



## **Standard Operating Guideline Public/Private Partnerships, Solicited and Unsolicited Proposals and Evaluation Process**

The purpose of this Standard Operating Guideline (SOG) is to provide guidance for the review of proposals for Public/Private Partnerships.

Authority:

Purchasing Policies and Procedures Manual (PPPM), *Unsolicited Proposals*.

### **I. INTRODUCTION, POLICY, AND INTENT**

The City of Delray Beach (City) encourages redevelopment of underdeveloped and underutilized properties through public/private partnerships (hereinafter "P3") where appropriate. The City recognizes properly structured P3s share risk and expense amongst public and private partners; encourage efficiencies and innovation in design, construction, operations, and maintenance; and maximize funding and cash flow initiatives.

A public-private partnership is a contractual agreement between a public agency (federal, state, or local) and a private sector person or entity for the purpose of timely delivering services or facilities in a cost-effective manner that might not otherwise be possible using traditional sources of public procurement. Through this contractual agreement, the assets and professional skills of each sector (public and private) are shared and leveraged to deliver a service or facility to be used by the general public. Each sector shares in the potential risks of the timely and efficient delivery and operations of the service or facility. To be considered under the City's Public/Private Partnership Program, all parties must comply with the following Guidelines for P3 Applications and Evaluation Process (hereinafter "Guidelines").

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.

### **II. DEFINITIONS**

Unless otherwise specified, whenever the following terms are used in these Guidelines, they have the meanings set forth below:

**"Affiliate"** is as provided in Section 337.165(1)(a), Florida Statutes and means a predecessor or successor of a contractor under the same, or substantially the same, control or a group of business entities which are connected or associated so that one entity controls or has the power to control each of the other business entities. The term "affiliate" includes the officers, directors, executives, shareholders active in management, employees, and agents of the affiliate. The ownership by one business entity of a controlling interest in another business entity or a pooling of equipment or income among business entities shall be prima facie evidence that one business entity is an affiliate of another.

**"Bid"** means a response to a solicitation for proposals, for qualifications, for bids, or a response

to a Notice of Receipt by the City of Delray Beach of an unsolicited proposal, and for the purposes of these guidelines is also synonymous with the word "proposal".

**"Bidder"** means the person who responds to a Notice of Receipt of an unsolicited proposal.

**"Certify"** means to attest, under penalty of perjury, that the information being certified is true and correct.

**"City"** means the City of Delray Beach, Florida, 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.

**"Commission"** shall mean the City of Delray Beach City Commission.

**"Cone of Silence"** means Section 2-355 of the Palm Beach County Code of Ordinances.

**"Contracting Person"** means an individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity that enters into a Comprehensive or Interim Agreement with the City.

**"Detailed Proposal"** means a proposal for a Proposed Project after the Initial Stage review, that defines and establishes more specific proposed terms related to costs, payment schedules, financing, deliverables, design, plans for operations and maintenance, and project schedule, among other factors.

**"Detailed Stage"** means the phase of Proposed Project evaluation where the City has completed the Initial Stage but has requested additional and/or more detailed information regarding proposals for a Proposed Projects.

**"Develop"** or **"Development"** means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, and/or expand a facility for public use or benefit.

**"Fee"** means a rate, fee, or other charge associated with the use of a Proposed Project, as defined by a Comprehensive Agreement.

**"Financial Closing Date"** means when construction of a project has been completed and accepted by the City and City has issued a Notice of Completion or implemented a Management or other such agreement for continued operation of a project.

**"Initial Proposal"** means an unsolicited proposal for a Proposed Project accepted for consideration and evaluation by the City.

**"Initial Stage"** means the initial phase of Proposed Project evaluation when the City assesses whether a Proposed Project serves a public purpose and appears to meet the minimum criteria for a Proposed Project or certain goals of the City and the City reviews and evaluates proposals received from the private sector for pursuing a Proposed Project as a P3.

**"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.

**"Lease Payment"** means any form of payment, including a land lease, by a governmental or private entity to the Contracting Person and/or the City for the use of a Proposed Project.

**"Lifecycle Cost Analysis"** means an analysis calculating the cost of an asset over its entire life span, including the cost of planning, constructing, operating, maintaining, and replacing the asset, estimates of sufficient capital improvement reserves, and, when applicable, salvaging the asset. The analysis must compare the proposed life cycle cost of the Proposed Project to what the project would likely cost the City if a standard, non-P3 delivery method was used. The Comprehensive Agreement must identify if there is no cost to the City of an asset projected for the City.

**"Notice of Receipt"** shall mean, at a minimum, the notice that the City shall publish to advise the general public that the City has received an unsolicited proposal and to solicit Bids for the same type of project or concept that is reflected in the unsolicited proposal.

