

MIAMI BEACH ADMINISTRATIVE ORDER OF THE CITY MANAGER	DATE ISSUED: MARCH 2022	Page: 1 Of: 7	SEQUENCE NUMBER: PO.19.01
	SUBJECT: SUBMITTAL OF UNSOLICITED PROPOSALS		
	RESPONSIBLE DEPARTMENT: PROCUREMENT DEPARTMENT		

A. PURPOSE. The purpose of this administrative order is to establish the guidelines for submittal and evaluation of unsolicited proposals submitted by private entities pursuant to §255.065, Florida Statutes. The City recognizes that properly structured public-private partnerships ("P3") may: promote the development of City assets; encourage efficiencies and innovation in design, construction, operations, and maintenance; and maximize funding and cash flow initiatives.

APPLICABILITY

This order is applicable to all City of Miami Beach employee.

B. DEFINITIONS. Unless otherwise specified, whenever the following terms are used, they have the meanings set forth below.

"City" means the City of Miami Beach, which may act through its City Commission or City Manager, as the context and applicable law permits.

"Comprehensive Agreement" means the agreement between the Contracting Person and the City that is required before the development or operation of a Proposed Project.

"Interim Agreement" means an agreement, before or in connection with the negotiation of a Comprehensive Agreement, between the City and a Contracting Person whereby the Contracting Person may be authorized by the City to conduct due diligence or further studies or investigations related to the Proposed Project which may include, but not be limited to, project planning and development, design, engineering, environmental analysis and mitigation, surveying, financial and revenue analysis, ascertaining the availability of financing, or any other aspect of the Proposed Project. The rights of the Contracting Person and the City will be governed by the terms of the Interim Agreement, which must be in writing. No purported Interim Agreement or terms relating thereto shall be effective, binding, or valid until approved by the City and signed in writing.

"Private Entity" means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity. A private entity includes a "Proposer" that submits an unsolicited proposal or a "Respondent" that submits a proposal in response to a Solicitation. "Private Entity" also means each individual entity participating in or comprising a Proposer's or Respondent's team.

"Proposer" means a Private Entity that submits or is considering submitting an unsolicited proposal. "Proposer" is the Private Entity with whom the City is expected to contract for a Proposed Project. If the Private Entity has not yet been formed, then "Proposer" shall mean all entities collectively who are known and intend at that time to participate on the Proposer's team.

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"Proposed Project(s)" means:

1. A facility or project fulfilling a public purpose or goal, including, but not limited to, any mass transit facility, vehicle parking facility, rail facility or project, fuel supply facility, medical or nursing care facility, recreational facility, sporting or cultural facility, public library, power generation facility, waste treatment facility, educational facility, civic facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;
2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;
3. A water, wastewater, or surface water management facility or other related infrastructure; or
4. Any other project the City designates as a Proposed Project.

Notwithstanding anything herein to the contrary, a Proposed Project may also include, in addition to the public facility or project, residential, retail, commercial, hospitality or other private, revenue-generating facilities and uses as appropriate and necessary to achieve the public purposes intended for the Proposed Project on a cost model acceptable to the City.

"Respondent" means a Private Entity that submits a proposal in response to a Solicitation.

"Solicitation" means a written request for bids or proposals issued by the City soliciting responses for a P3 project, including, but not limited to, business plans, expressions of interest, ideas, offers, proposals, qualifications, or any combination thereof.

C. SUBMITTAL OF UNSOLICITED PROPOSALS. A private entity may submit to the City an unsolicited proposal for any proposed P3 project in accordance with §255.065, Florida Statutes. The unsolicited proposal should be formatted in accordance with this administrative order and submitted to the following individuals:

To: City Manager
1700 Convention Center Drive
Miami Beach, Florida 33139

Copy: Procurement Director
1755 Meridian Avenue
Miami Beach, Florida 33139.

D. CONTENT OF UNSOLICITED PROPOSALS. At a minimum, unsolicited proposals must include:

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Tab 1 – Cover Letter. The cover letter is to include the following information and must be signed by an authorized representative of the Proposer.

- a. Brief description and purpose of the Proposed Project.
- b. A statement that the unsolicited proposal is being submitted in accordance with §255.065, Florida Statutes.
- c. Identify all Private Entities, and each entity’s principals, who will be directly involved in the Proposed Project. Include the scope of each entity’s engagement, relevant experience, address, email address, and telephone number.
- d. Identify the key contact person(s) and contact information for purposes of the unsolicited proposal.

Tab 2 – Proposed Project Information. Proposed project information should include the following information at a minimum.

