now rather than waiting.

At the OUA Board review and discussions, OUA staff requests direction upon one of more of the following (or other Workshop discussed options)

- Accelerate the \$1.00 per hour wage increase for this year at an anticipated annual budget cost of approximately \$155,800.
- Increase the monthly insurance stipend to \$900 at an expected annual cost for this year at \$49,400 and possibly next year and all remaining years up to \$93,600.
- Provide for the planned year end performance bonus at 3% (doubled), at an expected increase to the budget of \$50,000.

OKEECHOBEE UTILITY AUTHORITY

AGENDA ITEM NO. 7

NOVEMBER 14, 2022

LOCAL PURCHASE OPTION

At the last board meeting on October 20, 2022, the staff was asked to develop a policy and procedure guideline for the establishment of a local preference vendor policy.

To initiate such policy, the following Florida Statutes were reviewed:

- FS 255.20 - Construction of Public Property and Public Owned Building.
- FS 287.055 – Acquisition of professional architectural, engineering, landscape architectural, or surveying and Mapping Services (Short title: Consultant Competitive Negotiation Act).

From our review, it was noted that the statues recommend that all work undertaken by governmental bodies, “must be competitively awarded to an appropriately licensed contractor in accordance with generally accepted cost-accounting principles”.

To better understand the interpretation of the statues, the staff referred to an article published by Florida Attorney General (AGO: 2012 - 34) on September 19, 2012 in response to a question from Suwannee River Water Management District which asked the following question:

“Whether water management district is authorized to adopt a policy of local preference vendor when purchasing goods and services, as per ss 255.20, 287.055, and Ch. 373, Fla. Stat.”

The Attorney General responded:

“The Suwannee River Water Management District is limited to utilizing the procedures set forth in the statutes for the procurement of goods and services including the Consultants Competitive Negotiation Act and has no authority to enact a policy granting local preference to businesses located within the boundaries of the district except to the extent the district can identify a statutory authorization for local preference consideration”.

To confirm the interpretation posted by the Attorney General, Mr. Tom Conley, the Board’s counsel, was asked to provide his legal opinion on the issue whether OUA was legally capable of establishing a policy on Preferred Local Vendor.

In response, Mr. Conley replied:

“The OUA, as a special independent agency, does not have home rule authority to modify the State Statues, and therefore, cannot legally adopt a Vendor Preference Policy”.

Given the response of the Attorney General on September 19, 2012 (on the above topic) along with the recommendation of the Board’s Attorney, Mr. Tom Conley, the staff of OUA seeks the board’s direction on the way forward, regarding the implementation of a Vendor Preference Policy at OUA.

The Florida Senate
2022 Florida Statutes

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| <p><u>Title XIX</u> PUBLIC BUSINESS</p> | <p><u>Chapter 287</u> PROCUREMENT OF PERSONAL PROPERTY AND SERVICES</p> <p><u>Entire Chapter</u></p> | <p>SECTION 055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties.</p> |
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287.055 Acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services; definitions; procedures; contingent fees prohibited; penalties. —

(1) **SHORT TITLE.** — This section shall be known as the “Consultants’ Competitive Negotiation Act.”

(2) **DEFINITIONS.** — For purposes of this section:

(a) “Professional services” means those services within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

(b) “Agency” means the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term “agency” does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. [380.06](#) or ss. [163.3220-163.3243](#).

(c) “Firm” means any individual, firm, partnership, corporation, association, or other legal entity permitted by law to practice architecture, engineering, or surveying and mapping in the state.

(d) “Compensation” means the amount paid by the agency for professional services regardless of whether stated as compensation or stated as hourly rates, overhead rates, or other figures or formulas from which compensation can be calculated.

(e) “Agency official” means any elected or appointed officeholder, employee, consultant, person in the category of other personal service or any other person receiving compensation from the state, a state agency, municipality, or political subdivision, a school district or a school board.

(f) “Project” means that fixed capital outlay study or planning activity described in the public notice of the state or a state agency under paragraph (3)(a). A project may include:

1. A grouping of minor construction, rehabilitation, or renovation activities.
2. A grouping of substantially similar construction, rehabilitation, or renovation activities.

(g) A “continuing contract” is a contract for professional services entered into in accordance with all the procedures of this act between an agency and a firm whereby the firm provides professional services to the agency for projects in which the estimated construction cost of each individual project under the contract does not exceed \$4 million, for study activity if the fee for professional services for each individual study under the contract does not exceed \$500,000, or for work of a specified nature as outlined in the contract required by the agency, with the contract being for a fixed term or with no time limitation except that the contract must provide a termination clause. Firms providing professional services under continuing contracts shall not be required to bid against one another.

(h) A “design-build firm” means a partnership, corporation, or other legal entity that:

1. Is certified under s. [489.119](#) to engage in contracting through a certified or registered general contractor or a certified or registered building contractor as the qualifying agent; or
2. Is qualified under s. [471.023](#) to practice or to offer to practice engineering; qualified under s. [481.219](#) to practice or to offer to practice architecture; or qualified under s. [481.319](#) to practice or to offer to practice landscape architecture.

