

Competitive bid, nonprofit corp. created by county

Number: AGO 2002-59

Date: September 03, 2002

Subject:

Competitive bid, nonprofit corp. created by county

Mr. Steven A. Ramunni
Glades County Attorney
Heritage Square
1422 Hendry Street, Suite 302
Fort Myers, Florida 33901

RE: COUNTIES--NONPROFIT CORPORATIONS--COMPETITIVE BIDS--CONSULTANTS'
COMPETITIVE NEGOTIATION ACT--nonprofit corporation created to construct, manage and
operate county jail subject to competitive bid and negotiation requirements. ss. 255.20 and
287.055, Fla. Stat.

Dear Mr. Ramunni:

On behalf of Glades County you ask substantially the following question:

Must the Glades Correctional Development Corporation, a nonprofit corporation created by the
county, comply with the competitive bidding and negotiation requirements of Florida law for the
construction of a county jail?

In sum:

The Glades Correctional Development Corporation, acting as an instrumentality of the county,
must comply with the competitive bidding and negotiation requirements of Florida law for
construction of a county jail.

The Glades Correctional Development Corporation (GCDC) was created by the Glades County
Commission as a nonprofit corporation for the purpose of owning and operating a detention
facility in Glades County.[1] The facility will house federal inmates and persons detained by the
Immigration and Naturalization Service, as well as detainees awaiting trial for offenses
committed in Glades County. The Glades County Sheriff's Office will have its administrative
offices on site and will manage and operate the facility. Financing for the acquisition of real
property and construction of the project will be through the issuance of revenue bonds. Monies
payable to GCDC for housing federal inmates will supplement the sheriff's budget, with excess
revenue paid to Glades County.

The original board of the GCDC consisted of the Glades County Board of County
Commissioners. These members subsequently were replaced by an appointed board consisting
of one county commissioner and two private citizens. You indicate that the developers of the

project have selected bond counsel, an underwriter and a design-build team. You question, however, whether the project is subject to the competitive bidding requirements of sections 255.20 and 287.055, Florida Statutes.

Section 255.20, Florida Statutes, requires a county seeking to construct or improve a public building to competitively award to an appropriately licensed contractor each project that is estimated to have total construction project costs of more than \$200,000. For electrical work, local governments must competitively bid each project that exceeds \$50,000. The provisions of the chapter do not apply under specified conditions that are not applicable to the situation at hand. If the project is to be awarded based on price, it must be awarded to the lowest qualified and responsive bidder in accordance with the applicable county ordinance.

Section 287.055, Florida Statutes, the Consultants' Competitive Negotiation Act, sets forth requirements for the procurement and contracting of professional architectural, engineering, landscape architectural, or land surveying services by governmental agencies.[2] For purposes of the act, "[a]gency" is defined as "the state, a state agency, a municipality, a *political subdivision*, a school district or school board." [3] (e.s.) Clearly, a county is a political subdivision of the state.[4]

The county is responsible for providing county buildings, such as the county jail.[5] Moreover, it is a well-established principle that public officials and entities cannot do indirectly that which they are prohibited from doing directly.[6] In this instance, the county has delegated its authority to build a jail to the GCDC. The county's responsibility to follow competitive bid and negotiation requirements may not be circumscribed by the creation of a nonprofit corporation, such as the GCDC, for the construction of a county jail.[7]

Accordingly, it is my opinion that the Glades Correctional Development Corporation is subject to the competitive bid and negotiation requirements of Florida law for construction of a county jail.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] You have advised this office in subsequent communications that the GCDC was created by the Glades County Commission.

[2] See s. 287.055(2)(a), Fla. Stat., defining "[p]rofessional services."

[3] Section 287.055(2)(b), Fla. Stat.

[4] See s. 1.01(8), Fla. Stat., providing that in construing the Florida Statutes, the word "political subdivision" includes counties.

[5] See s. 125.01(1)(c), Fla. Stat., recognizing the county's authority to "[p]rovide and maintain county buildings." See also Ops. Att'y Gen. Fla. 91-25 (1991) (statutes contemplate that county will provide a jail or detention facility within the county); 79-49 (1979) (sheriff responsible for equipping county jail and repairing, maintaining, and replacing equipment necessary for its proper and efficient operation; repairs, construction or capital improvements to county building housing jail remain responsibility of county).

[6] See *Green v. Galvin*, 114 So. 2d 187 (Fla. 1st DCA 1959), *cert. denied*, 116 So. 2d 775 (Fla. 1959), *appeal dismissed*, 117 So. 2d 844 (Fla. 1960); Ops. Att'y Gen. Fla. 78-76 (1978) and 75-203 (1975).

[7] *Cf.* Op. Att'y Gen. Fla. 94-34 (1994) (nonprofit corporation created by a county to assist in the financing and administration of governmental programs was subject to the Public Records Law and the Government in the Sunshine Law.)