

ORDINANCE NO. 9502-21

AN ORDINANCE OF THE CITY OF CLEARWATER, FLORIDA, AMENDING THE CODE OF ORDINANCES, CHAPTER 2, ARTICLE VI, DIVISION 3, PURCHASING; PROVIDING FOR SECTION 2.561(1)(K); SUBDIVISION V. PUBLIC-PRIVATE PARTNERSHIPS; SECTION 2.581 PURPOSE AND SCOPE; SECTION 2.582 DEFINITIONS; SECTION 2.583 CONCEPTUAL PROPOSAL; SECTION 2.584 UNSOLICITED DETAILED PROPOSALS; SECTION 2.585 SOLICITED DETAILED PROPOSALS; SECTION 2.586 COMPETITIVE REVIEW AND NEGOTIATION OF DETAILED PROPOSALS; SECTION 2.587 PUBLIC RECORDS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Division 3 of Article VI, Chapter 2 establishes fair and equitable methods of administering purchases of commodities, services, and construction to maximize the purchasing value of public funds; and

WHEREAS, in 2013, the Florida Legislature enacted Chapter 2013-223, Laws of Florida, section 2 of which governs public-private partnerships (the "P3 Statute"); and

WHEREAS, in 2016, the Florida Legislature enacted Chapters 2016-153 and 2016-154, Laws of Florida, amending the P3 statute; and

WHEREAS, public-private partnerships ("P3"), while not defined in the P3 Statute, are commonly recognized as contractual agreements between a public body and the private sector that allow for greater private sector participation in the delivery of public projects; and

WHEREAS, there is a public need for timely and cost-effective delivery of projects serving a public purpose, and this need may not be wholly satisfied by existing methods of procurement; and

WHEREAS, P3's have demonstrated that they can meet the needs of the public by improving the schedule for project delivery, lowering project costs, and providing other benefits to the public; and

WHEREAS, the City of Clearwater wishes to encourage investment in the City by private entities, to facilitate funding sources for the development of public projects, and to provide for the greatest possible flexibility in contracting for public projects under the P3 Statute; and

WHEREAS, the City of Clearwater is a "responsible public entity" as defined in the P3 Statute, authorized to follow the processes described in the P3 Statute to establish a P3 for a "qualifying project" as defined in the P3 Statute; and

WHEREAS, the P3 Statute recognizes the authority of local governments to create procurement processes for qualifying projects, and does not limit a local government's existing authority to enter into agreements with the private sector, including authority from existing home rule powers; and

WHEREAS, the procedures for a P3 project will not apply when the City of Clearwater procures stand-alone professional services, as defined in section 287.055, Florida Statutes, or when it procures professional services in the context of a design-build project, both of which will continue to be procured pursuant to section 287.055, Florida Statutes; and

WHEREAS, to promote the efficient and effective use of the P3 method of project delivery, the City Council finds it necessary to adopt uniform procedures to be used by both the City and private entities for the procurement of such projects.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CLEARWATER, FLORIDA IN SESSION AND DULY ASSEMBLED THAT:

Section 1. The above-mentioned recitals are true and accurate and included herein by reference.

Section 2. Division 3 of Article VI, Chapter 2, Code of Ordinances, is hereby enacted to read as follows:

DIVISION 3. PURCHASING

Sec. 2.561. Methods of source selection.

- (1) *Methods of source selection.* Unless otherwise authorized by law, all city contracts shall be procured by one of the following methods:
 - (a) Competitive sealed bidding.
 - (b) Competitive sealed proposals.
 - (c) Request for qualifications.
 - (d) Small purchases.
 - (e) Professional services subject to CCNA.
 - (f) Construction management at risk and design-build contracts.
 - (g) Invitation to negotiate.
 - (h) Job order contracting.

- (i) Reverse auctions.
- (j) Exceptions pursuant to section 2.563.
- (k) Public-private partnerships (P3).

Subdivision V. Public-Private Partnerships (P3)

Sec. 2.581. Purpose and scope.

- (1) This subdivision creates a uniform process for private entities and the city to engage in a public-private partnership (P3) consistent with Chapter 2013-223, Laws of Florida, section 2, as amended by Chapters 2016-153 and 2016-154, Laws of Florida.
- (2) When considering a public project, the city may elect to (1) follow this P3 process if consistent with Chapter 2013-223, Laws of Florida, as amended by Chapters 2016-153 and 2016-154, Laws of Florida, (2) follow any other legally available project delivery process, or (3) not pursue the project.
- (3) The procurement of P3 agreements by the city shall follow the provisions of this subdivision. Requirements of other sections or articles of this code shall not apply to procurements under this subdivision unless such requirement is expressly included or incorporated by reference in the procurement documents. The city shall ensure that generally accepted business practices for exemptions provided by this subdivision are part of the procurement process or are included in the P3 comprehensive agreement.
- (4) The city may develop and maintain a separate P3 policy containing more detailed procedures and requirements for entering into P3 agreements, consistent with this subdivision.
- (5) When the city procures stand-alone professional services, as defined in the Consultants' Competitive Negotiation Act, codified at section 287.055, Florida Statutes, or when it procures professional services in the context of a design-build project, the city will not follow the P3 process, but will instead continue to comply with section 287.055, Florida Statutes.

