

ORDINANCE NO. C-23-

AN ORDINANCE OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING DIVISION 2, – PURCHASING, OF ARTICLE V. - FINANCE, OF CHAPTER 2 – ADMINISTRATION, OF THE CODE OF ORDINANCES OF THE CITY OF FORT LAUDERDALE, FLORIDA, AMENDING SECTION 2-181 – METHOD OF PROCUREMENT TO ADD PROVISIONS GOVERNING THE PUBLIC PRIVATE PARTNERSHIP EVALUATION PROCESS, AND PROVIDING FOR SEVERABILITY, REPEAL OF CONFLICTING ORDINANCE PROVISIONS, CODIFICATION AND CORRECTION OF SCRIVENER’S ERRORS, AND AN EFFECTIVE DATE.

WHEREAS, the Legislature of the State of Florida (“Legislature”) found that there is a public need for the construction or upgrade of facilities that are used predominately for public purposes; and

WHEREAS, there is a public need for timely and cost-effective construction, improvement, and maintenance of 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, public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public; and

WHEREAS, the proposed Public-Private Partnership Ordinance (“Ordinance”) will codify provisions by which the City may contract with private entities for the improvement and development of public infrastructure, as defined in the Florida Statutes, § 255.065; and

WHEREAS, the Ordinance also provides a manner in which certain unsolicited proposals may be treated as unsolicited proposals for qualifying projects as defined in Florida Statute § 255.065; and

WHEREAS, the City Commission finds that it is necessary to modify the Code of Ordinances of the City of Fort Lauderdale, Florida, to create and codify a process for public-private partnerships; and

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WHEREAS, the City Commission finds that the procurement process of the City will be improved by adopting this Ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF FORT LAUDERDALE, FLORIDA:

SECTION 1. That Section 2-181, Division 2. – Procurement, of Article V. – Finance, of Chapter 2 - Administration of the Code of Ordinances of the City of Fort Lauderdale, Florida, is hereby amended to provide as follows:

Sec. 2-181. - Methods of procurement.

The chief procurement officer shall determine the appropriate method of source selection for each procurement, including but not limited to the following:

- (a) Competitive sealed bid process.
 - (1) Invitation to bid. The invitation to bid (ITB) solicitation document shall include the specifications and all contractual terms and conditions applicable to the procurement.
 - (2) ITBs may include pricing for the life cycle cost of items and shall be awarded to the lowest responsive and responsible bidder, considering all pertinent qualifications of the recommended awardee.
- (b) Competitive sealed proposal process.
 - (1) Request for proposals: When it is determined by the chief procurement officer that the use of competitive sealed bidding is either not practical, not advantageous to the city due to the technical or specialized nature of the goods and/or services sought, or best value procurement will result in selection of the best qualified vendor/contractor at a reasonable price, the city may use the competitive sealed proposal process. A request for proposals may be used as the solicitation document.
- (c) Request for qualifications (RFQ) process.
 - (1) Consultants' Competitive Negotiation Act.

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- a. The services of professional architects, engineers, landscape architect, surveyors, and mapping services shall be acquired in accordance with F.S. § 287.055, and as further delineated in the Procurement Manual.
 - b. Continuing contracts for these services may be solicited and entered into on a rotational basis between at least three (3) firms, in accordance with F.S. § 287.055(2)(g), as may be amended, and as further delineated in the Procurement Manual.
- (2) Competition among qualified proposers. When it is in the city's best interest to choose a qualified provider of professional services other than those encompassed by the Consultants' Competitive Negotiation Act, the City may issue a request for qualifications and thereby attain a pool of qualified providers. Fees are established via a competitive sealed bid process among the qualified providers.
- (d) Competitive negotiations process.
- (1) When the chief procurement officer determines that the use of competitive negotiations is advantageous to the city, the competitive negotiations process may be used. An invitation to negotiate (ITN) may be the solicitation method.
 - (2) The goal of an ITN is to obtain proposals from interested and qualified firms so that the city may enter into negotiations with the firm or firms determined most capable of providing the required supplies and services.
 - (3) The ITN document will supply the firms with information necessary to understand the need; however, the terms, scope of work, price, method of delivery, conditions of performance, and approaches of the project may be open to consideration and negotiations, including simultaneous negotiations with the most qualified firms.
 - (4) ITNs may not be used for procuring professional services addressed by F.S. Ch. 287.055 (CCNA).
- (e) Request for information process.

- (1) When it is considered impractical to prepare a purchase description to support an award based on price or detailed scope of work, any competitive solicitation may be preceded by a request for information (RFI) requesting the submission of unpriced submittals, which will provide input for the specifications or scope of work to be included in a subsequent competitive solicitation.

Public notice of a competitive solicitation shall be published on the city's website for a reasonable period prior to bid opening or response due date.

The public notice shall state the place, due date, time for delivery or receipt, and the location of the public acknowledgement of receipt. Bids and responses received after the time and date specified in the solicitation document shall not be opened, but will be reported to the city manager. Only the city manager may authorize the opening of a late bid or proposal.

