

ORDINANCE NO. 2017-_____

CITY OF POMPANO BEACH
Broward County, Florida

AN ORDINANCE OF THE CITY COMMISSION OF THE CITY OF POMPANO BEACH, FLORIDA, AMENDING CHAPTER 32, "DEPARTMENTS," OF THE POMPANO BEACH CODE OF ORDINANCES BY CREATING SECTION 32.47, "PUBLIC-PRIVATE PARTNERSHIPS," AND BY CREATING SECTION 32.48, "UNSOLICITED PROPOSALS," TO CODIFY THE PROCUREMENT PROCEDURES TO BE USED FOR PUBLIC-PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS CONSISTENT WITH SECTION 255.065, FLORIDA STATUTES; PROVIDING FOR SEVERABILITY; PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Pompano Beach ("City") Procurement Ordinance currently does not address the procurement procedures to be used for public-private partnerships or unsolicited proposals; and

WHEREAS, as codified in Section 255.065, Florida Statutes ("F.S."), entitled "Public-Private partnerships," as amended, the Florida Legislature has determined that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's best interest to provide for the construction or upgrade of such facilities; and

WHEREAS, the Florida Legislature found that there is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects that serve a public purpose including, but not limited to, educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which serve a public

need and purpose, and that such public need may not be wholly satisfied by existing procurement methods; and

WHEREAS, the Florida Legislature found that there are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership model has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the costs involved, and providing other benefits to the public; and

WHEREAS, the Florida Legislature recently found that procuring public-private partnerships and unsolicited proposals serve a valid public purpose if such procurements facilitate the timely development or operation of a qualifying project as defined in Section 255.065(1)(i) F.S., as amended; and

WHEREAS, the purpose of this Ordinance is to define the procurement procedures to be used by the City for public-private partnerships and unsolicited proposals in a manner consistent with Section 255.065, F.S., as amended; and

WHEREAS, when considering and addressing public-private partnerships and unsolicited proposals the City shall do so in a manner consistent and compliant with Section 287.055, F.S., Consultant's Competitive Negotiation Act (CCNA), for architects, surveyors, mappers and engineers in projects where the basic construction cost exceeds \$325,000.00; and

WHEREAS, in considering and addressing public-private partnerships and unsolicited proposals the City shall do so in a manner consistent with the applicable provisions of Chapter 255 F.S., as amended, involving public construction, including but not limited to bonding, letters of credit, parent company, lender, and equity partner guarantees; and

WHEREAS, the purpose of this legislation, more commonly referred to as "Public-Private Partnerships" or "P3's," is to facilitate the construction, delivery, financing, operation and maintenance of eligible public buildings and infrastructure projects; and

WHEREAS, Section 250 and 253 of the City's Charter specifically govern the sale and lease of City-owned real property, and any agreements consummated under this section with regard to City-owned real property must comply with the requirements of the Charter; and

WHEREAS, pursuant to law, ten (10) days' notice has been given by publication in a paper of general circulation in the City, notifying the public of this proposed Ordinance and of a public hearing in the City Commission Chambers of the City of Pompano Beach; and

WHEREAS, a public hearing before the City Commission was held pursuant to the published notice described above, at which hearing the parties in interest and all other citizens so desiring had an opportunity to be and were, in fact, heard; now, therefore,

BE IT ENACTED BY THE CITY OF POMPANO BEACH, FLORIDA:

SECTION 1. That Section 32.47, "Public-Private Partnerships," of Chapter 32, "Departments," of the Pompano Beach Code of Ordinances, is hereby created to read as follows:

§ 32.47 PUBLIC-PRIVATE PARTNERSHIPS.

(A) The City hereby adopts F.S. § 255.065, "Public-Private Partnerships," as amended, and expressly incorporates it by reference into the City Procurement Ordinance.

(B) Definitions. For purposes of this section, the words defined in F.S. § 255.065(1), (entitled "Definitions"), as amended, including, without limitation, "qualifying project," shall have the same meaning in this section.

(C) Conditions for use.

(1) Competitive negotiations/competitive sealed proposals may be used for a qualifying project in which it is both practicable and advantageous for the City to consider a range of competing plans, specifications, standards, terms and conditions so that adequate competition will result and award be made not principally on the basis of price, but to the respondent whose proposal contains the most advantageous combination of price, quality or other features.

All contracts shall be approved by the City Commission and shall be signed by the City Manager, City Attorney and City Clerk.

(2) A contract may be entered into by use of the competitive negotiation/competitive sealed proposal methods when:

(a) The Director of General Services determines that the complex specialized nature or technical details of a particular procurement make the use of competitive sealed bidding either not practicable or unreasonable, or not advantageous to the City;

(b) Specifications or scope of work cannot be fairly or objectively prepared so as to permit competition in the invitation for bids; or

(c) Qualifications and the quality of the service to be delivered can be considered more important than price.