Sec. 2.582. Definitions.

Terms not defined in this subdivision shall have the meaning customarily assigned to them. Otherwise, the following words, terms, and phrases, when used in this subdivision, shall have the meanings ascribed to them in this subdivision, except where the context clearly indicates a different meaning:

Conceptual proposal means an unsolicited proposal that includes conceptual information sufficient for the city to determine whether the proposed ideas are attractive enough to justify investment of city resources to undertake a process that may lead to formation of a contract to implement the ideas.

Detailed proposal means a proposal (solicited or unsolicited) that contains detail beyond a conceptual level sufficient for the city to compare the proposal competitively to others.

P3 means a public-private partnership, which is an agreement between the city and a private entity that allows for greater private sector participation in the delivery of a city qualifying project.

P3 Statute means Chapter 2013-223, Laws of Florida, section 2, as amended by Chapters 2016-153 and 2016-154, Laws of Florida, as codified in section 255.065, Florida Statutes, and as may be further amended from time to time.

Private entity means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.

Proposal review fee means the fee paid by the private entity submitting an unsolicited proposal or by the private entity submitting a detailed proposal that competes with an unsolicited proposal.

Qualifying project means a facility or project that serves a public purpose, or a facility or infrastructure that is used or will be used by the public or in support of a public purpose or activity, as defined in the P3 Statute.

Unsolicited proposal means a conceptual proposal or a detailed proposal that a private entity submits to the city on its own initiative, and not in response to a solicitation.

Sec. 2.583. Conceptual proposal.

- (1) A private entity may submit a conceptual proposal to the city, to gauge the city's potential interest in pursuing the proposed project as a P3. A conceptual proposal is not required. A private entity may forego submitting a conceptual proposal and submit an unsolicited detailed proposal.
- (2) A private entity must tender a proposal review fee of \$5,000 with its conceptual proposal. The city will not review a conceptual proposal that is not accompanied

by the payment of this fee. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal or business checks will not be accepted.

- (3) A conceptual proposal must contain information sufficient to inform the city about (1) the overall character of the proposed qualifying project, (2) the general experience of the private entity, and (3) the general strategies to ensure successful project delivery.
- (4) Within ten (10) business days after receipt of the conceptual proposal, the city will either (1) summarily reject the conceptual proposal and return the proposal review fee or (2) accept the conceptual proposal for substantive review and notify the private entity of the anticipated time required for the city to complete the review of the conceptual proposal.
- (5) If the city decides to accept the conceptual proposal for substantive review, the city will preliminarily assess whether: (1) the proposed project is a qualifying project; (2) the proposed project delivery model offers advantages over traditional models, for example, lower cost, shorter schedule, increased investment, etc.; and (3) the proposed project is reasonably likely to satisfy the criteria established by the P3 Statute.
- (6) Upon completion of review of the conceptual proposal, the city will notify the private entity in writing of the city's position regarding the proposed project. The city may:
 - (a) Decide not to pursue the proposed project;
 - (b) Decide to pursue the proposed project, or a similar project, using other procurement methods (in which, if open to private companies, the private entity may compete if otherwise qualified); or
 - (c) Decide to continue considering the proposed project under the P3 Statute and request the private entity to submit a detailed proposal (which request shall not constitute a formal solicitation).
- (7) The city's disposition of a conceptual proposal does not limit its discretion or authority with respect to future projects, whether solicited or unsolicited.

Sec. 2.584. Unsolicited detailed proposals.

- (1) A private entity may submit an unsolicited detailed proposal to the city, to initiate the city's consideration of whether to deem the proposed project as a qualifying project and whether to pursue it further under the P3 Statute. The city is not obligated to pursue a project under the P3 Statute, even if the project satisfies the statutory definition of a qualifying project.

