Special Districts - Airports - Contracts

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Subject:
Special Districts - Airports - Contracts

Mr. Paul R. Pizzo
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Post Office Box 1438
Tampa, Florida 33601

RE: SPECIAL DISTRICTS – AIRPORTS – CONTRACTS – COMMODITIES – whether airport authority is "eligible entity" for purposes of purchasing commodities or contractual services using purchasing agreements of state and other special districts. ss. 189.4221, 287.012, and 287.056, Fla. Stat.

Dear Mr. Pizzo:

As counsel for the Sebring Airport Authority, you request my opinion on substantially the following question:

Is the Sebring Airport Authority an "eligible user" under section 287.056(1), Florida Statutes, authorized to purchase commodities and contractual services from state purchasing agreements and state term contracts as provided under section 287.057, Florida Statutes?

In sum:

The Sebring Airport Authority is an "eligible user" under section 287.056(1), Florida Statutes, and is authorized to purchase commodities and contractual services from state purchasing agreements and state term contracts as provided under section 287.057, Florida Statutes.

The Sebring Airport Authority is a dependent special district of the City of Sebring exercising "powers relating to aviation conferred upon municipalities by general law, including the provisions of chapter 332, Florida Statutes, or the Federal Aviation Administration."[1] The charter of the district is codified in Chapter 2005-300, Laws of Florida, as amended by Chapter 2011-265, Laws of Florida. The Legislature has constituted the authority as a public instrumentality and stated that the exercise of the powers granted to the authority by its charter "shall be deemed and held to be the performance of essential governmental functions."[2]

The Sebring Airport Authority is authorized to exercise its powers and jurisdiction over the "Sebring Regional Airport and Industrial Park"[3] and the jurisdictional boundaries of the district are prescribed.[4] Among the powers specifically granted to the airport authority is the power to adopt bylaws for the regulation of affairs of the authority and the conduct of its business[5] and to acquire, lease, construct, reconstruct, improve, extend, repair, maintain, and operate "any airport

and other facilities, including tire and automobile testing and racing, and commercial and industrial facilities, which may be located on the property of the authority."[6] The authority is empowered to issue bonds to finance the acquisition, construction, reconstruction, improvement, extension, enlargement, or equipment needed for airport facilities.[7] Contractual authority is extended to the district as may be "necessary or incidental to the performance of its duties and the execution of its powers under this act[.]"[8]

Administrative agencies, such as the airport authority, are creatures of statute and derive only the power specified therein.[9] The powers of administrative agencies are measured and limited by statutes or acts in which such powers are expressly granted or implicitly conferred.[10]

In 2011, the Legislature amended the authority's charter to specifically authorize purchases as provided in section 189.4221, Florida Statutes:

"The authority may purchase commodities or contractual services from the purchasing agreements of other special districts, municipalities, or counties as provided in section 189.4221, Florida Statutes."[11]

While acknowledging that the airport authority may now purchase commodities or contractual services using the purchasing agreements of other special districts, municipalities, or counties, you question whether the authority may purchase commodities or contractual services using state term contracts and purchasing agreements under section 287.057, Florida Statutes. Legislative history relating to the amendment of section 189.4221, Florida Statutes, states that "special districts may purchase commodities and contractual services from the DMS purchasing agreements and state term contracts"[12] and you have asked for reassurance that this is indeed the state of the law.

Section 287.056(1), Florida Statutes, provides that "[a]gencies shall, and eligible users may, purchase commodities and contractual services from purchasing agreements established and state term contracts procured, pursuant to s. 287.057, by the department." The statute requires that each such agency agreement include

"(a) A provision specifying a scope of work that clearly establishes all tasks that the contractor is required to perform.
(b) A provision dividing the contract into quantifiable, measurable, and verifiable units of deliverables that must be received and accepted in writing by the contract manager before payment. Each deliverable must be directly related to the scope of work and specify the required minimum level of service to be performed and the criteria for evaluating the successful completion of each deliverable."[13]

An "eligible user," as that term is used in Part I, Chapter 287, Florida Statutes, is "any person or entity authorized by the department [Department of Management Services] pursuant to rule to purchase from state term contracts or to use the online procurement system."[14] The Department of Management Services has promulgated Rule 60A-1.005, Florida Administrative Code, which provides that "eligible users" include "[a]ll governmental agencies, as defined in Section 163.3164, F.S., which have a physical presence within the State of Florida[.]" Listed among the governmental agencies in section 163.3164(21), Florida Statutes, the "Community

Planning Act," is

"(c) Any local government, as defined in this section, or any department, commission, agency, or other instrumentality thereof.
(d) Any school board or other special district, authority, or governmental entity."

