

Michael Sjuggerud and Andrew Schwartz Discuss Business with Florida Ports in the DBR

Daily Business Review
4.27.21

This [article](#) appeared in the Daily Business Review on April 26, 2021.

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Doing Business With Florida's Ports in 2021

In the wake of the Suez Canal Crisis, heightened attention has been paid to Florida's ports, which are pivotal hubs of commerce for the state's economy. Florida's fifteen public seaports are strategically positioned for the movement of goods and people into and out of the United States. These ports generate jobs, support business and recreation, and contribute to tax coffers through cargo and cruise activities. Although ports contribute billions in economic value to the state, many people remain unfamiliar with their operational activities or how to position themselves for advantageous business opportunities in Florida's maritime industry.

Activities Overseen at Florida's Ports

A typical Florida port provides facilities for ocean liners and/or cruise ships. Although there are fifteen public seaports in Florida, only eight support cruise line services - among them are the top three multi-day cruise ports in the world. To offset the cost of their facilities, ports generate revenues from "dockage," which is the charge assessed against a vessel for berthing at a wharf, pier, bulkhead structure or bank. Ports also generate revenues from "wharfage," a charge on all cargo passing or conveyed over wharves or between vessels (to or from barge, lighter or water), when berthed at a wharf or when moored in a slip adjacent to a wharf. With Florida's cruise ports representing the largest passenger cruise market in the world, revenue is also made from fees applied to the embarkations and disembarkations of ship passengers. Ports that are significant landholders may generate income from lease payments and parking fees.

Considerations for Doing Business with Ports

Doing business with a port is similar to dealing with a governmental entity. There are unique legal requirements and strict timelines that those who wish to do business with ports must follow. Depending on the nature of the business contemplated at a Florida port, the following elements

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should be considered:

1. Commercial tenants lease real property from landlord ports for a variety of purposes, including storage and distribution of bulk products, storage of recreational boats at marinas, and operation of entertainment venues. These long-term commercial leases may potentially be in effect for decades, with renewal options available for some.
2. In the event a tenant enters into a ground lease with a port, the tenant may desire to construct improvements to the property, requiring the potential negotiation of a construction contract. It is important to review the terms of the ground lease for contemplated improvements and the port's approval procedures for certain aspects of construction.
3. Cruise ship operators may desire to enter into long-term operating contracts with certain Florida ports to secure docking space. Those ports may make certain landside and waterside improvements for these cruise operators in exchange for revenues from the passenger wharfage, vessel dockage, and other fees.
4. The purchase of goods and services by Florida's ports creates opportunities for the business community, but such procurements can also pose risks. Many ports have their own procurement codes, or are subject to the procurement code of another government entity (e.g., Port Everglades may be subject to Broward County's procurement code), requiring ports to make purchases using a competitive bidding process. If the port awards a contract without a competition in violation of its procurement rules, the port may keep any delivered goods, or retain the benefit of services rendered, and pay nothing to the contractor.
5. From time to time, ports expand their real estate holdings, occasionally acquiring property to grow their immediate port operations. However, when selling real property, a port may be required to sell through a competitive process. For example, Florida law generally requires counties to sell their land to the highest bidder in a competition open to the public. This requirement would likely apply to lands being sold by "county-owned" ports.
6. Many of Florida's ports are located in or adjacent to a Foreign Trade Zone (FTZ), which encourages U.S. activity among foreign competition by allowing delayed or reduced duty payments on foreign merchandise, in addition to other savings. Businesses engaged in international trade use FTZ activated sites located at or in the vicinity of ports to minimize exposure to duties, and for their proximity to shipping and other transportation modes.
7. Additionally, a variety of vessel-related incidents can occur at ports. Counsel can help companies navigate various legal issues ranging from property damage claims involving vessels or cargo to personal injury claims involving workers or cruise line passengers.

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Conclusion

Florida's ports serve as a focal point for waterborne international trade and the world's largest cruise market. However, ports are not immune to the volatility of the global marketplace, as evidenced by the pandemic's effect on cruise ship operations. To that end, ports offer knowledgeable businesses advantageous opportunities to operate at or with their facilities, but such opportunities are accompanied by potential legal challenges.

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