- (2) A private entity must tender a proposal review fee of \$25,000 with its detailed proposal, unless the private entity has already paid a fee for review of a substantially similar conceptual proposal, in which case the proposal review fee is \$20,000. The city will not review a detailed proposal that is not accompanied by the payment of this fee. The proposal review fee is refundable if the city does not evaluate the detail proposal. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal or business checks will not be accepted.
- (3) If the initial proposal review fee is insufficient to cover the city's costs to evaluate the proposal, the city will request, in writing, the additional amounts required. If the private entity does not tender the additional requested amount with thirty (30) days of the written request, the city may, in its sole discretion, stop its review of the proposal.
- (4) A detailed proposal must contain information sufficient to inform the city about: the detailed quality and character of the proposed qualifying project; the detailed experience and capacity of the private entity; and the detailed financial and implementation strategies to ensure successful project delivery. This information should include the following:
 - (a) A description of the private entity, including name, address, type of organization, and legal structure.
 - (b) Name and complete contact information of the primary point of contact for the detailed proposal.
 - (c) Names and experience of proposed key project personnel.
 - (d) Type of support needed, if any, from the city, for example, facilities, equipment, materials, personnel, financial resources, etc.
 - (e) Identification of any proprietary data used and the manner in which it is used.
 - (f) Identification of any outside entities or professionals the private entity has or intends to consult with respect to the project.
 - (g) The names of any other federal, state, or local agencies receiving the same proposal.
 - (h) A complete discussion of the objective of the project, the method of approach, the nature of the anticipated results, and the characteristics that make it a qualifying project worthy of pursuit by the city.
 - (i) A detailed overview of the proposed business arrangements, including the plan for the development, financing, and operation of the project.
 - (j) A preliminary project schedule.
 - (k) A detailed financial analysis of the proposed project.
 - (l) Specification as to when the pricing or terms of the proposal will expire.

- (5) Within ninety (90) business days after receipt of the detailed proposal, the city will notify the private entity in writing of the city's decision either to reject the detailed proposal or to accept the detailed proposal for competitive review. During this period, the city may meet with the private entity to gain a deeper understanding of the detailed proposal, and the city may request that the private entity submit additional information. These meetings will be preliminary in nature and will not include or constitute substantive negotiation of agreement terms. In considering whether to accept the detailed proposal for competitive review, the city will assess whether: (1) the proposed project is a qualifying project; (2) the proposed project delivery model offers advantages over traditional models, for example, lower cost, shorter schedule, increased investment, etc.; (3) the proposed project is reasonably likely to satisfy the criteria established by the P3 Statute. The city may determine that it requires more than 90 days to complete its review of the detailed proposal and this assessment, in which case it will notify the private entity in writing of how much time will be required.
- (6) An unsolicited proposal may be rejected by the city at any time. The city has complete discretion and authority to reject any unsolicited proposal it receives.
- (7) If the city decides to accept an unsolicited proposal for competitive review, the city will advertise the potential opportunity and accept competing detailed proposals.
 - (a) The advertisement will include: a general description of the qualifying project; an invitation to submit a competing detailed proposal for the qualifying project, which may propose the identical project, a functionally equivalent project, or an alternative project that achieves the same purpose or uses the same city resources as the proposed project; information about how to obtain more detailed information; and a due date for responding, which ordinarily will be 45 days after initial publication, but which may be up to 120 days as the circumstances warrant.
 - (b) The city will advertise the potential opportunity in the Florida Administrative Register at least once a week for three consecutive weeks; in a newspaper of general circulation within the city at least once a week for three weeks prior to the due date for competing proposals; and on the city's website in the same manner as competitive solicitations.
- (8) If an unsolicited proposal involved architecture, engineering or landscape architecture, the city will engage licensed professionals for review and evaluation of the initial and any subsequent proposals, in accordance with section 255.065(3)(a)5., Florida Statutes.

Sec. 2.585. Solicited detailed proposals.

- (1) The city may on its own initiative determine to issue a solicitation inviting private entities to submit detailed proposals for any opportunity that the city has identified as a qualifying project.
- (2) Any solicitation that the city issues under the authority of the P3 Statute will identify the P3 Statute and the city's related code sections as the governing procurement process. The solicitation documents will specify information necessary for interested parties to understand and respond to the solicitation.
- (3) If a solicitation under the P3 Statute includes design work, the solicitation will include a design criteria package prepared by a licensed architect, landscape architect, or engineer engaged by the city in accordance with section 255.065(3)(c), Florida Statutes.
- (4) The city is not obligated to proceed under the P3 Statute when soliciting proposals, and may follow any legally available procurement process, regardless of whether the project qualifies as a qualifying project and regardless of whether the ultimate transaction may be characterized as a P3.

Sec. 2.586. Competitive review and negotiation of detailed proposals.

