

Sec. 2-199.3 Unsolicited Proposals.

(a) Any person or legal entity may submit an unsolicited proposal to the City to contract for the design, construction, operation, ownership, acquisition, or leasing of public infrastructure which unsolicited proposal shall be governed by the provisions of this section. For purposes of this section, public infrastructure shall include software.

(b) The City shall charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal, including a fee to cover the costs of attorneys, engineers, consultants, and financial advisors. The fee charged for the review of the proposal shall be based on the level of expertise deemed necessary by the City Manager and required to review the proposal, and will not be greater than the direct costs associated with evaluating the unsolicited proposal. "Direct costs" may include, but are not limited to, (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the costs of attorneys, engineers, financial advisors and other consultants. Should the project proceed beyond the initial review, and be published for competition, additional fees for review and evaluation may be charged as agreed to by the parties.

(c) The City shall require the initial processing fee of twenty-five thousand dollars (\$25,000.00). Additional fees may be charged based on the nature of the proposal and the complexity of the review required. All requested fees shall be paid prior to the City's further evaluation of the proposal. The City Manager shall refund any portion of the initial processing fee paid which in the discretion of the City Manager exceeds the direct costs associated with evaluating the proposal.

(d) Upon receipt of an unsolicited proposal or group of proposals and payment of any required fees by the proposer or proposers, the City Manager shall note the date and time of receipt of such proposal and shall determine within 90 days whether to accept the unsolicited proposal solely for the purpose of proceeding to publication as described below. Alternatively, the City Manager shall reject the proposal within such ninety (90) days or, in the event that the time for consideration is insufficient, request an extension of this time from the City Commission; however, the City Commission shall not grant more than one such extension. Final determination of whether to publish a proposal shall be made by the City Commission. Following such determination, the City Manager shall respond to the proposer in writing as to the acceptance or rejection of the unsolicited proposal. The initial review time may be extended by mutual agreement of the City Manager and the proposer. The proposal shall be published not later than thirty (30) days following acceptance by the City Commission.

(e) In its sole and absolute discretion, the City Manager may reject or return an unsolicited proposal. The decision to reject an unsolicited proposal which is accompanied by the applicable fee shall be subject to ratification by the City Commission. The City Manager shall provide a written explanation of the reasons for rejection in the item requesting ratification. It is not the intention or obligation of the City to correct and/or assist in the preparation of an unsolicited proposal in any manner.

(f) In determining whether to accept the unsolicited proposal for publication, the City shall take into consideration such factors as: whether the proposed project is in the public's best interest; the costs of the proposed project and its funding sources; whether the proposed project may be accomplished through the use of City resources; the need for the proposed project; the scientific, technical or socioeconomic merits of the proposal; the contribution of the proposal to the City's goals and objectives; the qualifications, technical and management capabilities and experience of the proposer considered as a whole and considered in terms of the legal entities who may comprise the proposer or who may be serving as subcontractors to the proposer; the general reputation and financial condition of the proposer and its team members; the proposer's financial capacity to perform its obligations in the proposed contract; the financial viability and feasibility of the submitted proposal; the cost, if any, to the City to proceed with implementation of the proposal; and any other information the City deems appropriate for such initial evaluation.

(g) Any unsolicited proposal shall include sufficient detail and information for the City to evaluate the proposal in an objective and timely manner and to determine if the proposal meets the above criteria and benefits the City. If such proposal is not deemed by the City to be complete or in sufficient detail, it may be rejected at the sole discretion of the City Manager. The City Manager shall inform the proposer in writing of the reason for rejection and shall provide the proposer a copy of the item explaining the reason for rejection delivered to the City Commission. It is not the intent or obligation of the City Manager to assist the proposer in completing the proposal and the City Manager shall bear no responsibility to itemize or advise the proposer of the incomplete items or terms of the proposal.

(h) Any unsolicited proposal shall contain at a minimum the following items, as appropriate to the proposed project:

(1) Information and supporting documentation necessary for the City to evaluate the factors listed in subsection (f) above.

(2) A site plan indicating the location of the project proposed, if applicable.

(3) A description of the project, including the conceptual design of the public infrastructure.

(4) The proposed schedule for development of the project and/or the proposed term for operation of the project, along with an estimate of the life cycle cost of the proposed proposal.

(5) A statement setting forth a method by which the private entity proposes to secure any property interests required for the proposed project.

(6) A statement setting forth the proposer's plans for developing, financing, constructing and/or operating and maintaining the project, including identification of any revenue, public or private of proposed debt or equity investment proposed by the proposer. The financing plans shall address any and all means by which the costs of the project will be borne by persons other than the City.

(7) Names and addresses of persons who may be contacted for further information concerning the request.

(8) A financial plan for the entire time period of the proposed private entity involvement in the project.

(9) Performance guarantees, if any, and any proposed bonding to be provided by the proposer.

(10) The names of owners, directors and officers of the proposer, and such information as may be necessary to evaluate the qualifications of the critical personnel to be engaged in the project.

(11) A list of all engineering, construction firms and consultants to be proposed on the project and their qualifications and a description of their role in the proposal.