**"Operate"** means to operate a Proposed Project.

**"P3"** means a Public-Private Partnership.

**"P3 Project"** means a Public-Private Partnership project.

**"Public-Private Partnership Program" or "P3 Program"** means the City of Delray Beach's public-private partnership program implemented in accordance with these Guidelines.

**"Private Entity"** means any individual person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, a 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.

**"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 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, reclaimed water, or surface water management facility or other related infrastructure; or
4. Any other project the City designates as a Proposed Project.
5. 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.

**"Revenue"** means all revenue, income, earnings, Fees, Lease Payments, and/or other payments supporting the development or operation of a Proposed Project, including money received as a grant or otherwise from the federal government, a governmental entity, or any agency or instrumentality of the federal government or governmental entity in aid of the Proposed Project.

**"Solicitation"** means a written request for services 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.

### **III. UNSOLICITED PROPOSALS**

#### **A. General**

The City may publicize its needs and encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the P3 Program. If any proposals are received without the issuance of a Solicitation, the proposals may be treated as an unsolicited proposal and may be evaluated through the City's approved P3 Program. All unsolicited proposals shall only be sent to the attention of the Purchasing Director of the Purchasing Division and, upon the Purchasing Department's receipt of an unsolicited proposal, the Cone of Silence shall commence.

The P3 Program is intended to create a process to guide the City's evaluation of potentially competing proposals from the private sector that offer solutions, private financing, innovations, and efficiencies in support of the Proposed Project, allocate risk amongst the City and the Private Entity, and benefit the public.

#### **B. Content of Unsolicited Proposals**

##### **1. General**

A Proposer submitting an unsolicited proposal requesting approval of a Proposed Project as a P3 project shall specifically identify all facilities, buildings, infrastructure, and improvements included

in the proposal. Although the City may have identified Development Opportunities, they are not exclusive and Private Entities are encouraged to submit proposals they believe are consistent with the City's goals.

Private Entities are urged to include in their proposal innovative financing methods, including the imposition of Fees or other forms of payments in lieu of or in addition to payments from the City. The P3 Program is a flexible development tool allowing for the use of innovative financing techniques. Additionally, the Proposer can structure its role on the Proposed Project in a variety of ways, from designing the facility to undertaking its financing, construction, operation, maintenance, and management. Depending on the circumstances of the Proposed Project, the Proposer is encouraged to consider different types of public-private partnership structures to the extent appropriate for the project at issue and as allowed by law.

## **2. Summary of Content Requirements**

Unsolicited proposals should be prepared simply and economically. They shall provide a concise description of the Proposer's qualifications and capabilities to complete the Proposed Project and the benefits to be derived by the City from the Proposed Project. As described in more detail below, proposals must include:

- a) a description of the Proposed Project,
- b) a description of the method by which the Proposer plans to secure any necessary property interests required for the Proposed Project,
- c) Provide a conceptual plan that details how the Respondent intends to ensure an adequate level of commitment from potential finance providers, where relevant, for a timely and successful financial closing. Include a list of anticipated timelines and milestones to obtain financial commitments and to close on the financing of the project;
  - If known, provide the names of the anticipated financiers (for example, banks, bonds, federal programs, life insurance companies, pension funds, private placements), their proposed involvement if available (in approximate percentage terms), how they were selected, and why they were preferred; Provide an explanation of the Respondent's contingency plans should there be a gap in the financing or should any potential finance provider not be in a position to provide its share of the financing;
  - Provide the names of the funding sources for previous projects of a similar size as applicable.
- d) the name and address of the Proposers and the name of the project leader who may be contacted for additional information concerning the proposal,
- e) the sources of proposed Fees, Lease Payments, or other payments, the Proposer is anticipating, and
- f) additional supplemental material or information that the City reasonably requests.

## **3. Format**

### **A. General**

Unsolicited proposals shall be submitted in the following format:

1. Pages shall be numbered and organized by paginated table of contents corresponding to the tabbed sections identified below.
2. The submittal shall be divided into tabbed sections as follows:

**TAB 1:** Executive Summary

**TAB 2:** All Private Entities associated with the Proposal

**TAB 3:** Qualifications, Experience, and Financial Capacity

**TAB 4:** Proposal

**TAB 5:** Project Analysis

**TAB 6:** Community Impact

**TAB 7:** Miscellaneous

**TAB 8:** Addenda

3. The contents shall be printed on 3-hole punched 8½" x 11" paper (except A/E drawings and renderings).
4. Drawings and renderings shall be printed no larger than 36" x 54".
5. Supplemental materials in alternate formats may be allowed to describe the proposal in more detail.
6. All submissions shall be addressed to:

**Purchasing Manager  
City of Delray Beach  
100 N.W. 1st Avenue  
Delray Beach, Florida 33444**

in a sealed envelope marked as follows:

Property ID (common name, address, and folio numbers)  
Proposer's Name  
Mailing Address  
Proposal Date

All submittals shall be in the format requested by this Section unless a waiver of any particular requirement or requirements is agreed to by the City.