(i) A “design-build contract” means a single contract with a design-build firm for the design and construction of a public construction project.

(j) A "design criteria package" means concise, performance-oriented drawings or specifications of the public construction project. The purpose of the design criteria package is to furnish sufficient information to permit design-build firms to prepare a bid or a response to an agency's request for proposal, or to permit an agency to enter into a negotiated design-build contract. The design criteria package must specify performance-based criteria for the public construction project, including the legal description of the site, survey information concerning the site, interior space requirements, material quality standards, schematic layouts and conceptual design criteria of the project, cost or budget estimates, design and construction schedules, site development requirements, provisions for utilities, stormwater retention and disposal, and parking requirements applicable to the project.

(k) A "design criteria professional" means a firm that is qualified under chapter 481 to practice architecture or landscape architecture or a firm who holds a current certificate as a registered engineer under chapter 471 to practice engineering and who is employed by or under contract to the agency for the providing of professional architect services, landscape architect services, or engineering services in connection with the preparation of the design criteria package.

(l) "Negotiate" or any form of that word means to conduct legitimate, arms length discussions and conferences to reach an agreement on a term or price. For purposes of this section, the term does not include presentation of flat-fee schedules with no alternatives or discussion.

(3) PUBLIC ANNOUNCEMENT AND QUALIFICATION PROCEDURES. —

(a)1. Each agency shall publicly announce, in a uniform and consistent manner, each occasion when professional services must be purchased for a project the basic construction cost of which is estimated by the agency to exceed the threshold amount provided in s. [287.017](#) for CATEGORY FIVE or for a planning or study activity when the fee for professional services exceeds the threshold amount provided in s. [287.017](#) for CATEGORY TWO, except in cases of valid public emergencies certified by the agency head. The public notice must include a general description of the project and must indicate how interested consultants may apply for consideration.

2. Each agency shall provide a good faith estimate in determining whether the proposed activity meets the threshold amounts referred to in this paragraph.

(b) Each agency shall encourage firms engaged in the lawful practice of their professions that desire to provide professional services to the agency to submit annually statements of qualifications and performance data.

(c) Any firm or individual desiring to provide professional services to the agency must first be certified by the agency as qualified pursuant to law and the regulations of the agency. The agency must find that the firm or individual to be employed is fully qualified to render the required service. Among the factors to be considered in making this finding are the capabilities, adequacy of personnel, past record, and experience of the firm or individual.

(d) Each agency shall evaluate professional services, including capabilities, adequacy of personnel, past record, experience, whether the firm is a certified minority business enterprise as defined by the Florida Small and Minority Business Assistance Act, and other factors determined by the agency to be applicable to its particular requirements. When securing professional services, an agency must endeavor to meet the minority business enterprise procurement goals under s. [287.09451](#).

(e) The public must not be excluded from the proceedings under this section.

(4) COMPETITIVE SELECTION. —

(a) For each proposed project, the agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with, and may require public presentations by, no fewer than three firms regarding their qualifications, approach to the project, and ability to furnish the required services.

(b) The agency shall select in order of preference no fewer than three firms deemed to be the most highly qualified to perform the required services. In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection

of the most highly qualified firms. The agency may request, accept, and consider proposals for the compensation to be paid under the contract only during competitive negotiations under subsection (5).

(c) This subsection does not apply to a professional service contract for a project the basic construction cost of which is estimated by the agency to be not in excess of the threshold amount provided in s. [287.017](#) for CATEGORY FIVE or for a planning or study activity when the fee for professional services is not in excess of the threshold amount provided in s. [287.017](#) for CATEGORY TWO. However, if, in using another procurement process, the majority of the compensation proposed by firms is in excess of the appropriate threshold amount, the agency shall reject all proposals and reinstate the procurement pursuant to this subsection.

(d) Nothing in this act shall be construed to prohibit a continuing contract between a firm and an agency.

(5) COMPETITIVE NEGOTIATION. —

(a) The agency shall negotiate a contract with the most qualified firm for professional services at compensation which the agency determines is fair, competitive, and reasonable. In making such determination, the agency shall conduct a detailed analysis of the cost of the professional services required in addition to considering their scope and complexity. For any lump-sum or cost-plus-a-fixed-fee professional service contract over the threshold amount provided in s. [287.017](#) for CATEGORY FOUR, the agency shall require the firm receiving the award to execute a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the compensation are accurate, complete, and current at the time of contracting. Any professional service contract under which such a certificate is required must contain a provision that the original contract price and any additions thereto will be adjusted to exclude any significant sums by which the agency determines the contract price was increased due to inaccurate, incomplete, or noncurrent wage rates and other factual unit costs. All such contract adjustments must be made within 1 year following the end of the contract.

(b) Should the agency be unable to negotiate a satisfactory contract with the firm considered to be the most qualified at a price the agency determines to be fair, competitive, and reasonable, negotiations with that firm must be formally terminated. The agency shall then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the agency must terminate negotiations. The agency shall then undertake negotiations with the third most qualified firm.