- (1) Whether received in response to a solicitation under the P3 Statute or in response to an advertisement concerning an unsolicited proposal, within ten days after the receipt of all competing detailed proposals the city will designate a negotiation team to conduct negotiations concerning the qualifying project. The negotiation team will consist of at least three persons, including at least one city employee, who collectively have knowledge and experience in contract negotiations, the subject matter related to the qualifying project, public procurement, and project management. No person with a financial interest in the outcome of the negotiation team's efforts or in the qualifying project may participate on the negotiation team.
- (2) The negotiation team's meetings are temporarily exempt from the Sunshine Law as provided in section 286.0113(2), Florida Statutes, and section 255.065(15), Florida Statutes. The city will record and preserve as required by law any exempt portion of a negotiation team meeting.
- (3) The negotiation team may rely on subject matter experts and staff for information gathering and administrative work, but the negotiation team alone will possess and exercise authority for all recommendations concerning the detailed proposals.

- (4) The negotiation team will initially review the detailed proposals and determine whether to allow oral presentations for the purpose of gaining deeper understanding of the detailed proposals. The negotiation team is not required to allow oral presentations. Any oral presentations will be limited to reviewing and discussing information contained in the detailed proposals, and will not include or constitute substantive negotiations related to any detailed proposal or the qualifying project.
- (5) Within thirty days after its appointment, or after the final oral presentation, whichever is later, the negotiation team will rank the detailed proposals in order of preference. The negotiation team may meet as often as it deems necessary before ranking, in order to discuss details and strategies related to the detailed proposals and the qualifying project. The negotiation team will strive for consensus, but a majority of the team may establish the ranking. The negotiation team may use any reasonable method to rank the detailed proposals, and is not required to numerically score them. In ranking the detailed proposals, the negotiation team members will consider the private entity team members' professional qualifications and experience, the proposed general business terms, innovative project delivery terms (including finance, design, construction, maintenance, and operation, as applicable to the particular circumstance), and any other factors indicated in the advertisement or solicitation.
- (6) Following its ranking of detailed proposals, the negotiation team will commence negotiations with the private entity responsible for the top-ranked proposal. The negotiation team will then conduct negotiations in accordance with the P3 Statute.
- (7) In its discretion, the negotiation team may recommend that the city and the private entity enter into an interim agreement as described in the P3 Statute. The negotiation team is not authorized to enter into or otherwise bind the city to an interim agreement. Any recommendation to enter into an interim agreement will be brought to the city council for consideration. Only the city council is authorized to approve an interim agreement.
- (8) The negotiation team may recommend that the city and the private entity enter into a comprehensive agreement as described in the P3 Statute. The negotiation team is not authorized to enter into or otherwise bind the city to a comprehensive agreement. Any recommendation to enter into a comprehensive agreement will be brought to the city council for consideration. Only the city council is authorized to approve a comprehensive agreement.

- (9) In deciding whether to enter into a comprehensive agreement, the city council will consider and determine all reasonable factors, including but not limited to:
- (a) Whether the proposed project is a qualifying project.
 - (b) Whether the qualifying project is in the public's best interest.
 - (c) Whether the qualifying project involves a facility that is owned by the city or for a facility for which ownership will be conveyed to the city.
 - (d) Whether the comprehensive agreement has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default by the private entity or cancellation of the qualifying project by the city.
 - (e) Whether the comprehensive agreement has adequate safeguards in place to ensure that the city or the private entity has the opportunity to add capacity to the qualifying project or other facilities serving similar predominantly public purposes.
 - (f) Whether the qualifying project will be owned by the city upon completion or termination of the project and payment of amounts financed.
 - (g) Whether there is a public need for or benefit derived from the qualifying project.
 - (h) Whether the estimated cost of the qualifying project is reasonable in relation to similar facilities.
 - (i) Whether the comprehensive agreement will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

Sec. 2.587. Public records.

- (1) Information made or received by the city in connection with transaction of the city's official business is subject to the Florida Public Records Law. Unsolicited proposals received by the city are temporarily exempt from the Public Records Law as provided in section 255.065(15), Florida Statutes.
- (2) If a private entity believes that any information it submits to the city is exempt from the Public Records Law under any additional statutory exemptions, the private entity must expressly identify the statutory basis of the claimed exemption and segregate the exempt information.

Section 3: Each provision of this Ordinance shall be deemed separate and severable and if any section or part thereof is held to be invalid by a court of competent jurisdiction, the remainder of the Ordinance shall not be affected.

Section 4: This Ordinance shall take effect immediately upon its final passage and adoption.

PASSED ON FIRST READING

PASSED ON SECOND AND FINAL
READING AND ADOPTED

Frank Hibbard
Mayor

Approved as to form:

Attest:

Owen Kohler
Assistant City Attorney

Rosemarie Call
City Clerk