**B. TAB 1 - Executive Summary**

- i. Provide a cover letter, signed by an authorized representative of the Proposer, including the information detailed below:
- ii. Identify the nature of the Proposed Project and the public benefit to be gained thereby.
- iii. Identify all Private Entities who will be directly involved in the Proposed Project by name, the scope of services they will be providing to the project, address, email address, and telephone number;
- iv. Identify the principal(s) of each Private Entity who will be directly involved in the Proposed Project, including their title, mailing address, phone number, and email address;
- v. Identify the person(s) in charge of negotiations with the City and decision making on behalf of the Proposer; and
- vi. Identify any persons comprising the Proposer who may be disqualified from participation in any transaction arising from or in connection to the Proposed Project and the reasons therefor.

**C. TAB 2 - All Private Entities on the Proposer Team**

Provide a list of all Private Entities the Proposer intends to use as consultants, including legal counsel, marketing and public relations firms, real estate brokers, property management firms, property utilization analysts, public finance analysts, and government relations consultants and, for each one, include their company name, name of primary contact, title, address, telephone, and email address.

**D. TAB 3 - Qualifications, Experience, and Financial Capacity**

The Proposer must provide, as to each Private Entity and consultant participating on the Proposer, a statement of qualifications; and experience in projects of similar complexity, scope, and scale to the Proposed Project. The unsolicited proposal must also describe, as to each Private Entity participating on the Proposer team, relevant experience with respect to other public-private partnership projects of any type.

**E. TAB 4 - Proposal**

The Proposer must provide:

- i. An overview of the Proposed Project.
- ii. Design concept renderings and a concept site plan and elevations that collectively illustrate the location, size, and context of the Proposed Project.
- iii. Summarize the preliminary programming of facilities, including, if any, the mix of uses, square footage(s), total parking spaces, parking allocations (specify if they are shared or exclusive), and types of parking (e.g. structured or surface).
- iv. Identify any known or suspected synergies and incompatibilities between the Proposed Project and any other existing, planned, or contemplated public facility within the City

or any neighboring city or affected jurisdiction and the manner in which the Proposer anticipates addressing same.

- v. Identify any additional terms or conditions to be included as part of the negotiation process.

#### **F. TAB 5 - Project Analysis**

This section of the unsolicited proposal should state the financial business aspects of the Proposed Project and should generally summarize why the unsolicited proposal offers the City value for money over the Proposed Project's life cycle as opposed to procuring the project using more traditional procurement methods, including the City funding the project itself.

#### **G. TAB 6 - Community Impact**

- i. Identify all anticipated community benefits.
- ii. Identify all known stakeholders for the Proposed Project.
- iii. Discuss the Proposed Project's compatibility with existing and planned facilities.

#### **H. TAB 7 - Miscellaneous**

Use this Section to present additional information supporting the proposal.

#### **I. TAB 8 - Addenda**

Use this Section to present details of any item cited or referenced in the proposal.

### **4. Flexibility in Structure**

The City encourages creativity and flexibility in the structure of a Proposed Project where appropriate. By way of example, where appropriate and available, the City may contribute off-site parcels of real property to a Contracting Person in exchange for the Contracting Person to design, construct, finance, operate, and maintain a Proposed Project. In such an event, the value of the Contracting Person's services to the Proposed Project are expected to be equal to or greater than the fair market value of the real property interest they seek to obtain. The City will exercise full and proper due diligence in the evaluation and selection of Proposed Projects, including those utilizing creative or flexible structures.

### **5. Request for Clarifications**

The City may request in writing, clarifications to any submission, including unsolicited proposals, which shall be promptly provided by the Proposer.

### **6. Application Fee**

Contemporaneously with the submission of an unsolicited proposal, the Proposer shall pay an application fee to the City in the amount of Twenty Thousand Dollars (\$20,000.00) to cover the costs of processing, reviewing, and evaluating the proposal, including the fees and costs for



private consultants to assist in the evaluation. The application fee is non-refundable and shall be delivered to the attention of the Purchasing Manager in the Purchasing Division office. If extraordinary costs associated with the City's preliminary evaluation are encountered, the City may require additional fees from the Proposer. Within 30 days of receipt of any unsolicited proposal, the Purchasing Manager may elect to not evaluate the unsolicited proposal, in which case the City must return the application fee. The City reserves the right to be the sole determinant of whether to evaluate an unsolicited proposal.

## 7. Process for Submission and Evaluation

The City shall provide deadlines for submission of certain requested information related to proposal or project evaluation. Failure to meet such deadlines may result in the rejection of the proposal.

The City shall not be liable for any costs incurred by the Private Entities in preparing, submitting, or presenting an unsolicited proposal.