(c) Should the agency be unable to negotiate a satisfactory contract with any of the selected firms, the agency shall select additional firms in the order of their competence and qualification and continue negotiations in accordance with this subsection until an agreement is reached.

(6) PROHIBITION AGAINST CONTINGENT FEES. —

(a) Each contract entered into by the agency for professional services must contain a prohibition against contingent fees as follows: "The architect (or registered surveyor and mapper or professional engineer, as applicable) warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for the architect (or registered surveyor and mapper, or professional engineer, as applicable) to solicit or secure this agreement and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the architect (or registered surveyor and mapper or professional engineer, as applicable) any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this agreement." For the breach or violation of this provision, the agency shall have the right to terminate the agreement without liability and, at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

(b) Any individual, corporation, partnership, firm, or company, other than a bona fide employee working solely for an architect, professional engineer, or registered land surveyor and mapper, who offers, agrees, or contracts to solicit or secure agency contracts for professional services for any other individual, company, corporation, partnership, or firm and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, the award or the making of a contract for professional services shall, upon conviction in a competent court of this state, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(c) Any architect, professional engineer, or registered surveyor and mapper, or any group, association, company, corporation, firm, or partnership thereof, who offers to pay, or pays, any fee, commission, percentage, gift, or other

consideration contingent upon, or resulting from, the award or making of any agency contract for professional services shall, upon conviction in a state court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(d) Any agency official who offers to solicit or secure, or solicits or secures, a contract for professional services and to be paid, or is paid, any fee, commission, percentage, gift, or other consideration contingent upon the award or making of such a contract for professional services between the agency and any individual person, company, firm, partnership, or corporation shall, upon conviction by a court of competent authority, be found guilty of a first degree misdemeanor, punishable as provided in s. [775.082](#) or s. [775.083](#).

(7) **AUTHORITY OF DEPARTMENT OF MANAGEMENT SERVICES.**—Notwithstanding any other provision of this section, the Department of Management Services shall be the agency of state government which is solely and exclusively authorized and empowered to administer and perform the functions described in subsections (3), (4), and (5) respecting all projects for which the funds necessary to complete same are appropriated to the Department of Management Services, irrespective of whether such projects are intended for the use and benefit of the Department of Management Services or any other agency of government. However, nothing herein shall be construed to be in derogation of any authority conferred on the Department of Management Services by other express provisions of law. Additionally, any agency of government may, with the approval of the Department of Management Services, delegate to the Department of Management Services authority to administer and perform the functions described in subsections (3), (4), and (5). Under the terms of the delegation, the agency may reserve its right to accept or reject a proposed contract.

(8) **STATE ASSISTANCE TO LOCAL AGENCIES.**—On any professional service contract for which the fee is over \$25,000, the Department of Transportation or the Department of Management Services shall provide, upon request by a municipality, political subdivision, school board, or school district, and upon reimbursement of the costs involved, assistance in selecting consultants and in negotiating consultant contracts.

(9) **APPLICABILITY TO DESIGN-BUILD CONTRACTS.**—

(a) Except as provided in this subsection, this section is not applicable to the procurement of design-build contracts by any agency, and the agency must award design-build contracts in accordance with the procurement laws, rules, and ordinances applicable to the agency.

(b) The design criteria package must be prepared and sealed by a design criteria professional employed by or retained by the agency. If the agency elects to enter into a professional services contract for the preparation of the design criteria package, then the design criteria professional must be selected and contracted with under the requirements of subsections (4) and (5). A design criteria professional who has been selected to prepare the design criteria package is not eligible to render services under a design-build contract executed pursuant to the design criteria package.

(c) Except as otherwise provided in s. [337.11\(7\)](#), the Department of Management Services shall adopt rules for the award of design-build contracts to be followed by state agencies. Each other agency must adopt rules or ordinances for the award of design-build contracts. Municipalities, political subdivisions, school districts, and school boards shall award design-build contracts by the use of a competitive proposal selection process as described in this subsection, or by the use of a qualifications-based selection process pursuant to subsections (3), (4), and (5) for entering into a contract whereby the selected firm will, subsequent to competitive negotiations, establish a guaranteed maximum price and guaranteed completion date. If the procuring agency elects the option of qualifications-based selection, during the selection of the design-build firm the procuring agency shall employ or retain a licensed design professional appropriate to the project to serve as the agency's representative. Procedures for the use of a competitive proposal selection process must include as a minimum the following:

1. The preparation of a design criteria package for the design and construction of the public construction project.
2. The qualification and selection of no fewer than three design-build firms as the most qualified, based on the qualifications, availability, and past work of the firms, including the partners or members thereof.
3. The criteria, procedures, and standards for the evaluation of design-build contract proposals or bids, based on price, technical, and design aspects of the public construction project, weighted for the project.

