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## OFFICE OF INSPECTOR GENERAL PALM BEACH COUNTY

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Accredited

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### Recording Meetings within the Procurement Process



Florida's Sunshine Law gives a right of access to meetings of any collegial body of a county, municipality, school district, or special district at which public business is to be transacted or discussed, except as specifically exempted by law.<sup>1</sup> Such meetings require notification to the public and prompt recording in the form of written minutes made available for public inspection.<sup>2</sup> Open meetings protect the public from closed-door politics. An official who knowingly violates the Sunshine Law may be subject to criminal sanctions.<sup>3</sup> Additionally, official acts taken in violation of section 286.011 are void ab initio.<sup>4</sup>

#### **Procurement Committee Meetings**

The Sunshine Law applies to procurement committees, such as selection committees or negotiation committees, which have been delegated decision-making authority as part of the competitive solicitation process. Committee actions such as short-listing responsive bids, evaluating and ranking bids for recommendation of award, and negotiating on behalf of agencies have, all been found to be official acts required at a public meeting.<sup>5</sup>

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<sup>1</sup> Article 1, s. 24, Florida Constitution; §286.011, Fla. Stats.

<sup>2</sup> §286.011, Fla. Stats.; AGO 75-45.

<sup>3</sup> § 286.011(3)(b), Fla. Stat.

<sup>4</sup> *Sarasota Citizens for Responsible Gov't v. City of Sarasota*, 48 So. 3d 755, 762 (Fla. 2010); *Town of Palm Beach v. Gradison*, 296 So. 2d 473, 477 (Fla. 1974).

<sup>5</sup> *Leach-Wells v. City of Bradenton*, 734 So. 2d 1168, 1171 (Fla. 2d DCA 1999); *Silver Express Co. v. District Bd. of Lower Tribunal Trustees of Miami-Dade Community College*, 691 So. 2d 1099, 1100 (Fla. 3d DCA 1997); *Monroe County v. Pigeon Key Historical Park*, 647 So. 2d 857 (Fla. 3d DCA 1994); AGO 94-21.

*“Enhancing Public Trust in Government”*

## **Exempt Meetings: Oral Presentations, Negotiation Strategy and Negotiation Meetings**

Florida law, however, currently sets forth several limited exemptions to the open meetings requirements. One such exemption applies to the competitive solicitation<sup>6</sup> process. On June 2, 2011, Governor Scott signed HB 7223 into law. This legislation provides exemptions for any portion of meetings relating to competitive solicitations where: 1) negotiations between government negotiators and a vendor occur, 2) the vendor makes a presentation or answers questions, and 3) the negotiation team discusses negotiation strategies.<sup>7</sup>



### **Recording of Exempt Meetings**

No portion of an exempt meeting may be held off the record, and a complete recording shall be made of the meeting.<sup>8</sup> These recordings are required to be made available to the public either when the agency provides notice of an intended decision or thirty (30) days after opening of the bids, proposals, or final replies, whichever occurs earlier, or up to a year if the agency rejects all bids.<sup>9</sup>

### **Recommendation**

Staff from the Office of Inspector General follow many public solicitations. We have found that some public employees leading a solicitation effort are not aware of the requirement to record exempt meetings. We recommend that entities review their procurement ordinances, policies, and practices in light of this “Tips and Trends” and take appropriate actions.

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<sup>6</sup> “Competitive solicitation” means the process of requesting and receiving sealed bids, proposals, or replies in accordance with the terms of a competitive process, regardless of the method of procurement. §286.0113(2)(a)1., Fla. Stats.

<sup>7</sup> §286.0113(2)(b)1., Fla. Stats.

<sup>8</sup> §286.0113(2) (c)1., Fla. Stats.

<sup>9</sup> §286.0113(2) (c)2., Fla. Stats.