All unsolicited proposals must be organized in the manner outlined in these Guidelines and submitted with the applicable application fee defined herein. No page limitation is imposed, but brevity is appreciated. All proposals shall be submitted as one (1) original, thirteen (13) exact copies, and one electronic copy (searchable PDF format on CD, flash drive or other similar electronic media). The original copy containing original signatures shall be marked **ORIGINAL** on the cover letter.

Proposers may assert that some trade secrets, financial records, and proprietary or other confidential information in their unsolicited proposal are confidential information that they claim 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 a document is not totally confidential but contains non-confidential and confidential information, the proposer shall provide a redacted copy of the document and an unredacted copy. In addition, the proposer shall prepare a list of all the documents claimed to be confidential or containing confidential information, and on the next line under the description of each document the proposer shall cite the statutory provision that provides the basis for the proposer's claim that the document or a portion of the document is confidential and below the citation, the proposer shall copy and paste the applicable statutory provision (this listing requirement shall hereinafter be referred to as "properly list" or "properly listed" confidential document). The 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.

Only unsolicited proposals apparently complying with these Guidelines and containing information sufficient for meaningful evaluation will be considered. Within thirty days of receiving an unsolicited proposal, the City will preliminarily review it to determine whether to accept and recommend it for Initial Stage evaluation. After the City's Initial Stage evaluation, if the City wishes to continue considering the unsolicited proposal, it may, at its sole and exclusive option, either advertise its receipt of the unsolicited proposal ("Notice of Receipt") and solicit other proposals or conduct further evaluation of the unsolicited proposal before advertising for alternative and perhaps competitive bids.

Under either scenario, once the City decides to advertise for alternative and perhaps competitive bids, the manner and timing for said advertisement and competitive bidding process shall be in accordance with section IV of these Guidelines. At the conclusion of the competitive bidding period, the City will commence Initial Stage evaluation of any competing proposals timely submitted. Upon completion of the Initial Stage evaluation of the proposal(s), the City may identify a shortlist of proposers/bidders with whom to continue the process. That process may require submission of a Detailed Proposal from the competitive proposers/bidders and, if not already required from the unsolicited Proposer, a Detailed Proposal may be required from them as well. At that point, the City may commence a Detailed Stage evaluation in accordance with Section V of these Guidelines.

#### **IV. COMPETITIVE BIDDING**

If the City determines they are interested in further considering any unsolicited proposal, they shall publish a public Notice of Receipt of same and invite competing bids during a competitive bidding period. Said period shall be not less than twenty-one days (21) and shall be of a duration the City shall specify in its sole and exclusive option, typically 120 days. The public Notice of Receipt shall minimally state the City has received an unsolicited proposal and will accept bids for the same type of project or concept. If more than one unsolicited proposal is received for the same or similar project or concept, only one public notice shall be required for the Proposed Project. At the City's sole and exclusive option, the public notice may provide more details to be required in responses thereto. The notice shall be posted on the City's website, published in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks, and advertised in any other manner considered appropriate by the City to encourage competition and provide notice to Private Entities interested in submitting alternative and perhaps competing proposals. A copy of the notice will also be mailed to each local government reasonably identified as one who may be impacted by the Proposed Project. The Cone of Silence applies to each solicitation of competing bids and all respondents to the solicitation shall comply with the Cone of Silence.

Bidders submitting competitive bids in response to the notice shall comply with any other requirements specified in the notice and pay a bid application fee of \$25,000. The initial Proposer(s) shall also submit a bid in response to the notice providing such further details about the unsolicited proposal as may be required by the notice. The initial proposer shall receive a credit for its initial unsolicited proposal application fee and shall thus only be required to pay an additional \$5,000 to submit its bid.

The City may require additional fees from the Proposer(s) or Bidder(s), due to extraordinary costs associated with the City's evaluation. After the public notification and bidding period has expired, the City may determine:

1. To proceed further with any proposal/bids;
2. To proceed to the Detailed Stage of review with one of the original unsolicited proposals only and reject any other unsolicited proposals and competitive bids received by the City;
3. To proceed to the Detailed Stage with a competing bid only and reject the unsolicited proposal(s) and other competitive bids; or
4. To proceed to the Detailed Stage with any or all of the initial unsolicited proposal(s) and any or all of the competitive bids. In this event, the City shall rank the proposals and bids received in order of preference. In ranking the proposals/bids, the City may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, finance plans, and any other factor determined by the City. Part of the ranking process, at the City's discretion, may require submission of a Detailed Proposal for evaluation by the City from every proposer and bidder whose proposals/bids the City may consider. The Detailed Proposals shall supplement the Initial Proposal and initial bid. Detailed Proposals shall comply with the requirements of Section V of these Guidelines.