- a. Detailed overview of the Proposed Project that illustrates the location, size, and context of the Proposed Project, including (as applicable) design concept renderings, site plan, elevations, and preliminary programming of facilities (including the mix of uses, square footage(s), total parking spaces, parking allocations (specify if they are shared or exclusive).
- b. Any known or suspected synergies or incompatibilities between the Proposed Project and any other existing, planned or contemplated public facility and how the Proposer anticipates addressing same.
- c. Proposed term of the agreement.
- d. Any material terms or conditions to be included as part of any resulting negotiation process.
- e. Method by which the Proposer plans to secure any necessary property interests required for the Proposed Project.
- f. If known, provide the names of the anticipated financier(s) and the financing arrangement anticipated.
- g. Details on any code variances or modifications that may be necessary for the Proposed Project.

Tab 3 – Financial Terms. Clearly state the financial terms of the Proposed Project, including the proposed revenue, payments, or other remuneration to the City over the proposed term.

Tab 4 - Community Impact. Identify all known community stakeholders and anticipated benefits. Describe how Proposer will manage community outreach and input, and communications with all stakeholders.

E. INITIAL APPLICATION FEE. With the unsolicited proposal, Proposer must include an initial non-refundable application fee in the amount of \$25,000 to offset the costs of processing and initial review of the proposal. The application fee shall be delivered to the Procurement Department with the original unsolicited proposal. If the City Manager determines that additional costs will be incurred as a result of the initial review of proposals, including the costs for private

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consultants to assist in the review, additional fees may be required to be paid by the Proposer. Further, if the City Commission accepts the proposal for further consideration and authorizes the public bidding phase, further fees may be required.

F. PROCESS FOR CONSIDERATION OF UNSOLICITED PROPOSALS. The City's review and consideration of an unsolicited proposal that meets the requirements of this administrative order and applicable law will generally follow the process outlined below. However, the City is not required to consider any unsolicited proposal and may deviate from the outlined process at its sole discretion. The City may request in writing, clarifications to any submission, including unsolicited proposals, which shall be promptly provided by the Proposer.

1. City receives an unsolicited proposal.
2. Within 60 days of receipt of an unsolicited proposal, the City Manager may authorize the initial review period or may notify the Proposer that the unsolicited proposal does not comply with the requirements of this administrative order or that an additional fee is necessary for the initial review period pursuant to Section E.
3. Within 90 days after commencement of the initial review period, the Administration will submit a recommendation to the City Commission to: a) reject the unsolicited proposal (for reasons that may be identified by the City Manager at his/her sole discretion); or accept the unsolicited proposal for further consideration and initiate the public bidding phase.
4. If the City Commission approves the City Manager's recommendation to further consider the unsolicited proposal and initiate the public bidding phase, the Administration will release a competitive solicitation inviting other private parties to submit proposals for like projects. The released solicitation will be subject to the City's Cone of Silence Ordinance.
5. As part of the public bidding phase, the City may require Proposers, including the Proposer initially submitting the unsolicited proposal, to pay a fee to the City for review and evaluation of the proposals received. Any fees already paid by the Proposer initially submitting the unsolicited proposal may be deducted from the fee required public bidding phase.
6. During the public bidding phase, the Proposer initially submitting the unsolicited proposal may, but is not required to, submit a supplemental proposal. However, prior to further consideration of its proposal, the Proposer initially submitting the unsolicited proposal must pay the evaluation fees imposed by the City, less any previously paid fees the City agrees to deduct.
7. Proposals received in response to the public bidding phase and the unsolicited proposal (or its supplemental version submitted during the public bidding phase) will be evaluated in accordance with the criteria established in the competitive solicitation released by the City. The City Manager may also recommend to the City Commission a shortlist of Proposers with whom to further interview and consider.
8. Following the evaluation of proposals received, the City Manager may make a recommendation to the City Commission to authorize the Administration to negotiate with the selected Proposer(s) for: a) an interim agreement to be followed (at a later date) by a comprehensive agreement; or b) bypass the interim agreement and negotiate a comprehensive agreement.
8. At any time (prior to, during, or after the public bidding phase), the City may reject the unsolicited proposal and any other competing proposal received for the Proposed Project.

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G. GENERAL PROVISIONS.

1. The City shall not be liable for any costs incurred by the private entities in preparing, submitting, or presenting an unsolicited proposal or competing proposals.
2. Proposer may assert that any trade secrets, financial records, and proprietary or other confidential information in its unsolicited proposal are confidential information that it claims to be exempt from disclosure under applicable Florida public records laws. Such information may be included in the unsolicited proposal, but submitted in a separate, sealed binder, designated on the cover as **CONFIDENTIAL MATERIALS**. A proposer submitting materials claimed to be confidential shall include a cover letter listing all material designated as confidential and clearly mark each page of any material believed to be a trade secret or other confidential information/document in all capital letters and bold font as **CONFIDENTIAL MATERIALS**. If any portion of the unsolicited proposal contains non-confidential and confidential information, the Proposer shall provide a redacted copy of the document within three (3) days of request by the City. Failure to properly list a confidential document or the failure to redact a confidential document that is only partially confidential shall result in the waiver of any claim that the document is confidential or that the unredacted document contains confidential information.