(D) Competitive sealed proposal method. Where the contract exceeds \$75,000.00, the City may utilize the following competitive sealed proposal methods:

(1) Request for Proposals (RFP), Request for Letters of Interest (RFLI), or Request for Qualifications (RFQ) setting forth the terms and conditions of the professional or personal services sought for the qualifying project, including but not limited to, scope of work and evaluation factors, shall be issued.

(2) Financing. Public-private partnerships traditionally involve long-term financing agreements between the parties. RFPs, RFLIs or RFQs for a qualifying project that contemplate long-term financing wherein the City would incur a debt obligation must be reviewed and approved in advance of advertisement as to form by the Director of Finance and the City Attorney.

(3) Public notice. Adequate public notice in a newspaper of general circulation shall be provided pursuant to Section 255.065 (3)(b), F.S., as amended.

(4) Pre-proposal conference. A pre-proposal conference may be conducted to explain the requirements of the proposed procurement and shall be announced to all prospective proposers known to have received an RFP, RFLI, or RFQ. Conferences should be held long enough after the RFP, RFLI, or RFQ has been issued to allow prospective proposers to become familiar with the proposed procurement, but sufficiently before receipt of proposal to allow consideration of the conference results in preparing their proposals. Nothing stated at a pre-proposal conference shall change the RFP, RFLI, or RFQ unless a change is made by written addendum, which shall be supplied to all those prospective proposers known to have received a RFP, RFLI, or RFQ. All pre-proposal conferences shall be recorded and be maintained as a public record.

(5) Receipt of proposals. Sealed proposals must be received by the General Services Department no later than the time and date specified for submission in the RFP, RFLI, or RFQ. The name of each proposer shall be recorded by the department, and the record and each proposal, to the extent consistent with applicable state law, shall be open to public inspection.

(6) Proposal evaluation. An evaluation committee shall be appointed by the City Manager or designee for the purpose of evaluating proposals based upon the criteria contained in the RFP, RFLI or RFQ. This evaluation committee shall be comprised predominantly of individuals who are City personnel and are deemed subject matter experts in the project areas concerned (for example: an architect, engineer, certified public accountant, financial advisor, etc. who are certified or registered as required by the law). No other factors or criteria shall be used in the evaluation. As may be provided in the RFP, RFLI or RFQ, proposers may be invited to make oral presentations regarding their proposals. The recommendations of the evaluation committee shall be submitted to the City Manager.

In the event only one proposal is received, the evaluation committee may proceed with the evaluation, or request the City Manager to recommend to the City Commission to reject all proposals, whichever is in the best interests of the City.

(7) Award. For comprehensive agreements that involve long-term financing wherein the City would incur a debt obligation, the City Manager's award recommendation shall be reviewed and approved by the Director of Finance and the City Attorney before being submitted for consideration by the City Commission. Award shall be made to the responsive and responsible proposer whose proposal is most advantageous to the City as determined by the City Commission in accordance with the evaluation criteria contained in the RFP, RFLI or RFQ.

(a) After reviewing the City Manager's recommendation, the City Commission may:

1. Approve the City Manager's recommendation and authorize contract negotiations;

2. Reject all proposals;

3. Reject all proposals and instruct the City Manager to reissue a solicitation; or

4. Reject all proposals and instruct the City Manager to enter into competitive negotiations with at least three individuals or firms possessing the ability to perform such services and obtain information from said individuals or firms relating to experience, qualifications and the proposed cost or fee for said services, and make a recommendation to the City Commission.

The decision of the City Commission shall be final. Written notice of the award shall be given to the successful proposer.

Threshold amounts referenced herein shall include the values associated with potential options of renewal. Awards made by the City Commission shall include authority for all subsequent options of renewal, if any. The aforementioned options of renewal shall be exercised at the option of the City Manager, subject to confirmation by the City Commission if, after review of past performance under the contract, the City Manager determines in his/her sole discretion that exercise of the option of renewal is in the best interest of the City.

SECTION 2. That Section 32.48, "Unsolicited Proposals," of Chapter 32, "Departments," of the Pompano Beach Code of Ordinances, is hereby created to read as follows:

§ 32.48 UNSOLICITED PROPOSALS.

(A) The City hereby adopts F.S. § 255.065, "Public-private partnerships," as amended, and expressly incorporates it by reference into the City Procurement Ordinance, as such may be modified.

(B) Definitions. For purposes of this section, the following words shall have the same meanings ascribed to them as in F.S. § 255.065, as amended:

- (1) "Qualifying project"; and
- (2) "Private entity";

(C) Conditions for use. The City may receive unsolicited proposals for a qualifying project and may thereafter enter into an agreement with a private entity, or a consortium of private entities, for said qualifying project, subject to the procedures and conditions set forth herein. Any unsolicited proposal shall include sufficient detail and information for the City to evaluate the proposal in an objective and timely manner.