## **V. DETAILED STAGE EVALUATION AND INTERVIEWS WITH BIDDERS**

Some Proposed Projects may require more details from prospective bidders or Proposers and more evaluation by the City. On those projects, the City may request a Detailed Stage Evaluation before awarding a contract. On projects for which the City has enough information from bidders/proposers in the Initial Proposal/Bid, the City may waive, or modify the Detailed Stage evaluation.

Each bidder and/or initial Proposer, invited to submit a Detailed Proposal or modified Detailed Proposal and participate in the Detailed Stage, shall pay a Detailed Proposal application fee of up to \$20,000, as determined by the City. The City may require additional fees from the Proposer or Bidder if a supplemental payment is required due to extraordinary costs associated with the City's evaluation.

If the City requests a Detailed Stage evaluation, then the City may require the Proposer or bidder to provide any or all of the following information as part of a Detailed Proposal depending upon the Proposed Project's requirements or the information received thus far by the City in Initial Proposals or responses to Solicitations or Bids or other information as requested by the City:

1. A Lifecycle Cost Analysis specifying methodology and assumptions supporting same and the proposed start date of construction; anticipated roles of all parties; the source and amount of all equity, debt, and other financing mechanisms funding the design, construction, operations, and maintenance of the Proposed Project; and a schedule of anticipated revenues and costs during project operations and the manner in which said costs would be funded and revenues distributed. The Lifecycle Cost Analysis shall include a detailed analysis of the projected rate and amount of return, expected useful life of the facility, and estimated annual operating and maintenance expenses.

2. Detailed analysis of the financial feasibility of the Proposed Project, including its impact on similar facilities operated or planned by the City or neighboring jurisdictions and include a detailed description of any financing plan for the project, comparing that plan with financing alternatives available to the City, and all underlying data and assumptions supporting any conclusions reached in the analysis of the financing plan proposed for the Proposed Project. The analysis shall also include any feasibility studies that support assumptions about project usage, revenue, and costs.
3. For each Private Entity participating on the Proposer team, provide a statement listing all prior projects and clients' names and contact information for the past five years. If any Private Entity has worked on more than ten projects during this period, it may limit its prior project list to ten most relevant projects, but shall include first all projects similar in scope and size to the Proposed Project; second, all other public/private partnerships and, finally, as many of its other most recent projects as possible. For each project identified, provide at least the following information:
  - a) Client and Project Identification:
    - i. Client's name, project name, and project location;
    - ii. Primary contact name, address, telephone and fax numbers, and e-mail address of the client;
    - iii. The role of the Private Entity in the project; and
    - iv. Project description, including year completed, type, size, unit mix, and major tenants and their percentage of space plan allocation.
  - b) Identify the cumulative dollar amount of the Private Entity's involvement and type of involvement, including changes, and a brief explanation of the financial structure used to finance the project; and
  - c) Describe the extent of public involvement in each of the public-private partnership projects.

The Detailed Proposal shall also identify the Bidder/Proposer's financial capacity to develop and operate the Proposed Project as proposed, by specifying the source and amount of equity and debt capital the Proposer intends to access to deliver the Proposed Project in a compliant and timely manner. Each Bid/proposal must state the name of each identified investor and lender on the Proposed Project.

The Bidder/Proposer must identify its bonding capacity, insurance limits, and any factor impacting the ability to complete the Proposed Project in a timely and professional manner;

1. Describe the plan for the design, construction, financing, operation, and maintenance of the Proposed Project, including the anticipated schedule of funds to be paid to the Proposer during the project's life cycle and any anticipated performance-based conditions on said payments and the manner of measuring same.
2. Describe the type and amount of Fees, Lease Payments, and other payments anticipated over the term of any applicable Interim or Comprehensive Agreement and the methodology

and circumstances for changes to same over time.

3. Identify all necessary permits and approvals to be obtained for the Proposed Project and how long the Proposer anticipates it taking to secure same.
4. Identify the anticipated duration of design and construction, listing major milestones for each phase and giving corresponding anticipated dates for same. Also, identify the anticipated duration during which the Bidder/Proposer will operate and maintain the facility and the nature of project ownership at all stages of the project from inception to expiration of the Comprehensive Agreement.
5. To the greatest extent possible, the Bidder/Proposer must describe the operational and management plan for the Proposed Project; other circumstances that will increase the viability of the Proposed Project; adjacent uses and emerging projects that could impact the value or influence the use of the Proposed Project; connections to public transportation; availability and existing capacity of public infrastructure and required extensions or improvements; any assumptions the Bidder/Proposer is making to support any of the representations contained in the proposal and the source of information giving rise to each assumption; the means for adding capacity to the Proposed Project; and the means for ensuring additional costs or service disruptions will not be imposed on the public in the event of material default or cancellation of any Comprehensive Agreement.
6. Identify the sources and amount of debt and equity to be used to capitalize the Proposed Project and the relationships of the funding sources to the project (e.g., outside lender, parent company, institutional lender, private placement funding, etc.).
7. Identify the sources and anticipated amounts of working capital to cover design, construction, and operating costs and to adequately maintain the facility or services from the start-up through completion of the project as defined by the Proposal.
8. Identify any parcels of land that must be acquired for the Proposed Project, the anticipated means for acquiring same, and all projected costs, both hard and soft, necessary to acquire same. Also, specify the anticipated timing for acquisition.
9. Identify all assumptions underlying the proposal.
10. Indicate opportunities that exist for increasing cost savings beyond the initial proposed financial plan.
11. Outline the financial penalties, if any, that would result should the Bidder/Proposer fail to meet certain identified performance standards and milestones.
12. Identify any work required from or otherwise to be performed by the City.
13. Identify any restrictions on the City's use of the Proposed Project.
14. Identify any federal, state, or local resources or commitment the Bidder/Proposer contemplates requesting for the Proposed Project.
15. Identify any special use of technology or innovations and efficiencies in project design, construction, operations, and/or maintenance.

