BERGER SINGERMAN
FLORIDA'S BUSINESS LAW FIRM

# GOVERNMENT DISPUTES

Litigating against the government presents unique challenges that require specialized legal counsel. The attorney members of Berger Singerman's Government Disputes Practice Group have decades of experience litigating for and against government agencies. This experience has given these attorneys a unique understanding of the strengths and weaknesses of government in an adversarial context.

The Government Disputes Practice Group's provides the following legal services includes:

- Challenges to tax assessments
- Challenges to election results or candidate qualification determinations
- Representation of clients that are the targets of agency probes, investigations, subpoenas, and the like
- Challenges to Agency Decisions That Impact Clients
- Counsel Clients on Administrative and Judicial Options to Challenge Agency Action or Inaction
- Defense of Clients' Interests in Proceedings Brought by Third Parties to Challenge Agency Action or Inaction Favorable to a Client
- Negotiation with agencies adverse to clients to effectuate resolution prior to the filing of actions by the agency
- Negotiation of Settlement Agreements Between Clients and Agencies
- Challenges to Agency Rules, Regulations and Ordinances
- Initiation of Civil or Administrative Actions Against an Agency for Proposing or undertaking actions adverse to a client
- Constitutional Challenges to Agency Action
- Representation of Clients Before Governmental Boards Acting in a Quasi-Judicial Capacity
- Representation of Clients That May Be a Target of White Collar Criminal Proceedings
- Challenges to ballot initiatives and referenda

The Government Disputes Practice Group's attorneys have assisted clients with the following types of matters:

- Environmental Enforcement
- Land Use
- Eminent Domain
- Bert J. Harris Act
- Property Tax
- Sales and Use Tax
- Code Enforcement
- Business and Professional Licensing
- Clean Water Act

- CERCLA
- Endangered Species Act
- National Environmental Policy Act
- 42 U.S.C. §§1981 and 1983
- Americans With Disabilities Act (ADA)
- Criminal Investigations and Defense
- Voting Rights Act

The Government Disputes Practice Group's attorneys have experience before numerous tribunals and boards:

- Federal and State Agencies, such as the U.S. Army Corps of Engineers, Federal Aviation Administration, Department of Justice, Florida Departments of Environmental Protection, Community Affairs, Health, Health Care Administration, Transportation, Management Services, Business and Professional Regulation, Revenue, Education and Financial Services, Fish and Wildlife Conservation Commission, Division of Highway Safety and Motor Vehicles, Florida Lottery, and the Public Service Commission
- Regional and Local Agencies, such as Water Management Districts, Boards of County Commissioners and Municipal Governing Boards
- The State of Florida Division of Administrative Hearings
- State Professional Licensing Boards
- Local Administrative Tribunals and Boards, such as Code Enforcement Boards, Hearing Officers and Boards of Zoning and Appeals
- Federal Trial, Appellate and Specialty Courts
- Florida Trial and Appellate Courts
- Grand Juries

## Representative Matters

**A & R CONTEMPORARY, INC.**
Berger Singerman is engaged in representing A & R Contemporary, Inc., v. Dept. of Revenue in the assessment of original artwork for sales and use tax for sales conducted in South America. The assessment is being contested because the Dept. of Revenue lacks jurisdiction for sales in South America and because it cannot tax items protected by the First Amendment. The outcome of this case is currently pending.

**CITY OF MIAMI (PRO BONO)**
Berger Singerman assisted the City of Miami by offering its time and efforts, pro bono, on a significant matter requiring a legal opinion where the City Attorney felt conflicted and unable to provide for its client. The matter involved a civil lawsuit filed by a sitting City Commissioner against the Mayor of the City and the question posed was whether the City was obligated to pay for the legal defense of the Mayor. Attorneys Mitchell Berger, Javier Vazquez and Paul Figg were instrumental in a providing a legal Memorandum of Law as well as personal presentation at the dais on the day the matter was discussed. This matter represented tens of thousands of dollars in savings to the residents of the City of Miami.

**CITY OF MIAMI BEACH CONVENTION CENTER AREA AND PARKING FACILITIES**
Berger Singerman represented interests seeking to prevent the award of a contract for the redevelopment of the City of Miami Beach’s Convention Center Area and Parking Facilities. After the contract was conditionally awarded, on behalf of the client Berger Singerman successfully removed a ballot to approve the contract by simple majority. While this representation was not a typical bid protest, it is an example of a solution to a contract award effectuated by other means.