4. The solicitation of competitive proposals, pursuant to a design criteria package, from those qualified design-build firms and the evaluation of the responses or bids submitted by those firms based on the evaluation criteria and procedures established prior to the solicitation of competitive proposals.

5. For consultation with the employed or retained design criteria professional concerning the evaluation of the responses or bids submitted by the design-build firms, the supervision or approval by the agency of the detailed working drawings of the project; and for evaluation of the compliance of the project construction with the design criteria package by the design criteria professional.

6. In the case of public emergencies, for the agency head to declare an emergency and authorize negotiations with the best qualified design-build firm available at that time.

(10) REUSE OF EXISTING PLANS.—Notwithstanding any other provision of this section, there shall be no public notice requirement or utilization of the selection process as provided in this section for projects in which the agency is able to reuse existing plans from a prior project of the agency, or, in the case of a board as defined in s. [1013.01](#), a prior project of that or any other board. Except for plans of a board as defined in s. [1013.01](#), public notice for any plans that are intended to be reused at some future time must contain a statement that provides that the plans are subject to reuse in accordance with the provisions of this subsection.

(11) CONSTRUCTION OF LAW.—Nothing in the amendment of this section by chapter 75-281, Laws of Florida, is intended to supersede the provisions of ss. [1013.45](#) and [1013.46](#).

History.—ss. 1, 2, 3, 4, 5, 6, 7, 8, ch. 73-19; ss. 1, 2, 3, ch. 75-281; s. 1, ch. 77-174; s. 1, ch. 77-199; s. 10, ch. 84-321; ss. 23, 32, ch. 85-104; s. 57, ch. 85-349; s. 6, ch. 86-204; s. 1, ch. 88-108; s. 1, ch. 89-158; s. 16, ch. 90-268; s. 15, ch. 91-137; s. 7, ch. 91-162; s. 250, ch. 92-279; s. 55, ch. 92-326; s. 1, ch. 93-95; s. 114, ch. 94-119; s. 10, ch. 94-322; s. 868, ch. 95-148; s. 2, ch. 95-410; s. 45, ch. 96-399; s. 38, ch. 97-100; s. 1, ch. 97-296; s. 80, ch. 98-279; s. 55, ch. 2001-61; s. 63, ch. 2002-20; s. 944, ch. 2002-387; s. 1, ch. 2005-224; s. 19, ch. 2007-157; s. 3, ch. 2007-159; s. 3, ch. 2009-227; s. 49, ch. 2020-2; s. 2, ch. 2020-127; s. 81, ch. 2020-160.

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The Florida Senate

2022 Florida Statutes

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| <p><u>Title XVIII</u> PUBLIC LANDS AND PROPERTY</p> | <p><u>Chapter 255</u> PUBLIC PROPERTY AND PUBLICLY OWNED BUILDINGS</p> <p><u>Entire Chapter</u></p> | <p>SECTION 20 Local bids and contracts for public construction works; specification of state-produced lumber.</p> |
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255.20 Local bids and contracts for public construction works; specification of state-produced lumber. —

(1) A county, municipality, special district as defined in chapter 189, or other political subdivision of the state seeking to construct or improve a public building, structure, or other public construction works must competitively award to an appropriately licensed contractor each project that is estimated to cost more than \$300,000. For electrical work, the local government must competitively award to an appropriately licensed contractor each project that is estimated to cost more than \$75,000. As used in this section, the term "competitively award" means to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation. This subsection expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law. For purposes of this section, cost includes employee compensation and benefits, except inmate labor, the cost of equipment and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. Subject to the provisions of subsection (3), the county, municipality, special district, or other political subdivision may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.

(a) Notwithstanding any other law, a governmental entity seeking to construct or improve bridges, roads, streets, highways, or railroads, and services incidental thereto, at a cost in excess of \$250,000 may require that persons interested in performing work under contract first be certified or qualified to perform such work. A contractor may be considered ineligible to bid if the contractor is behind by 10 percent or more on completing an approved progress schedule for the governmental entity at the time of advertising the work. A prequalified contractor considered eligible by the Department of Transportation to bid to perform the type of work described under the contract is presumed to be qualified to perform the work described. The governmental entity may provide an appeal process to overcome that presumption with de novo review based on the record below to the circuit court.

(b) For contractors who are not prequalified by the Department of Transportation, the governmental entity shall publish prequalification criteria and procedures prior to advertisement or notice of solicitation. Such publications must include notice of a public hearing for comment on such criteria and procedures prior to adoption. The procedures must provide for an appeal process within the authority for making objections to the prequalification process with de novo review based on the record below to the circuit court within 30 days.

(c) The provisions of this subsection do not apply:

1. If the project is undertaken to replace, reconstruct, or repair an existing public building, structure, or other public construction works damaged or destroyed by a sudden unexpected turn of events such as an act of God, riot, fire, flood, accident, or other urgent circumstances, and such damage or destruction creates:
 - a. An immediate danger to the public health or safety;
 - b. Other loss to public or private property which requires emergency government action; or
 - c. An interruption of an essential governmental service.
2. If, after notice by publication in accordance with the applicable ordinance or resolution, the governmental entity does not receive any responsive bids or proposals.