(12) A listing of all proposed obligations and requirements of the City and any other governmental agencies, including, but not limited to, contributions to the project financing, staffing and permitting.

(13) Such additional material and information that a responsible public entity may reasonably expect, in order to review and evaluate such proposal.

(i) The City may seek the advice of internal staff or outside advisors, attorneys or consultants, or any combination thereof, with relevant experience in determining whether to accept the unsolicited proposal for publication and/or whether to enter into an agreement with the private entity or any competing proposer. At its option, the City may seek further clarification of the proposal.

(j) If the City accepts the unsolicited proposal for publication, then the City Manager shall publish notice on the City's website and in a newspaper of general circulation at least once a week for 2 weeks stating that the City has received a proposal and will accept for 21 days ("Response Period") after the initial date of publication other proposals for the same project. Such period may be extended by the City Commission, upon request by the City Manager explaining why a longer period for response is in the best interest of the City. The City Manager shall identify the procedures that will be used for evaluating the proposals in the notice or in a subsequent publication. Once the City decides to receive competing proposals, it may utilize its existing procedures for evaluating the proposals or may adopt project-specific procedures. The proposer shall be authorized to respond to the competitive solicitation and offer to the City a proposal in terms not less favorable to the City than the original proposal.

(k) Proposal documents submitted by private entities are public records under Chapter 119, Florida Statutes, subject to any exemption otherwise provided by law. Any competing proposer may request and receive a copy of such proposal, and the City reserves the right to publish such unsolicited proposal and solicit competing proposals within the Response Period. In no event

shall the City be liable to a proposer for the disclosure of all or a portion of a proposal submitted under this subsection.

(l) When the private entity requests that the City not disclose information that is exempt from the disclosure requirements of the Chapter 119, Florida Statutes, the private entity must (i) invoke the exemption when the data or materials are submitted to the City or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary, citing the specific exemption to Chapter 119, Florida Statutes, that the proposer believes applies. The City's determination as to confidentiality shall be final and binding upon the proposer. The proposer shall bear all attorneys' fees and costs associated with litigation for public access to claimed confidential documents. The City's need to maintain certain information confidential may be taken into consideration in the City's decision not to publish a solicitation.

(m) After the Response Period has expired, the City Manager shall within forty-five (45) days, or longer, as specified in the advertisement, evaluate all the competing proposals and rank them in order of preference utilizing the criteria published for the specific project. The City Manager's ranking shall be subject to ratification by the City Commission.

(n) The City Manager shall negotiate with the top-ranked proposers in the order of their ranking, and may, through such negotiations, aim to arrive at a mutually satisfactory agreement.

(o) If only one proposal is received, the City Manager shall negotiate in good faith and if he or she is not satisfied with results, may at his or her sole discretion terminate negotiations with the proposer and report same to the City Commission.

(q) Any agreement entered into by the City pursuant to this section shall contain, at a minimum:

(1) The delivery of performance and payment bonds, letters of credit, or other security acceptable to the City in connection with the development or operation of the project in the form and amount satisfactory to the City. For the components of the project which involve construction, the form and amount of the bonds must comply with Section. 255.05, Florida Statutes.

(2) The review of the plans and specifications for the project by the City and, if the plans and specifications conform to standards acceptable to the City, the approval by the City. This subsection does not require the proposer to complete the design of the project before the execution of the agreement.

(3) The inspection of the project by the City to ensure that the proposer's activities are acceptable to the City in accordance with the agreement.

(4) The maintenance of a policy of public liability insurance, a copy of which must be filed with the City and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the City's Risk Manager and reasonably sufficient to ensure coverage

of tort liability to the public and employees and to enable the continued operation of the qualifying project.

(5) The monitoring by the City of the maintenance practices to be performed by the proposer to ensure that the project is properly maintained.

(6) The periodic filing by the proposer of the appropriate financial statements that pertain to the project.

(7) The procedures that govern the rights and responsibilities of the City and the proposer in the course of the construction and operation of the project and in the event of the termination of the agreement or a material default by the proposer. The procedures must include conditions that govern the assumption of the duties and responsibilities of the proposer by an entity that funded, in whole or part, the project or by the City, and must provide for the transfer or purchase of property or other interests of proposer by the City.

(8) The fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the project. The execution of the agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the agreement comply with this subsection. Fees or lease payments established in the agreement as a source of revenue may be in addition to, or in lieu of, service payments.

(9) The duties of the proposer, including the terms and conditions that the City determine to serve the public purpose.

(10) The dedication of the project by the proposer to the City upon termination of agreement.

(q) No proposer is guaranteed the award of a contract as a result of being favorably ranked for this project. The issuance of an unsolicited proposal shall create no rights in the proposer including rights as a bidder, under contract or intellectual property. The City, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of a contract with a proposer.

(r) The bid protest process provided for in this Code shall not apply to any decision to reject an unsolicited proposal but shall apply to any decision to recommend a contract award rejection, unless such protest is waived in accordance with this Code.

(s) Nothing in this ordinance shall affect the City Manager's authority to recommend a waiver of competitive bids when he determines such waiver to be in the best interest of the City.