16. Identify all impacts on the City's debt burden. State the estimated project cost to the City over the Proposed Project's life cycle.
17. Identify the ratio of debt to equity in the Proposer's financing plan and discuss the stability and terms of loans and investments.
18. Project the number and value of subcontracts generated for area subcontractors and/or small or minority business enterprises.
19. Identify any anticipated adverse social, economic, environmental, and transportation impacts of the Proposed Project measured against the City's comprehensive plan and any applicable ordinances. Specify the strategies or actions to mitigate known adverse impacts of the Proposed Project. Indicate if necessary environmental assessments have been completed.
20. Any information identified in the Initial Proposal that was deferred to the Detailed Proposal or which the City has identified as needing further development or assessment.
21. Design criteria anticipated for the Proposed Project as may be requested by the City, including, but not limited to, finishes for the structure and materials and details of LEED compliance.
22. Additional material and information as the City deems appropriate.

## **VI. RESPONSES TO CITY SOLICITATIONS**

Responses to Solicitations shall comply with all requirements of the soliciting document (Notice of Receipt) and any applicable laws, statutes, rules, regulations, guidelines, and ordinances pertaining thereto.

## **VII. INTERIM AND COMPREHENSIVE AGREEMENTS**

### **A. General**

Before entering into the negotiation of an Interim or Comprehensive Agreement, the City will designate specific City staff and consultants to review and negotiate appropriate terms. The terms 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 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; 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 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.

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.

## **B. Interim Agreements**

The scope of an Interim Agreement may include, but not be limited to:

1. Project planning and development;



2. Design and engineering;
3. Environmental analysis and mitigation;
4. Surveying;
5. Ascertaining the availability of financing for the Proposed Project;
6. Geotechnical investigation of subsurface conditions at the Proposed Project site; setting the timing of the negotiation of the Comprehensive Agreement; and
7. Any other provisions related to any aspect of the development or operation of a Proposed Project that the parties deem appropriate prior to executing a Comprehensive Agreement.

The terms of compensation to the Bidder/Proposer, if any, under an Interim Agreement shall be negotiated and specifically referenced in the Interim Agreement.

### **C. Comprehensive Agreements**

The Commission must approve any Comprehensive Agreement entered into pursuant to the P3 Program between the City and a Contracting Person before said agreement becomes enforceable. The City shall accept no liability for development or operation of a Proposed Project before entering into a Comprehensive Agreement. Each Comprehensive Agreement shall define the rights and obligations of the City and the Contracting Person regarding the Proposed Project. The terms of the Comprehensive Agreement shall be tailored to address the specific Proposed Project and may include, but not be limited to:

1. The delivery of security, including performance and payment bonds, letters of credit, and other security in connection with, but not limited to, any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the Proposed Project;
2. The City's review and approval of the design of the Proposed Project;
3. The rights of the City to inspect the construction, operation, and maintenance of the Proposed Project to ensure compliance with specified performance standards and adjustments in the compensation to be paid to the Contracting Person and/or liquidated damages due from the Contracting Person should they fail to meet specified performance standards and/or deadlines;
4. The maintenance of insurance policies reasonably sufficient to ensure coverage of all aspects of the Proposed Project, including design, construction, and operations;
5. The services to be provided by the City and the terms of compensation due to the City for same;
6. The policy and procedures that will govern the rights and responsibilities of the parties if the Comprehensive Agreement is terminated or there is a material default by the Contracting Person, including the conditions governing assumption of the duties and responsibilities of the Contracting Person by the City and the transfer or purchase of property or other interests of the Contracting Person by the City;



7. The terms under which the Proposer will file, with the City, financial statements pertaining to the Qualified Project prepared in accordance with generally accepted accounting principles on a periodic basis but not less than annually;
8. A schedule of Fees or Lease Payments and circumstances for, and method of calculating, anticipated adjustments to same over the project life cycle;
9. The mechanism by which Fees, Lease Payments, or payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for all persons using the facility under like conditions and that will not materially discourage use of the Proposed Project;
10. Service or concession contracts;
11. Classifications according to reasonable categories for assessment of Fees;
12. The terms and conditions under which the City will contribute financial resources if required for the Proposed Project;
13. The terms and conditions under which existing site conditions will be assessed and deficiencies therein addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
14. The terms and conditions under which capacity for the Proposed Project may be increased or enlarged;
15. A periodic reporting procedure incorporating a description of the impact of the Proposed Project, financially and socially, on the City; and
16. Other requirements of the P3 Program or applicable law or that the City deems appropriate.