3. To construction, remodeling, repair, or improvement to a public electric or gas utility system if such work on the public utility system is performed by personnel of the system.

4. To construction, remodeling, repair, or improvement by a utility commission whose major contracts are to construct and operate a public electric utility system.

5. If the project is undertaken as repair or maintenance of an existing public facility. For the purposes of this paragraph, the term "repair" means a corrective action to restore an existing public facility to a safe and functional condition and the term "maintenance" means a preventive or corrective action to maintain an existing public facility in an operational state or to preserve the facility from failure or decline. Repair or maintenance includes activities that are necessarily incidental to repairing or maintaining the facility. Repair or maintenance does not include the construction of any new building, structure, or other public construction works or any substantial addition, extension, or upgrade to an existing public facility. Such additions, extensions, or upgrades shall be considered substantial if the estimated cost of the additions, extensions, or upgrades included as part of the repair or maintenance project exceeds the threshold amount in subsection (1) and exceeds 20 percent of the estimated total cost of the repair or maintenance project fully accounting for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. An addition, extension, or upgrade shall not be considered substantial if it is undertaken pursuant to the conditions specified in subparagraph 1. Repair and maintenance projects and any related additions, extensions, or upgrades may not be divided into multiple projects for the purpose of evading the requirements of this subparagraph.

6. If the project is undertaken exclusively as part of a public educational program.

7. If the funding source of the project will be diminished or lost because the time required to competitively award the project after the funds become available exceeds the time within which the funding source must be spent.

8. If the local government competitively awarded a project to a private sector contractor and the contractor abandoned the project before completion or the local government terminated the contract.

9. If the governing board of the local government complies with all of the requirements of this subparagraph, conducts a public meeting under s. [286.011](#) after public notice, and finds by majority vote of the governing board that it is in the public's best interest to perform the project using its own services, employees, and equipment. The public notice must be published at least 21 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the components and scope of the work, and the estimated cost of the project fully accounting for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs. The notice must specify that the purpose for the public meeting is to consider whether it is in the public's best interest to perform the project using the local government's own services, employees, and equipment. Upon publication of the public notice and for 21 days thereafter, the local government shall make available for public inspection, during normal business hours and at a location specified in the public notice, a detailed itemization of each component of the estimated cost of the project and documentation explaining the methodology used to arrive at the estimated cost. At the public meeting, any qualified contractor or vendor who could have been awarded the project had the project been competitively bid shall be provided with a reasonable opportunity to present evidence to the governing board regarding the project and the accuracy of the local government's estimated cost of the project. In deciding whether it is in the public's best interest for the local government to perform a project using its own services, employees, and equipment, the governing board must consider the estimated cost of the project fully accounting for all costs associated with performing and completing the work, including employee compensation and benefits, equipment cost and maintenance, insurance costs, and the cost of direct materials to be used in the construction of the project, including materials purchased by the local government, and other direct costs, plus a factor of 20 percent for management, overhead, and other indirect costs, and the accuracy of the estimated cost in light of any other information that may be presented at the public meeting and whether the project requires an increase in the number of government employees or an increase in capital

expenditures for public facilities, equipment, or other capital assets. The local government may further consider the impact on local economic development, the impact on small and minority business owners, the impact on state and local tax revenues, whether the private sector contractors provide health insurance and other benefits equivalent to those provided by the local government, and any other factor relevant to what is in the public's best interest. A report summarizing completed projects constructed by the local government pursuant to this subsection shall be publicly reviewed each year by the governing body of the local government. The report shall detail the estimated costs and the actual costs of the projects constructed by the local government pursuant to this subsection. The report shall be made available for review by the public. The Auditor General shall review the report as part of his or her audits of local governments.

10. If the governing board of the local government determines upon consideration of specific substantive criteria that it is in the best interest of the local government to award the project to an appropriately licensed private sector contractor pursuant to administrative procedures established by and expressly set forth in a charter, ordinance, or resolution of the local government adopted before July 1, 1994. The criteria and procedures must be set out in the charter, ordinance, or resolution and must be applied uniformly by the local government to avoid awarding a project in an arbitrary or capricious manner. This exception applies only if all of the following occur:

a. The governing board of the local government, after public notice, conducts a public meeting under s. [286.011](#) and finds by a two-thirds vote of the governing board that it is in the public's best interest to award the project according to the criteria and procedures established by charter, ordinance, or resolution. The public notice must be published at least 14 days before the date of the public meeting at which the governing board takes final action. The notice must identify the project, the estimated cost of the project, and specify that the purpose for the public meeting is to consider whether it is in the public's best interest to award the project using the criteria and procedures permitted by the preexisting charter, ordinance, or resolution.

b. The project is to be awarded by any method other than a competitive selection process, and the governing board finds evidence that:

(I) There is one appropriately licensed contractor who is uniquely qualified to undertake the project because that contractor is currently under contract to perform work that is affiliated with the project; or

(II) The time to competitively award the project will jeopardize the funding for the project, materially increase the cost of the project, or create an undue hardship on the public health, safety, or welfare.

c. The project is to be awarded by any method other than a competitive selection process, and the published notice clearly specifies the ordinance or resolution by which the private sector contractor will be selected and the criteria to be considered.

d. The project is to be awarded by a method other than a competitive selection process, and the architect or engineer of record has provided a written recommendation that the project be awarded to the private sector contractor without competitive selection, and the consideration by, and the justification of, the government body are documented, in writing, in the project file and are presented to the governing board prior to the approval required in this paragraph.

