

MEMORANDUM

Amended
Agenda Item No. 7(A)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners


DATE: December 1, 2021

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Ordinance relating to public-private partnerships; amending section 2-8.2.6 of the Code to revise certain timeframes and to require Board review of solicitations for the same project purpose for any accepted unsolicited proposal

Ordinance No. 21-140

The accompanying ordinance was prepared and placed on the agenda at the request of Prime Sponsor Chairman Jose "Pepe" Diaz.



Geri Bonzon-Keenan
County Attorney


GBK/gh

Memorandum



Date: December 1, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Fiscal Impact Statement for Ordinance Requiring Board Review of Solicitations for the Same Project

The implementation of this ordinance will not have a fiscal impact to Miami-Dade County, as it only makes procedural changes.



Edward Marquez
Chief Financial Officer

Memorandum



Date: December 1, 2021

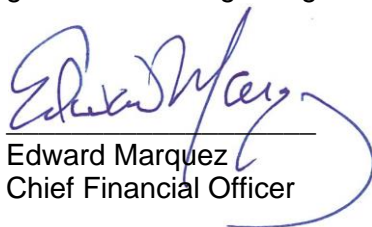
To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Social Equity Impact Statement for Ordinance Relating to Public-Private Partnerships; Amending Section 2-8.2.6 of the Code of Miami-Dade County, Florida to Revise Certain Timeframes and to Require Board Review of Solicitations for the same Project Purpose for any Accepted Unsolicited Proposal

The proposed ordinance amends Section 2-8.2.6 of the County Code. The amendments do not have a direct social impact. However, there may be indirect social impacts on a project-by-project basis. For instance, the proposed amendments include shortening the time the County Mayor must evaluate an unsolicited proposal from 90 to 60 days. The shortened period provides less time to explore the impact and value of the proposed project. Many unsolicited proposals are complex and require significant vetting, engagement with the proposer, research into the proposal, alternatives to the proposal, consultation with industry experts and financial advisors prior to providing a recommendation on whether to proceed or reject such offers. Insufficient time for proper evaluation of the public benefit of unsolicited proposals may lead to unintended increased cost to the public or loss of control of public assets.

Another proposed amendment to the ordinance requires seeking Board of County Commissioners (Board) approval should the County Mayor elect, or the Board direct, a solicitation for the same project purpose as an unsolicited proposal. The solicitation must be submitted by the County Mayor, within 130 days of receipt of the unsolicited proposal, to the Chairperson of the Board for placement on a Board agenda. This timeline to prepare a solicitation and present it to the Board may shorten the time the County Mayor has to explore the community impact of a project. However, presenting the solicitation to the Board will provide the public an opportunity to give feedback regarding the project in a public forum at the Board meeting prior to advertisement.


Edward Marquez
Chief Financial Officer



MEMORANDUM
(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: December 1, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Amended
Agenda Item No. 7(A)

Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

ORDINANCE NO. 21-140

ORDINANCE RELATING TO PUBLIC-PRIVATE PARTNERSHIPS; AMENDING SECTION 2-8.2.6 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA TO REVISE CERTAIN TIMEFRAMES AND TO REQUIRE BOARD REVIEW OF SOLICITATIONS FOR THE SAME PROJECT PURPOSE FOR ANY ACCEPTED UNSOLICITED PROPOSAL; PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, section 2-8.2.6 of the Code of Miami-Dade County sets forth an alternative method of contracting for the County to procure, finance, operate or maintain any public improvement or services through a public-private partnership and following the receipt of an unsolicited proposal (the “P3 Ordinance”); and

WHEREAS, the P3 Ordinance requires that for each unsolicited proposal that the County Mayor evaluates, a recommendation be brought to the Board to either reject the unsolicited proposal, accept the unsolicited proposal for the same project purpose, or take any other action regarding the unsolicited proposal; and

WHEREAS, currently, the P3 Ordinance does not require the County Mayor to provide the Board the solicitation for the same project purpose as the accepted unsolicited proposal prior to publishing same; and