With respect to the construction component of the Proposed Project, the City generally anticipates addressing the following in the Comprehensive Agreement:

1. The Contracting Person will be expected to assume single-point responsibility and liability for all planning, designing, financing, constructing, operating, and maintaining the Proposed Project.
2. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation, as well as all other unforeseen site conditions, will be allocated to the Contracting Person in the Comprehensive Agreement.
3. The City encourages the Contracting Person to propose a formula for the mutual sharing of cost savings realized during construction by virtue of value engineering initiatives and efficiencies. Mutually agreed-upon terms for the sharing of such savings will be incorporated in the Comprehensive Agreement.
4. The City may require that one or more of the Private Entities and/or their principal members provide performance guaranties of all obligations undertaken in the Comprehensive Agreement. This requirement is in addition to the statutory requirement for a performance and

payment bonds and any other performance security required by the Comprehensive Agreement. Private Entities interested in entering into a public-private partnership with the City under the P3 Program must be willing to provide this security.

## **VIII. SOLICITED PROPOSALS**

As provided in the City of Delray Beach's Purchasing Policy and Procedures Manual, the City may advertise for competitive proposals for a P3 Project. The terms, evaluation criteria and selection process shall be outlined in the solicitation which may be made by a request for proposals, invitation to negotiate, or other method, as deemed appropriate by the City Manager and hereinafter referred to as a "Solicitation".

Responses to a Solicitation shall comply with all requirements of the soliciting document(s) and shall comply with any applicable laws, statutes, rules, regulations, adopted Guidelines, and ordinances pertaining thereto.

All Responses to a Solicitation for a P3 Project shall be evaluated by the City as set forth in its Guidelines. Final award decisions for P3 Projects initiated by a Solicitation shall be made by the City Commission, and as determined to be in the best interests of the City.

## **IX. CONFLICTS OF INTEREST**

It is the intent of the City to maximize competition on P3 Projects while ensuring that the procurement of each project is open and fair. In addition, the City believes that professional consultants representing the City must be free of conflicting professional or personal interests. Such competing interests have the potential to make it difficult for consultants to discharge their contractual obligations impartially, and otherwise create an appearance of impropriety, even if none exists, that can undermine confidence in the City's procurement process. To this end, the following is intended to provide guidance to firms and individuals directly or indirectly performing services for the City in connection with P3 Projects, either solicited or unsolicited. All firms and individuals performing work or contemplating the performance of work for the City on P3 Projects are also expected to understand and comply with existing City conflicts of interest policies and Florida law, including laws related to conflicts of interest.

It is the responsibility of each firm and individual to understand and comply with this guidance. As a tool to assist in such compliance, the City will include in the solicitation for each P3 Project a list of firms and individuals that the City believes, at the time of issuance of the solicitation, to have a conflict of interest for that P3 Project pursuant to this guidance (the "List"). The List will be as inclusive as possible based on the information reasonably available to the City at the time the List is published. However, it remains the responsibility of each firm and individual to be both knowledgeable of this policy and to comply with the guidance regardless of whether listed on the List. If a firm otherwise subject to this guidance is not on the List, such non-inclusion shall not excuse a failure to comply with this policy.

The City will reasonably consider requests for exceptions to this policy on a case-by-case basis upon a showing of good cause for the exception. Please see Paragraph 5 below for further details.

### **A. Owner's Representatives**

## 1. Firms

A firm serving as one of the City's consultants or as a subconsultant in the development of procurement documents, evaluation criteria, or technical criteria for a City P3 Project (collectively, "Owner's Representative") is prohibited from participating in any capacity on a proposer team for that P3 Project or any other P3 Project under procurement by the City. This prohibition extends to the Owner's Representative's affiliates and shall remain in place for a period up to and including, and in limited instances beyond, the date said project is closed and final payment has been rendered or until the City determines that any such conflicts no longer exist.

A firm continuing to serve as one of the City's Owner's Representatives for a P3 Project after the project has been closed is prohibited from participating on a proposer's team for that P3 Project or any other P3 Project unless and until the City grants an exception.