**EDUCATIONAL INSTITUTIONS**
Berger Singerman served as Florida counsel to a for-profit chain of educational institutions under investigation

by Florida's Attorney General for alleged deceptive and unfair trade practices related to advertising and student enrollment. The investigation led to a negotiated settlement of all claims without admission of any wrongdoing. Berger Singerman currently serves as Florida counsel to two for-profit educational institutions in defense of a class action lawsuit related to its enrollment practices.

**FHP BID PROTEST**

Berger Singerman assisted FHP Tectonics Corp, a regional office of Chicago-based FH Paschen, protest a City of Miami contract bid awarded to Munilla Construction Management LLC. FHP was the lowest of five bidders in the initial round of the bidding for a promenade and walkway at Museum Park but MCM, the fourth lowest bidder, maintained it qualified under the city preference rules as a local company for a second round of bidding. Both MCM and FHP were asked to submit best and final offers and MCM's final price was the lowest and the contract was recommended for award to MCM. Berger Singerman learned shortly thereafter that MCM's alleged local office, which qualified them for the second round of bidding, was not in fact an MCM office for purposes of the procurement rules of the City of Miami. Berger Singerman was able to demonstrate that MCM should have never been given a second chance and MCM was disqualified, thus allowing for the $9.4 million job to be awarded to FHP.

**HOST INTERNATIONAL**

Berger Singerman represented Host International in defense of the award of a contract for food and beverage concessions for half of the passenger terminals at Fort Lauderdale/Hollywood International Airport. The protest was dismissed by the aggrieved respondent after receipt of Host's response to the protest.

**MIAMI-DADE COUNTY CLASSROOM TEACHERS' ASSOCIATION, INC.**

Berger Singerman is engaged in representing Miami-Dade County Classroom Teachers' Association, Inc. v. Miami-Dade County Property Appraiser in a case to determine whether or not the Teachers' Association is liable for the back taxes owed on a piece of property for the 2006 and 2007 Tax Years. During those tax years, the owner of the Property was Grouper UTD, LLC. Grouper had purchased the Property from the Teachers' Association and the Teachers' Association had given Grouper a purchase money mortgage. When the Teachers' Association had owned the Property, the Property Appraiser had applied an exemption to its use of the Property. For reasons unknown, the Property Appraiser continued to apply an exemption to Grouper's ownership and use of the Property in the 2006 and 2007 Tax Years. Sometime during the course of the Teachers' Association's foreclosure of the property in early 2008, the Property Appraiser realized its mistake and assessed the Property for back taxes. The tax liability was not known until long after the Teachers' Association purchased the Property in a foreclosure sale. The outcome of this case is currently pending.

**PRIVATE WASTE DISPOSAL COMPANY**

Berger Singerman served as lead counsel in an ongoing dispute between a major private waste disposal company and multiple South Florida municipalities. The dispute involves the county-wide solid waste disposal system and the cities' disposal obligations. Detailed capacity, contractual and permitting issues, as well as the state and federal solid waste regulatory scheme were litigated. Berger Singerman worked closely with the cities and our client to craft a solution that balances complex inter-governmental and public and private sector considerations. Faced with possible contract termination, the result ultimately achieved both preserved our client's relationships with the affected public bodies, but also lead to the expansion of those relationships thereby creating substantial revenue opportunities for the client.

**SUN RECYCLING, LLC & BERGERON ENVIRONMENTAL AND RECYCLING, LLC**

Berger Singerman represented Joint Venture between Sun Recycling, LLC & Bergeron Environmental and Recycling, LLC, in defense of the award of a contract by the City of Miramar for waste disposal services. The City's RFP was prepared in such a manner as to allow other municipalities in Broward County to piggyback on the contract it awarded, as an alternative to the waste disposal contract provided by the County. The City's award to the Client represented the end of a 26 year monopoly on waste disposal within the County.

**SUNRISE PROPERTIES & INVESTMENTS #13 #14 #15, LLC**

Berger Singerman represented Sunrise Properties & Investments #13 #14 #15, LLC to protest Broward County's determination of responsiveness for number-one ranked respondent in two-part competitive

procurement for $15M turnkey facility for the Supervisor of Elections. Our attorneys obtained stay pending review of Client's Petition for Writ of Certiorari challenging the responsiveness determination. Consistent with our client's business goals, Berger Singerman negotiated final settlement of the dispute which allowed the Client to withdraw its proposal and proposal letter of credit, and receive its protest bonds back, in exchange for dismissal of Petition for Writ of Certiorari.