





**Memorandum No: 24-021**

**City Attorney's Office**

**To:** Honorable Mayor and City Commissioners  
**Thru:** Thomas J. Ansbro, City Attorney   
**From:** D'Wayne M. Spence, Deputy City Attorney   
**Date:** February 22, 2024  
**Re:** Proposed Public-Private Partnership Ordinance Comparison Chart

The City Attorney's Office presented a preliminary draft public-private partnership ordinance at the October 17, 2023, City Commission Conference Meeting. At that meeting our office was directed to provide the City Commission with a document that compares the proposed ordinance with the requirements of Section 255.065, Florida Statutes and obtain feedback from the Council of Fort Lauderdale Civic Associations (the "Council") before bringing the proposed ordinance back for discussion. The proposed ordinance is intended to supplement Section 255.065, Florida Statutes and not supplant it in accordance with Section 255.065(14)(d), Florida Statutes. A table explaining how the draft ordinance supplements Section 255.065, Florida Statutes is provided in this memorandum as Table 1. The City Attorney and Deputy City Attorney met with members of the Council on January 24, 2024. The Council has provided our office with comments in two documents attached hereto as Exhibit 3 and Exhibit 4.

Table 1: Propose Public-Private Partnership Process

Proposed Ordinance	Florida Statutes § 255.065	
	Unsolicited Proposal	Solicited Proposal
		Independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded. - § 255.065(5)(d)
Specifies that the method of procurement is determined by the chief procurement officer and can be one of the following:		Issue solicitation for proposals - § 255.065(3), § 255.065(3)(b)

Proposed Ordinance	Florida Statutes § 255.065		
	Unsolicited Proposal	Solicited Proposal	
<ul style="list-style-type: none"> <li>Competitive sealed bid</li> <li>Competitive sealed proposal</li> <li>Competitive negotiation process</li> </ul> – Sec 2-181(g)(2)a.1			
City Finance Department to review and approve long-term financing - – Sec 2-181(g)(2)a.2			
Sec 2-181(g)(2)a.3 provides for notice on the City’s website and bidding platforms			
Pre-proposal conference required - – Sec 2-181(g)(2)a.4			
Proposals submitted through online platform - – Sec 2-181(g)(2)a.5			
Evaluation by evaluation committee – Sec 2-181(g)(2)a.6			
City Manager review of evaluation committee’s recommendation and determination as to whether to submit to City Commission. - – Sec 2-181(g)(2)b			
City Commission award – Sec 2-181(g)(2)c			
		Submission of proposal with initial application fees - § 255.065(3)(a)2	
City manager provides an initial review and can decide to reject the unsolicited proposal – Sec 2-181(g)(3)a.2		Return application fee if proposal is not evaluated. -§ 255.065(3)(a)4	
City Commission Conference Discussion and decision on whether to enter into a Comprehensive Agreement –			

Proposed Ordinance	Florida Statutes § 255.065	
	Unsolicited Proposal	Solicited Proposal
Sec 2-181(g)(3)a.3		
	Evaluation of Unsolicited Proposal	
	Written notice requesting additional amount for evaluation of proposal - § 255.065(3)(a)3	
	Payment of additional amount requested for evaluation of proposal within 30 days of written notice, if requested. - § 255.065(3)(a)3	
	Intent to enter into a Comprehensive Agreement - § 255.065(3)(b)	
	City Commission sets timeframe for accepting proposals between 21 days and 120 days - § 255.065(3)(b)	
Additional notice on the City's website and bidding platforms and to registered homeowner's and neighborhood associations – Sec 2-181(g)(3)a.3	Publish Notice for accepting proposals in Florida Administrative Register and newspaper once a week for 2 weeks - § 255.065(3)(b)	
	Notice to each local government in affected area - § 255.065(3)(b)	
Proposals submitted through online platform – Sec 2-181(g)(3)a.4		
Evaluation by evaluation committee - - Sec 2-181(g)(3)a.5	Rank Proposals - § 255.065(5)(c)	
	Interim Agreement (Optional) - § 255.065(6)	
	Negotiate for a comprehensive agreement with highest-ranked firm. - § 255.065(5)(c)	
	If not satisfied terminate negotiations and negotiate with second-ranked or subsequent-ranked firms. - § 255.065(5)(c)	

Proposed Ordinance	Florida Statutes § 255.065	
	Unsolicited Proposal	Solicited Proposal
City manager has the authority to reject the proposal or submit the evaluation committee's recommendation to the City Commission -- Sec 2-181(g)(2)b	May reject all proposals at any point in the process until a contract with the proposer is executed. - § 255.065(5)(c)	
	Independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded. - § 255.065(5)(d)	
	<p>Determination that the proposed project meets the requirements of - § 255.065(3)(d):</p> <ol style="list-style-type: none"> <li>1. Is in the public's best interest.</li> <li>2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity.</li> <li>3. 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 or cancellation of the comprehensive agreement by the responsible public entity.</li> <li>4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.</li> <li>5. Will be owned by the responsible public entity upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.</li> </ol>	
	Approval of the Qualified Project - § 255.065(5)(h)	
	Approval of the Comprehensive Agreement	
	<p>Before signing consider:</p> <ul style="list-style-type: none"> <li>• a reasonable finance plan.</li> <li>• qualifying project cost</li> <li>• revenues by source</li> <li>• available financing</li> <li>• major assumptions</li> <li>• internal rate of return on private investments</li> <li>• if governmental funds are assumed in order to deliver a cost-feasible project;</li> <li>• total cash-flow analysis beginning with the implementation of the project and extending for the term of the comprehensive agreement. - § 255.065(3)(e)</li> </ul>	

This item is anticipated to be brought to the City Commission for discussion at the March 19, 2024, conference meeting.

**Attachments**

Exhibit 1 – Florida Statutes Section 255.065

Exhibit 2 – Draft Ordinance

Exhibit 3 – CFLCA P3 Bullet Points

Exhibit 4 – CFLCA P3 Position