If any person or entity requests that the City produce or disclose any of said purported confidential documents, the City will advise the Proposer and afford the Proposer an opportunity to protect its assertion that said confidential information is exempt from production. If Proposer fails to timely authorize the production of the information or document and/or fails to timely seek a protective order, and/or is unsuccessful in obtaining a protective order, the City will produce the requested information or document. The City shall not actively contest any request to disclose such alleged confidential information or document and the City cannot guarantee that the alleged confidential document or information may not be disclosed should it ultimately be determined not to be confidential under applicable Florida public records laws. The Proposer shall indemnify the City for any damages and costs the City may incur due to the Proposer's claim that its document or information is confidential. The City can only agree to advise the Proposer of such request and give the Proposer an opportunity, at Proposer's sole and exclusive cost, to defend the request for disclosure of the confidential information or document in a Court of competent jurisdiction or other applicable forum.

3. Only unsolicited proposals complying with these Guidelines, containing information sufficient for meaningful evaluation, and submitting an application fee will be considered.

H. INTERIM AND COMPREHENSIVE AGREEMENTS. The terms of any Interim or Comprehensive Agreement to be negotiated shall include, but not be limited to, the scope, design, amenities, total cost, and duration of the Proposed Project. Terms will also include the City's review, approval and control of project design and performance standards for construction, operations, and maintenance, for which compensation to the Proposer may be adjusted should

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the performance standards not be met. Terms will also include the City's right to inspect construction, operations and maintenance as well as the records relating to the cost of such operations; labor wage and local workforce requirements; periodic financial reporting by the Contracting Person of project financial performance; events of default and the parties' rights and responsibilities in the event of same; fees, Lease Payments or service payments to be paid under the agreement; and any other terms the City deems appropriate for the Proposed Project. Timelines for the negotiation with the Proposer or bidder will be developed consistent with the scope and timing of the Proposed Project.

Any Interim or Comprehensive Agreement shall define the rights and obligations of the City and the Contracting Person with regard to the Proposed Project. Prior to entering into a Comprehensive Agreement, an Interim Agreement may be entered into that permits a Bidder/Proposer or other Private Entity to perform activities, which may be compensable, related to the Proposed Project, usually in the nature of continued due diligence activities to inform the ultimate decision maker about the project's feasibility. The Interim Agreement is a discretionary step, not necessary in all cases, but is available should the City determine more investigation or due diligence is necessary about the Proposed Project before entering into a Comprehensive Agreement. The City shall not be bound to enter into a Comprehensive Agreement merely because it entered into an Interim Agreement. However, prior to developing or operating the Proposed Project, the Bidder/Proposer shall enter into a Comprehensive Agreement with the City.

Any changes in the terms of an Interim or Comprehensive Agreement, as may be agreed upon in writing by the parties from time to time, and in order to be enforceable shall be added to the Interim or Comprehensive Agreement only by written amendment. Verbal changes shall not be enforceable against the City. No act or omission or verbal representation or statement shall be treated as an expressed or implied waiver of this requirement and all waivers shall be in writing signed by the party who is alleged to have waived any of the terms and/or conditions of the Agreement. The requirements of this paragraph in particular, shall not be modified, amended or waived except in writing signed by both parties. A Comprehensive Agreement may provide for the development or operation of separate phases or segments of a Proposed Project. Parties submitting bids/proposals understand that representations, information, and data supplied in support of, or in connection with, bids/proposals play a critical role in the competitive evaluation process and the ultimate selection of a bid/proposal by the City. Accordingly, as part of the Comprehensive Agreement, the Bidder/Proposer and its team members shall certify that all material representations, information, and data provided in support of or in connection with a proposal are true and correct. Such certifications shall be made by the Bidder/Proposer's authorized representative who shall be an individual who has knowledge of the information provided in the proposal. If material changes occur with respect to any representations, information, and data provided for the proposal, the Bidder/Proposer shall immediately notify the City of same in writing. Notwithstanding any language contained within the Interim or Comprehensive Agreement, any violation of this Section shall give the City the right to terminate the Agreement, withhold payment, if any is due, and seek any other remedy available under the law.

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Before awarding a Comprehensive Agreement, the City shall hold a public hearing on the proposal to be awarded. The City may also make available to the public any proposed Comprehensive Agreement before accepting same by posting the Agreement on the City's website or by any other manner considered appropriate by the City to provide notice to the public.

The City reserves the right at all times to reject any or all bids/proposals at any time before signing a Comprehensive Agreement for any reason and may decline to pursue the Proposed Project. In the latter event, the City may accept new proposals for the Proposed Project should the City choose to restart the process at a later date. Discussions between the City and Private Entities about needed infrastructure, improvements, or services shall not limit the ability of the City to later decide to use standard procurement procedures to meet its infrastructure needs, whether the project will be a public/private partnership or not.

EXPIRATION

This order shall remain in effect until further notice.

Prepared by:

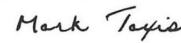
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3/15/22
 Date