

THE 2015 LEGISLATIVE SESSION:

WHAT CHANGED AND WHAT DIDN'T IN PUBLIC PROCUREMENT MAY 20, 2015



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Suzanne D'Agresta is a shareholder with Brown, Garganese, Weiss & D'Agresta, P.A. She is certified by The Florida Bar as a specialist in City, County and Local Government Law, and has significant experience in transactional and litigation matters involving School Boards. She concentrates her practice in the area of local government law. She is the recipient of the highest rating (AV) given by Martindale-Hubbell for legal ability and ethics. Ms. D'Agresta is recognized as a Florida Super Lawyer by *Law and Politics*. She is a member of the Florida School Board Attorney's Association, and served as its President in 2006. She was appointed to the City, County and Local Government Certification Committee for the maximum 6 year term and the Ninth Circuit Grievance Committee "D" for the maximum 3 year term. She is also a member of the National School Board Association/Council of School Attorneys, and The Florida Bar Education Law Committee.

Ms. D'Agresta currently serves as the school board attorney for the School Board of Indian River County, and has performed significant legal work for the School Board of Osceola County, and other school boards and cities in Florida. She is a frequent speaker on such local government issues as Sunshine Law, public records, public procurement and employment matters.

Ms. D'Agresta is admitted to practice in Florida state and federal courts. She is admitted to The Florida Bar, and the Bars of the United States District Court for the Middle District of Florida, the United States Court of Appeals for the Eleventh Circuit and the Supreme Court of the United States. She earned her law degree from the University of Florida, and received her Bachelor's degree from the University of Central Florida.

WHAT DIDN'T HAPPEN?

- ❖ Budget
- ❖ SREF flexibility (House Bill 181/Senate Bill 448)
- ❖ Special Session- June 2015
 - Depending upon the “call” of the special session, more than money may be discussed/passed

WHAT DID HAPPEN?

- ❖ Not a whole lot
- ❖ However- Special Session June 2015
Depending upon the “call” of the special session, more than money may be discussed/passed

WHAT HAPPENED IN PROCUREMENT

Senate Bill 778 - Local Government Preferences

House Bill 225 - Purchases of Flags

SENATE BILL 778

- ❖ May 7, 2015 – signed and presented to the Governor
- ❖ May 22, 2015 – deadline for Governor to sign or veto, or the bill becomes law without signature
- ❖ Assuming the bill becomes law, the bill is effective July 1, 2015

SENATE BILL 778 (CONTINUED)

Creates section 255.0991, Florida Statutes, regarding prohibited local government preferences in the award of certain contracts for construction services

SENATE BILL 778 (CONTINUED)

For a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds which have been appropriated at the time of the competitive solicitation, a state college, county, municipality, school district, or other political subdivision of the state may not use a local ordinance or regulation that provides a preference based upon:

SENATE BILL 778 (CONTINUED)

The contractor's

- ❖ maintaining an office or place of business
- ❖ hiring employees or sub-contractors from; or
- ❖ prior payment of local taxes, assessments, or duties

within a particular local jurisdiction

SENATE BILL 778 (CONTINUED)

Any competitive solicitation that meets the above criteria, shall disclose in the solicitation document that any applicable local ordinance or regulation does not include any preference that is prohibited by this new statute

SENATE BILL 778 (CONTINUED)

“Competitive solicitation” means an invitation to bid, a request for proposal, or an invitation to negotiate

SENATE BILL 778 (CONTINUED)

“State-appropriated funds” means all funds appropriated in the General Appropriations Act, excluding federal funds

SENATE BILL 778 (CONTINUED)

So...

- ❖ If 50 percent or more the costs of competitively procured construction services will be paid from funds appropriated in the General Appropriations Act and the funds were appropriated at the time of the competitive solicitation, then you are prohibited from using certain local preferences in awarding the work.

AND

- ❖ If the statute applies, then you must disclose in the solicitation documents that local ordinances and/or regulations do not include the preferences prohibited by this statute.

HOUSE BILL 225

- ❖ This bill has not been signed and presented to the Governor yet
- ❖ Assuming the bill becomes law, the bill is effective July 1, 2015 and applies to the purchase of flags on and after January 1, 2016

HOUSE BILL 225 (CONTINUED)

Creates section 256.041, Florida Statutes, regarding the purchase of United States and state flags for public use – The All American Flag Act

HOUSE BILL 225 (CONTINUED)

When the state, a county, or a municipality purchases a United States or a state flag for public use, the flag must be made in the United States from articles, materials, or supplies, all of which are grown, produced, and manufactured in the United States

HOUSE BILL 225 (CONTINUED)

Universities, colleges, and school districts have been operating under slightly different requirements

- ❖ Section 1000.06, Florida Statutes, requires all United States flags to be made in the United States
- ❖ Section 287.084, Florida Statutes, requires at least a 5% preference to Florida businesses for purchases of personal property (includes flags)

HOUSE BILL 225 (CONTINUED)

So...

If the state, a county, or a city purchases United States or state flags, then on and after January 1, 2016, the flags must be made in the United States entirely from domestically grown, produced and manufactured materials

RECENT DECISIONS OF INTEREST

AGO 2013-28 Osceola School Board

In determining the two million dollar value of continuing contracts under CCNA, the “estimated construction cost” does not include professional fees for such things as design services

RECENT DECISIONS OF INTEREST (CONTINUED)

AGO 2015-04 City of Ocala

Section 255.05(7), Florida Statutes, authorizes a contractor to file alternative forms of security (other than payment and performance bond) for public construction projects, as described in the statute, and there is no authority to refuse to accept the alternate forms of authorized security

RECENT DECISIONS OF INTEREST (CONTINUED)

DOAH Case No. 14-1024

Brevard School Board and AT&T
Corporation/BrightHouse Networks

As long as your bid documents clearly describe a two step pricing process or “best and final offer” as part of the procurement process, you should survive a bid protest

RECENT DECISIONS OF INTEREST (CONTINUED)

DOAH Case No. 14-3549

Broward School Board and Life Insurance Company of the Southwest/AXA Equitable Life Insurance Company

If your bid documents forbid alterations to the pricing form, then alternations to the pricing form are not minor irregularities or waivable technicalities

QUESTIONS?