11. To projects subject to chapter 336.

(d) If the project:

1. Is to be awarded based on price, the contract must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county or municipal ordinance or district resolution and in accordance with the applicable contract documents. The county, municipality, or special district may reserve the right to reject all bids and to rebid the project, or elect not to proceed with the project. This subsection is not intended to restrict the rights of any local government to reject the low bid of a nonqualified or nonresponsive bidder and to award the contract to any other qualified and responsive bidder in accordance with the standards and procedures of any applicable county or municipal ordinance or any resolution of a special district.

2. Uses a request for proposal or a request for qualifications, the request must be publicly advertised and the contract must be awarded in accordance with the applicable local ordinances.

3. Is subject to competitive negotiations, the contract must be awarded in accordance with s. [287.055](#).

(e) If a construction project greater than \$300,000, or \$75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county or municipality that issues registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 to supervise the work.

(f) If a construction project greater than \$300,000, or \$75,000 for electrical work, is started after October 1, 1999, is to be performed by a local government using its own employees in a county that does not issue registered contractor licenses, and the project would require a contractor licensed under chapter 489 if performed by a private sector contractor, the local government must use a person appropriately registered or certified under chapter 489 or a person appropriately licensed under chapter 471 to supervise the work.

(g) Projects performed by a local government using its own services and employees must be inspected in the same manner required for work performed by private sector contractors.

(h) A construction project provided for in this subsection may not be divided into more than one project for the purpose of evading this subsection.

(i) This subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance.

(j) A county, municipality, special district as defined in s. [189.012](#), or any other political subdivision of the state that owns or operates a public-use airport as defined in s. [332.004](#) is exempt from this section when performing repairs or maintenance on the airport's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(k) A local government that owns or operates a port identified in s. [403.021\(9\)\(b\)](#) is exempt from this section when performing repairs or maintenance on the port's buildings, structures, or public construction works using the local government's own services, employees, and equipment.

(l) A local government that owns or operates a public transit system as defined in s. [343.52](#), a public transportation system as defined in s. [343.62](#), or a mass transit system described in s. [349.04\(1\)\(b\)](#) is exempt from this section when performing repairs or maintenance on the buildings, structures, or public construction works of the public transit system, public transportation system, or mass transit system using the local government's own services, employees, and equipment.

(m) Any contractor may be considered ineligible to bid by the governmental entity if the contractor has been found guilty by a court of any violation of federal labor or employment tax laws regarding subjects such as safety, tax withholding, workers' compensation, reemployment assistance or unemployment tax, social security and Medicare tax, wage or hour, or prevailing rate laws within the past 5 years.

(2) The threshold amount of \$300,000 for construction or \$75,000 for electrical work, as specified in subsection (1), must be adjusted by the percentage change in the Engineering News-Record's Building Cost Index from January 1, 2009, to January 1 of the year in which the project is scheduled to begin.

(3)(a) All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify in the contract lumber, timber, and other forest products produced and manufactured in this state, if wood is a component of the public work, and if such products are available and their price, fitness, and quality are equal.

(b) This subsection does not apply:

1. To plywood specified for monolithic concrete forms.
2. If the structural or service requirements for timber for a particular job cannot be supplied by native species.
3. If the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture.
4. To transportation projects for which federal aid funds are available.

(4) Any qualified contractor or vendor who could have been awarded the project had the project been competitively bid has standing to challenge a local government's actions to determine if the local government has complied with this section. The prevailing party in such action is entitled to recover its reasonable attorney's fees.

History.—s. 1, ch. 61-495; s. 1, ch. 94-175; s. 4, ch. 95-310; s. 5, ch. 95-341; s. 1, ch. 99-181; s. 62, ch. 2002-20; s. 9, ch. 2003-286; s. 1, ch. 2009-210; s. 54, ch. 2012-30; s. 4, ch. 2013-193; s. 81, ch. 2014-22; s. 2, ch. 2020-154.

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Advisory Legal Opinion - AGO 2012-34

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Number: AGO 2012-34
Date: September 19, 2012
Subject: Special districts, local preference policy

Mr. George T. Reeves
Davis, Schnitker, Reeves & Browning, P.A.
Post Office Drawer 652
Madison, Florida 32341

RE: SPECIAL DISTRICTS--COMPETITIVE BIDDING--PROCUREMENT--WATER
MANAGEMENT DISTRICTS--whether water management district is authorized
to adopt policy of local preference in procurement of goods and
services. ss. 255.20, 287.055, and Ch. 373, Fla. Stat.