(f) Alternative source selection.

- (1) Small purchases. Any purchase for an amount less than the mandatory commission approval amount shall be made in accordance with those procedures promulgated in the Procurement Manual, provided, however, no purchase shall be artificially divided so as to constitute a small purchase under this section.
- (2) Sole source purchases. The chief procurement officer may make or authorize the procurement of goods and/or services, subject to the mandatory commission approval level stipulated in this article, without competitive solicitation when the director of the client department has documented in writing that such good or service is the only item that meets the need and is available through only one (1) source of supply, or when the intent to award through sole source is posted on the city's website for a reasonable time period, or when a documented research effort by the chief procurement officer or designee fails to identify further competing sources of the goods or services. Such written determinations and supporting documentation shall be retained by the chief procurement officer for public inspection and auditing purposes. The sole source process shall be further delineated in the Procurement Manual.

- (3) Proprietary purchases. The chief procurement officer may make or authorize the procurement of goods and/or services, subject to the mandatory commission approval level stipulated in this article, without competitive solicitation when the director of the client department has documented in writing that such goods and/or services is proprietary in nature. Such written determination and supporting documentation shall be retained by the chief procurement officer for public inspection and auditing purposes. The proprietary purchase process shall be further delineated in the Procurement Manual.
- (4) Emergency purchases. The city manager and/or designee may make or authorize emergency purchases as defined herein.
 - a. In the event of an emergency, such as an equipment failure, catastrophic damage to city property, or other similar unexpected event, all normal procurement procedures and requirements directly related to such emergency shall be suspended; and with the approval of the city manager or designee, the head of any department may purchase any required emergency supplies, materials, equipment or services. The head of such department shall send to the chief procurement officer a requisition and copy of the delivery record together with a full justification and circumstances of the emergency.
 - b. Records of emergency purchases shall be maintained by the chief procurement officer. A full report of emergency purchases exceeding the mandatory commission approval amount shall be submitted to the city commission at the earliest available commission meeting.

The emergency purchase process shall be further delineated in the Procurement Manual.

- (5) Cooperative purchases.
 - a. The city may purchase from any cooperative contract, including but not limited to, term contracts by the State of Florida, Federal General Services Administration, and other governmental or public entity and entities within and outside the State of Florida provided that the cooperative contract is established in compliance with the procurement procedures and requirements of the issuing body, entity, authority, or

cooperative. If such other governmental or cooperative contract is utilized, the public notice requirements and the need to utilize the methods of selection processes included in this article and the Procurement Manual are obviated.

- b. The city may purchase from (piggyback) a contract entered into by another governmental or public entity and a provider of supplies or services required by the city, if the chief procurement officer determines that it is practicable and advantageous for the city to employ this method of procurement. If such other governmental or public entity contract is utilized, the public notice requirements and the need to use the methods of selection processes included in this article and the Procurement Manual are obviated.
 - c. Other governmental agencies may purchase from the city's contracts.
 - d. The cooperative and piggyback procurement processes shall be further delineated in the Procurement Manual.
- (6) Design-build services.
- a. In accordance with Florida Statutes, the city may use a competitive solicitation process to establish a design-build contract.
 - b. The design-build process shall be further delineated in the Procurement Manual which implements this section.
 - c. Prohibition against contingent fees. Each contract for design-build services shall contain a prohibition against contingent fees as required by Florida Statute.
- (7) Capital improvement and construction services. Construction services shall be acquired in accordance with the competitive selection process as determined by the chief procurement officer. Performance bonds and payment bonds shall be as stipulated in F.S. § 255.05, as may be amended. Public notice for competitive solicitations related to construction and capital improvement projects shall be in accordance with F.S. § 255.0525(2), as may be amended.

The capital improvement and construction procurement process shall be further delineated in the Procurement Manual.

- (8) Construction management and construction management at risk services. The procurement of construction management services shall be made in accordance with the request for proposal or request for qualifications process herein and as further delineated in the Procurement Manual.
 - (9) Negotiated procurements. Negotiation of contracts and pricing by any method of selection process identified herein shall be by means promulgated in the Procurement Manual. Said procedures may include provisions for the right of the city to audit, cost principals to be used to determine the allowability of reimbursing expenses, and the designation of members of evaluation and negotiation teams.
 - (10) Job order contracting (JOC). The city may procure services by means of job order contracting. The job order contracting procurement process shall be further delineated in the Procurement Manual.
- (g) Public-private partnerships.
- (1) Public-private partnership.
 - a. In accordance with Florida Statutes, the city may receive unsolicited proposals or may solicit proposals for a qualifying project and may thereafter enter into a comprehensive agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities. The city hereby adopts Florida Statutes. § 255.065, as amended, and expressly incorporates it by reference into the City of Fort Lauderdale Procurement Ordinance.
 - b. Definitions. For purposes of this section, the words defined in Florida Statutes. § 255.065(1), as amended, including, without limitation, "qualifying project," shall have the same meaning in this section.
 - (2) Solicited proposals.
 - a. Solicitation Method.