As a dependent special district of the City of Sebring, the Sebring Airport Authority would fall within the scope of this definition and would constitute an "eligible user" for purposes of section 287.056(1), Florida Statutes.
Thus, as an administrative agency, the Sebring Airport Authority is empowered to contract and authorized, in its discretion, to utilize the provisions of section 287.056(1), Florida Statutes, to purchase from state term contracts or to use the online procurement system. This is the same conclusion presented to the Legislature by staff in 2009 when considering SB 712 which, following adoption, became section 189.4221, Florida Statutes.[15]

Further, nothing in the amendment of the Sebring Airport Authority's charter to allow the authority to take advantage of the provisions of section 189.4221, Florida Statutes, or in that amendment's legislative history would suggest that the Legislature intended to restrict the ability of the airport authority to utilize the provisions of section 287.056(1), Florida Statutes.[16] Rather, the amendments made to the airport authority's charter in Chapter 2011-265, Laws of Florida, appear to have been intended as an expansion of the authority's power to purchase commodities or contractual services.[17]

Thus, it is my opinion that the Sebring Airport Authority is an "eligible user" under section 287.056(1), Florida Statutes, and is authorized to purchase commodities and contractual services from state purchasing agreements and state term contracts as provided under section 287.057, Florida Statutes.[18]

Sincerely,

Pam Bondi
Attorney General

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[1] *See* s. 17, Ch. 2005-300, Laws of Fla.

[2] *See* s. 2, Ch. 2005-300, Laws of Fla.

[3] *See* s. 3, Ch. 2005-300, Laws of Fla.

[4] Section 3, Ch. 2005-300, Laws of Fla., sets forth the boundaries of the Sebring Airport Authority.

[5] Section 6(1), Ch. 2005-300, Laws of Fla.

[6] Section 6 (5), Ch. 2011-265, Laws of Fla., amending Ch. 2005-300, Laws of Fla.

[7] Section 6(6), Ch. 2005-300, Laws of Fla.

[8] Section 6(10), *supra. And see* s. 8, Ch. 2005-300, Laws of Fla., requiring certain contracts for services or purchases over $10,000 be awarded by sealed bids with notice.

[9] *Grove Isle, Ltd. v. State Dept. of Environmental Regulation*, 454 So. 2d 571 (Fla. 1st DCA 1984).

[10] Coastal *Petroleum Co. v. State Dept. of Environmental Protection*, 649 So. 2d 930 (Fla. 1st DCA 1995), *review denied*, 660 So. 2d 712, *appeal after remand*, 672 So. 2d 571, *rehearing denied, review denied, Chiles v. Coastal Petroleum Co.*, 678 So. 2d 1287; *State Dept. of Environmental Regulation v. Puckett Oil Co., Inc.*, 577 So. 2d 988 (Fla. 1st DCA 1991).

[11] *See* s. 8(2), Ch. 2011-265, Laws of Fla.

[12] *See* Florida Senate Bill Analysis and Fiscal Impact Statement on CS/CS/SB 712, section II, "Agency Procurement of Personal Property and Services - Chapter 287, F.S.," dated April 21, 2009.

[13] Section 287.056(1), Fla. Stat.

[14] Section 287.012(11), Fla. Stat.; *and see* subsection (9) thereof for the definition of "[d]epartment."

[15] *See* Florida Senate Bill Analysis and Fiscal Impact Statement on CS/CS/SB 712, p. 2, "Agency Procurement of Personal Property and Services - Chapter 287, F.S.," dated April 21, 2009.

[16] *Cf. Mann v. Goodyear Tire and Rubber Co.*, 300 So. 2d 666 (Fla. 1974) (repeal of statutes by implication is disfavored in the law, and that construction is favored which permits a separate field of operation for each statute validly enacted on the same subject); *Agency for Health Care Administration v. In re Estate of Johnson*, 743 So. 2d 83 (Fla. 3d DCA 1999).

[17] *See* The Florida Senate website, CS/HB 1489: Sebring Airport Authority, Highlands County, 2011 Legislative Session, for the description of this local bill and providing that the bill "expands power to purchase commodities or contractual services."

[18] However, the Sebring Airport Authority operates under a restriction, imposed in s. 8, Ch. 2011-265, Laws of Fla., that requires certain contracts involving expenditures of more than $10,000 be awarded by sealed bids under the provisions set forth therein. The language of s. 8 provides that the authority is authorized to reject all bids.