It is the intent of the City to separately procure an Owner's Representative for each P3 Project. Generally, any Design or other Consulting Firm meeting a project's requirements for an Owner's Representative is eligible to participate in such procurement, but the City will not allocate an Owner's Representative's scope of work to any Consulting Firm unless the Firm consents to serve as an Owner's Representative and agrees to be bound by these guidelines.

## 2. Individuals

Any individual who works for or has worked for an Owner's Representative and was involved in the development of procurement documents, evaluation criteria, or technical criteria for the P3 Project is prohibited from participating in any capacity on a proposer team for that P3 Project under procurement by the City. This prohibition shall remain in place until the date said project is closed and final payment has been rendered for the P3 Project that the individual was involved in, and in limited instances beyond, or until the City determines that any such conflict no longer exists or until or unless the City grants an exception.

Any individual who was an employee of the City within the past 2 years or whom had any involvement or oversight of the formulation, or analysis of any P3 Project or development of procurement documents, evaluation criteria, or technical criteria for the P3 Project, is prohibited from participating in any capacity on a proposer team for that P3 Project or any other P3 Project under procurement by the City. This prohibition shall remain in place until the Project Closeout Date for the P3 Project that the individual was involved in, and in limited instances beyond, or until the City determines that any such conflict no longer exists or until or unless the City grants an exception.

## **B. City Consultants and Subconsultants for Non-P3 Projects Converted to P3 Projects**

### 1. Firms

A firm serving or who has served as one of the City's consultants or as a subconsultant for one or more projects within the City that is/are converted to a P3 Project may participate on a proposer team with the approval of the City Manager. A firm may seek approval by submitting a written request to the Purchasing Manager. The request

shall describe the facts and circumstances of the requestor's involvement on the project including level of design (percent complete, the number of component design plans by other firms, etc.), the last date of any involvement by the firm, and the nature of its proposed participation for a proposer team on the P3 Project under procurement by the City.

A firm serving or who has served as one of City's consultants or subconsultants for a project is prohibited from participating on a proposal team submitting an unsolicited proposal for that project. A firm serving or who has served as one of the City's primary consultants for a project is prohibited from participating on a proposal team should the City elect to advertise the project as a P3 Project as a result of an unsolicited proposal.

## 2. Individuals

An individual who works or has worked for a City consultant or subconsultant that was involved in a City project that is converted to a P3 Project may not directly or indirectly serve in any capacity for a proposer team on that P3 Project until the date said project is closed and final payment has been rendered or until the City determines that any such conflict no longer exists through the granting of an exception prior to the submission of the solicitation.

Any individual who was an employee of the City within the past 2 years or whom had any involvement or oversight of the formulation, or analysis of any City Project converted to a P3 Project or development of procurement documents, evaluation criteria, or technical criteria for a City Project converted to a P3 Project, is prohibited from participating in any capacity on a proposer team for that P3 Project or any other P3 Project under procurement by the City. This prohibition shall remain in place until the date said project which the individual was involved is closed, the City determines that any such conflict no longer exists, or until or unless the City grants an exception.

### **C. Requests for Exceptions**

A firm or individual may seek an exception to the above guidelines by submitting a written request for exception to the City's Purchasing Manager. The decision to approve or deny a request shall be made by the City Manager or his designee within a reasonable time after submission of a complete request.

The request shall describe the facts and circumstances of the requestor's involvement on the P3 Project and the nature of its proposed participation for a proposer team on another P3 Project under procurement by the City. The request shall specifically disclose whether the requestor at any time (a) was involved in the preparation of procurement documents, technical criteria, or evaluation criteria for the P3 Project or any other P3 Project; (b) participated in P3 Project-related meetings or conference calls with an Owner's Representative or with City's legal advisors or financial advisors; or (c) works or has worked for one of the City's Owner's Representatives or for the City on a P3 Project after the project is closed and final payment has been rendered for such P3 Project. The City retains the right to accept or deny any request for exception to this policy in its sole and absolute discretion and any delays or costs resulting from the failure to request an exception in a timely manner shall be the responsibility of the firm or individual.

**X. GOVERNING PROVISIONS**

In the event of any conflict between these Guidelines and the City Charter, or any federal, state, county, or City law or administrative authority, the terms of the respective Charter, laws, or administrative rules and regulations shall control.

The provisions and requirements of these Guidelines shall apply to solicitations for P3 Projects by the City unless otherwise provided in the solicitation. Bids or proposals in response to City-initiated solicitations shall be evaluated pursuant to the provisions of these guidelines for Bids or proposals received subsequent to the advertisement of a Notice of Receipt of an unsolicited proposal. The manner and timing for said advertisement and competitive bidding process shall be in accordance with Section IV of these Guidelines.

Approvals:

  
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Hugh B. Dunkley, CPA, CGFO, Finance Director

Date: 5/3/2022

  
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Terrence R. Moore, ICMA-CM, City Manager

Date: 5/3/2022