(D) Application fee. Any private entity or consortium of private entities desiring to submit an unsolicited proposal for a qualifying project shall submit to the City an application fee of \$25,000.00 payable to the City in the form of a money order or cashier's check at the time of unsolicited proposal submittal. If the cost of evaluating the unsolicited proposal exceeds \$25,000.00 the application fee shall be increased to a reasonable fee to pay the costs of evaluating the unsolicited proposal. The proposer will be notified and will promptly pay the balance of the application fee needed to pay the costs of evaluating the unsolicited proposal. As provided for in F.S. § 255.065, as amended, the purpose of this application fee is to pay the costs of evaluating the unsolicited proposal. The City may need to engage the services of a private consultant to assist in the evaluation of the unsolicited proposal. The City shall refund any portion of the initial

application fee paid in excess of its direct costs associated with evaluating the proposal.

(E) Public notice. If the City receives an unsolicited proposal for a qualifying project pursuant to this section and the City desires to enter into an agreement with the private entity or consortium of private entities submitting same, the City shall first notify the City Commission of the receipt of said unsolicited proposal by placement of a discussion item on the next available commission meeting agenda. Upon the City Commission's approval to proceed with said unsolicited proposal project, the City shall publish public notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for two weeks stating that the City has received an unsolicited proposal and that the City will accept other proposals for the same qualifying project. The City shall set forth in each such request for proposals the criteria to be evaluated and how such private partner shall be selected from the proposals submitted. The entity submitting the original unsolicited proposal may submit a more detailed proposal in response to the City's notice. The timeframe for allowing other proposals shall be no fewer than 21 days, but no more than 120 days after the initial date of publication. A copy of the notice must be mailed to each local government in the affected area of the qualifying project and/or any municipality and/or special district in which all or a portion of the qualifying project is located.

(F) Receipt of proposals. Sealed proposals must be received by the General Services Department no later than the time and date specified for submission in the publication. The name of each proposer shall be recorded by the Director of General Services or designee, and the record and each proposal, to the extent consistent with applicable state law, shall be open to public inspection.

(G) Proposal evaluation. An evaluation committee shall be appointed by the City Manager for the purpose of evaluating and ranking the proposals based upon factors that include, but are not limited to: professional qualifications and experience, general business terms, innovative design techniques and/or cost-reduction terms, and finance plans. Proposers may be invited to make oral presentations regarding their proposals. The recommendations of the evaluation committee shall be submitted to the City Manager.

In the event only one proposal is received, the evaluation committee may proceed with the evaluation, or request the City Manager to recommend to the City Commission to reject all proposals, whichever is in the best interests of the City.

(1) After reviewing the evaluation committee's recommendation, the City Manager may:

(a) Approve the recommendation of the evaluation committee, written notice of which shall be provided to all proposers, and the City Manager shall then submit his or her recommendation to the City Commission;

(b) Reject the evaluation committee's recommendation and recommend to the City Commission to instruct the evaluation committee to re-evaluate and make further recommendations; or

(c) Recommend to the City Commission to reject all proposals.

(H) Award. For agreements that involve long-term financing wherein the City would incur a debt obligation, the City Manager's award recommendation shall be reviewed and approved by the Director of Finance and City Attorney before being submitted for consideration by the City Commission. Award shall be made to the highest-ranked responsible proposer whose proposal is most advantageous to the City as determined by the City Commission in accordance with the criteria the evaluation committee used in evaluating and ranking the proposals.

(1) After reviewing the City Manager's recommendation, the City Commission may either:

(a) Approve the City Manager's recommendation and authorize contract negotiations; or

(b) Reject all proposals.

(2) The decision of the City Commission shall be final. Written notice of the award or rejection shall be given to all proposers.

Unsolicited proposals may only be awarded by the City Commission subject to the procedures set forth herein. Awards made by the City Commission shall include authority for all subsequent options of renewal, if any. The aforementioned options of renewal shall be exercised at the option of the City Manager, subject to confirmation by the City Commission if, after review of past performance under the contract, the City Manager determines in his sole discretion that exercise of the option of renewal is in the best interest of the City. All agreements shall be in a form acceptable to the City Commission or City Manager, as applicable, and are subject to approval as to legal form by the City Attorney. The Director of Finance or designee shall review all finance plans and documents related to the private entity's performance, payment of subcontractors and similar responsibilities. The Director of Risk Management shall review all insurance and related requirements.

SECTION 3. That any provision of this Ordinance or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or

applications of this Ordinance that can be given effect without the invalid provision or application, and to this end the provisions of this Ordinance are declared to be severable.

SECTION 4. This Ordinance shall become effective upon passage.

PASSED FIRST READING this _____ day of _____, 2017.

PASSED SECOND READING this _____ day of _____, 2017.

LAMAR FISHER, MAYOR

ATTEST:

ASCELETA HAMMOND, CITY CLERK

MEB/jrm
6/23/17
l:ord/ch32/2017-219