Dear Mr. Reeves:

On behalf of the Governing Board of the Suwannee River Water Management District, you have asked for my opinion on substantially the following question:

Is the Governing Board of the Suwannee River Water Management District authorized to enact a policy granting a local preference in the procurement of goods and services to businesses which are located within the boundaries of the Suwannee River Water Management District?
[1]

In sum:

The Suwannee River Water Management District is limited to utilizing the procedures set forth in the statutes for the procurement of goods and services including the Consultants' Competitive Negotiation Act and has no authority to enact a policy granting a local preference to businesses located within the boundaries of the district except to the extent the district can identify a statutory authorization for local preference consideration.

The Suwannee River Water Management District is a multi-county special taxing district created pursuant to section 373.069, Florida Statutes,

[2] for the purpose of managing that geographical portion of Florida's water resources and managing those resources in a sustainable manner. [3] The district is recognized as an independent special district by the Division of Community Development, Florida Department of Economic Opportunity. [4]

While established as an independent special district, the powers of a water management district as an administrative agency are measured by the terms of the act under which it is organized and it can exercise no authority that has not clearly been granted to it by the Legislature or which is necessarily implied from the powers conferred. [5] Pursuant to sections 373.113 and 373.171(1)(c), Florida Statutes, the governing boards of water management districts are authorized to issue orders and adopt rules to implement the provisions of the act. Further, the governing board is authorized to provide for district works:

"In order to carry out the works for the district, and for effectuating the purposes of this chapter, the governing board is authorized to clean out, straighten, enlarge, or change the course of any waterway, natural or artificial, within or without the district; to provide such canals, levees, dikes, dams, sluiceways, reservoirs, holding basins, floodways, pumping stations, bridges, highways, and other works and facilities which the board may deem necessary; to establish, maintain, and regulate water levels in all canals, lakes, rivers, channels, reservoirs, streams, or other bodies of water owned or maintained by the district; to cross any highway or railway with works of the district and to hold, control, and acquire by donation, lease, or purchase, or to condemn any land, public or private, needed for rights-of-way or other purposes, and may remove any building or other obstruction necessary for the construction, maintenance, and operation of the works; and to hold and have full control over the works and rights-of-way of the district."

Among the general powers and duties of the governing board of a water management district is the power to enter into contracts. [6]

It is the general rule with regard to competitive bidding by public agencies that, in the absence of any legislative requirements regarding the method of awarding public contracts, public officers may exercise reasonable discretion, and a contract may be made by any practicable method that will safeguard the public interest. [7] You have not specified the types of goods and services to which the water management district's proposed policy may apply; however, the Florida Statutes contain extensive direction to special districts regarding bidding procedures for contractual services, goods and commodities, and personal property which would control and which contain local preference provisions upon which the district must rely.

The statutory directives requiring special districts to competitively award contracts for public construction projects are contained in sections 255.20 and 287.055, Florida Statutes. Section 255.20, Florida

Statutes, requires counties, municipalities, special districts as defined in chapter 189, or other political subdivisions[8] of the state that are seeking to construct or improve public construction works to competitively award these projects.[9] Such projects must be competitively awarded to a licensed contractor when the project is estimated to have construction costs of more than \$300,000. The term "competitively award" is defined to mean "to award contracts based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation." [10] The statute expressly allows contracts for construction management services, design/build contracts, continuation contracts based on unit prices, "and any other contract arrangement with a private sector contractor permitted by any applicable municipal or county ordinance, by district resolution, or by state law." [11] Exceptions to the statute are recognized for emergency situations. [12]

Section 255.20, Florida Statutes, making provision for letting contracts for certain public projects, contains a local preference requirement in subsection (3):

"All county officials, boards of county commissioners, school boards, city councils, city commissioners, and all other public officers of state boards or commissions that are charged with the letting of contracts for public work, for the construction of public bridges, buildings, and other structures must specify lumber, timber, and other forest products produced and manufactured in this state if such products are available and their price, fitness, and quality are equal. This subsection does not apply to plywood specified for monolithic concrete forms, if the structural or service requirements for timber for a particular job cannot be supplied by native species, or if the construction is financed in whole or in part from federal funds with the requirement that there be no restrictions as to species or place of manufacture."

This statute also makes reference to local preference legislation, i.e., "[t]his subsection does not preempt the requirements of any small-business or disadvantaged-business enterprise program or any local-preference ordinance." However, as discussed more fully herein, special districts, as limited purpose local governmental entities, have no home rule power to adopt ordinances.

The Consultants' Competitive Negotiation Act (CCNA), section 287.055, Florida Statutes, applies to political subdivisions[13] such as the Suwannee River Water Management District and requires that certain professional services be acquired utilizing the competitive selection procedures set forth in the statute. The statute includes procedures for competitive selection and, in subsection (4) (b) sets forth the factors an agency may consider in determining whether a firm is qualified to perform the required services:

"In determining whether a firm is qualified, the agency shall consider such factors as the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms." (e.s.)