1. The City may use of the competitive sealed bid, competitive sealed proposal, or competitive negotiation methods for soliciting public-private partnerships as determined by the chief procurement officer.
2. Financing. Public-private partnerships traditionally involve long-term financing agreements between the parties. Solicited proposals 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 City's Finance Department.
3. Public notice. Adequate public notice in the city's procurement services' website and via the on-line procurement/bidding platform shall be provided pursuant to City's Procurement Manual; provided, however, that all such public notices must also comply with Florida Statute § 255.065, as amended.
4. Pre-proposal conference. A pre-proposal conference may be conducted to explain the requirements of the proposed procurement, to clarify the City's needs, explain the solicitation process, ensure that the proposers understand what information must be submitted, answer questions, and shall be announced to all prospective proposers known to have received a solicitation package. All pre-proposal conferences shall be recorded and be maintained as a public record.
5. Receipt of proposals. Sealed proposals shall be submitted through the city's on-line procurement/bidding platform 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 on-line procurement/bidding platform, 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 chief procurement officer for the purpose of evaluating proposals based upon the criteria contained in the solicitation in the manner outlined in the city's procurement manual.

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

- b. After reviewing the evaluation committee's recommendation, the city manager may:
1. 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/her recommendation to the city commission;
 2. Reject the evaluation committee's recommendation and instruct the evaluation committee to re-evaluate and make further recommendations;
 3. Reject all proposals; or
 4. Recommend that the city commission reject all proposals.
- c. Award. 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 solicitation. 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

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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.

(3) Unsolicited proposals. 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.

a. Submission and Evaluation

1. 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 as set by resolution by the City Commission.
2. Initial Review. The City Manager may upon receipt of an unsolicited proposal and prior to proposal evaluation, elect to not evaluate any unsolicited proposal and return the application fee.
3. 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 commission of the receipt of said unsolicited proposal by placement of a discussion item on the next available city commission conference meeting agenda. Upon the commission's consensus approval to proceed with said unsolicited proposal project, the city shall publish public notice in the Florida Administrative Register, on the city's procurement website and/or via the on-line procurement/bidding platform, and a newspaper of general circulation at least once a week for a minimum of 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 additionally furnish a copy of the same notice to any homeowners or neighborhood associations currently registered with the city in the designated area. 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 which shall mean Broward County and any special district in which all or a portion of the qualifying project is located.

4. Receipt of proposals. Sealed proposals shall be submitted through the city's on-line procurement/bidding platform no later than the time and date specified. The name of each proposer shall be recorded by the on-line procurement/bidding platform, and the record and each proposal, to the extent consistent with applicable state law, shall be open to public inspection.
5. Proposal evaluation. An evaluation team shall be appointed by the Chief Procurement Officer 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 or cost-reduction terms, and finance plans. Proposers may be invited to make oral presentations regarding their proposals. The recommendations of the e-team 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 reject all proposals, whichever is in the best interests of the city.

6. After reviewing the evaluation committee's recommendation, the city manager may:
 - i. 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;

- ii. Reject the evaluation committee's recommendation and instruct the evaluation committee to re-evaluate and make further recommendations;
- iii. Reject all proposals; or
- iv. Recommend that the city commission reject all proposals.

b. Award Process.

1. Award. 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.
2. City Commission Action. After reviewing the city manager's recommendation, the city commission may:
 - i. Approve the city manager's recommendation and authorize agreement negotiations;
 - ii. Reject all proposals;
3. The decision of the city commission shall be final. Written notice of the award shall be given to the successful proposer.

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/her 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 from by the city attorney. The chief financial officer or his/her 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 2. CODIFICATION AND SCRIVENER'S ERRORS. The City intends that this Ordinance will be made part of the Code of Ordinance; that sections of this Ordinance can be re-numbered or re-lettered to accomplish codification and, regardless of whether this Ordinance is ever codified, the Ordinance can be re-numbered or re-lettered, and typographical errors that do not affect the intent can be corrected with the authorization of the City Manager, or his designee, without the need for a public hearing.

SECTION 3. That all ordinances or parts of ordinances in conflict herewith are hereby repealed, only to the extent of such conflict.

SECTION 4. That if any clause, section or other part of this Ordinance shall be held invalid or unconstitutional by any court of competent jurisdiction, the remainder of this Ordinance shall not be affected thereby, but shall remain in full force and effect.

SECTION 5. That this Ordinance shall be effective immediately upon its passage and adoption.

PASSED FIRST READING this ____ day of _____, 2023.

PASSED SECOND READING this ____ day of _____, 2023.

Mayor
DEAN J. TRANTALIS

ATTEST:

City Clerk
DAVID R. SOLOMAN

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