Thus, the location of a firm may be considered by the agency in evaluating qualifications to perform the services under the CCNA.

The Suwannee River Water Management District is also subject to the provisions of section 287.084, Florida Statutes, which provides preference to Florida businesses in the purchasing of personal property:

"(1) (a) When an agency, university, college, school district, or other political subdivision of the state is required to make purchases of personal property through competitive solicitation and the lowest responsible and responsive bid, proposal, or reply is by a vendor whose principal place of business is in a state or political subdivision thereof which grants a preference for the purchase of such personal property to a person whose principal place of business is in such state, then the agency, university, college, school district, or other political subdivision of this state shall award a preference to the lowest responsible and responsive vendor having a principal place of business within this state, which preference is equal to the preference granted by the state or political subdivision thereof in which the lowest responsible and responsive vendor has its principal place of business. In a competitive solicitation in which the lowest bid is submitted by a vendor whose principal place of business is located outside the state and that state does not grant a preference in competitive solicitation to vendors having a principal place of business in that state, the preference to the lowest responsible and responsive vendor having a principal place of business in this state shall be 5 percent."

Section 287.082, Florida Statutes, provides that commodities manufactured, grown, or produced in Florida are to be given preference in the sealed bidding process.

While this office has, on several occasions, recognized the authority of local governments to adopt ordinances or regulations establishing a local preference for procurement of goods and services, these opinions have related to the authority of local governments with home rule powers such as municipalities, counties, and, to a limited extent, school districts.[14] Unlike counties or municipalities which have been granted home rule powers, special districts possess no inherent or home rule powers. Created by statute for a specific, limited purpose, the

Suwannee River Water Management District may exercise only such power and authority as it has been granted by law. Thus, when presented with the issue of the authority of a water management district to adopt alternative or "hybrid" procedures for such things as public construction projects, this office has concluded that no such authority exists in the absence of statutory authority.[15]

In sum, it is my opinion that the Suwannee River Water Management District is limited to utilizing the procedures set forth in the statutes for the procurement of goods and services and has no authority to enact a policy granting a local preference to businesses located within the boundaries of the district except to the extent the district can identify a statutory authorization for local preference consideration.

Sincerely,

Pam Bondi
Attorney General

PB/tgh

[1] I note that you have asked a second question premised on an affirmative response to your first question (set out above). In light of my response to your initial question, no consideration of your second question is necessary.

[2] See s. 373.069(1)(b), Fla. Stat.

[3] Section 373.016, Fla. Stat., provides the declaration of policy for the "Florida Water Resources Act of 1972," i.e., Ch. 373, Fla. Stat.

[4] See Suwannee River Water Management District, Official List of Special Districts Online, Division of Community Development, Florida Department of Economic Opportunity.

[5] See *Florida Elections Commission v. Davis*, 44 So. 3d 1211 (Fla. 1st DCA 2010), *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), and e.g., Op. Att'y Gen. Fla. 08-02 (2008). Cf. *Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 2d 346 (Fla. 1919); Ops. Att'y Gen. Fla. 80-55 (1980), 83-44 (1983), and 74-169 (1974), recognizing that special districts possess only such powers as have been expressly granted by law or necessarily implied therefrom.

[6] See s. 373.083(1), Fla. Stat.

[7] See, e.g., Ops. Att'y Gen. Fla. 93-28 (1993) and 93-83 (1993) and the cases cited therein.

[8] See s. 1.01(8), Fla. Stat., defining "political subdivision" to include "all other districts in this state."

[9] Section 255.20(1), Fla. Stat.

[10] Section 255.20(1), Fla. Stat.

[11] *Id.*

[12] Section 255.20(1)(c)1., Fla. Stat.

[13] The definition of "[a]gency" for purposes of the CCNA includes "a political subdivision" and, as discussed herein, the definition of "political subdivision" includes special districts. See n.8 *supra*.

[14] See Ops. Att'y Gen. Fla. 02-03 (2002) and 01-65 (2001), discussing school boards and competitive bidding; Inf. Op. to the Hon. Dana Young, dated August 24, 2011, and Inf. Op. to the Hon. John Tobia, dated December 1, 2010, discussing local governments and local preference legislation generally; and see *City of Port Orange v. Leechase Corp.*, 430 So. 2d 534 (Fla. 5th DCA 1983) (legality of municipal bidding ordinance giving a local preference to bidders with principal place of business within municipality).

[15] See Op. Att'y Gen. Fla. 11-21 (2011), concluding that the Southwest Florida Water Management District is limited to utilizing the procedures set forth in the statutes for public construction works and for construction management services and that the district has no authority to develop a "hybrid" model for awarding construction projects in the absence of statutory authority to do so.

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OKEECHOBEE UTILITY AUTHORITY

AGENDA ITEM NO. 8

NOVEMBER 14, 2022

PUBLIC COMMENTS