WHEREAS, this Board desires to review all solicitations prepared by the County Mayor or Mayor’s designee as a result of unsolicited proposals prior to publication of same; and

WHEREAS, accordingly, this Board desires to amend the P3 Ordinance to require the County Mayor to present such solicitations to the Board for its approval prior to advertisement and to revise certain deadlines within the P3 Ordinance to allow the Board and County Mayor to timely undertake all necessary actions and reviews with respect to the evaluation and acceptance or rejection of unsolicited proposals and review of solicitations for same,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA:

Section 1. Section 2-8.2.6 of the Code of Miami-Dade County, Florida, is hereby amended to read as follows:¹

Sec. 2-8.2.6. Public-private partnerships; unsolicited proposals.

* * *

(3) *Procurement Procedures.* This section shall govern both: (i) unsolicited proposals received by the County which are to be treated as Non-P3 Qualifying Projects and procured through the procedures set forth herein; and (ii) all P3 Qualifying Projects, whether originating via an unsolicited proposal or initiated by the County. The Office of the Miami-Dade County Inspector General shall have the full authority, functions and powers enumerated in Section 2-1076 of this Code, as may be amended, relating to the investigation, oversight, auditing and any other powers granted to it by this Code relating to the processes, procurement procedures and agreements set forth herein.

a. Unsolicited Proposals.

- i. A private entity may submit an unsolicited proposal to the County for a Qualifying Project at any time. The unsolicited proposal must include:

¹ Words stricken through and/or [[double bracketed]] shall be deleted. Words underscored and/or >>double arrowed<< constitute the amendment proposed. Remaining provisions are now in effect and remain unchanged.

1. An initial application fee in an amount of \$25,000.00 paid by cash, cashier's check, or other non-cancelable instrument. Personal checks may not be accepted.
 2. All material and information set forth in section 255.065(4), Florida Statutes. Additionally, the private entity must provide: (a) information on how the project would benefit small and community based contractors within the County; (b) a listing of all small business enterprises (as defined in applicable County ordinances) which are proposed to participate in the project and the proposed scope of each; and (c) a listing of all proposed obligations and requirements of the County and any other governmental agencies, including but not limited to, contributions to project financing, staffing and permitting.
- ii. Within 30 days of receipt of any unsolicited proposal, the County Mayor may elect to not evaluate the unsolicited proposal, in which case the County must return the application fee. On at least a ~~[[quarterly]]~~ >> monthly << basis, the County Mayor shall submit a report to the Board of all unsolicited proposals the County Mayor has elected not to evaluate. Upon a majority vote of the Board members present, the Board may direct the County Mayor to evaluate an unsolicited proposal the County Mayor elected not to evaluate provided the application fee is resubmitted and the unsolicited proposal otherwise meets the requirements of this section.
- iii. If the County Mayor elects to evaluate an unsolicited proposal, the County Mayor may seek the advice of County staff, outside advisors, or consultants using the County Mayor's delegated authority under Board approved contracts with the County, or any combination thereof, with relevant experience in determining whether to accept the unsolicited proposal for publication of a solicitation for the same project purpose and/or whether to enter into an agreement with the private entity or any competing proposer. The County Mayor may require the private entity to provide a technical study as set forth in

section 255.065(3)(f), Florida Statutes. In determining whether to recommend the unsolicited proposal for publication of a solicitation for the same project purpose as either a P3 Qualifying Project or as a Non-P3 Qualifying Project, the County Mayor may 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 and its financial viability; whether the proposed project may be accomplished through the use of County resources; the need for the proposed project; the scientific, technical or socioeconomic merits of the unsolicited proposal; the contribution of the proposal to the County's goals and objectives; the cost, if any, to the County to proceed with implementation of the proposed project; and any other information the County deems appropriate for such evaluation.

- iv. If the initial application fee does not cover the County's costs to evaluate the unsolicited proposal, the County Mayor must request in writing the additional amounts the County Mayor deems reasonably necessary to fully evaluate the unsolicited proposal. The private entity must remit the requested additional amounts within 30 days of receipt of the request for additional fees or the County Mayor shall stop the review of the unsolicited proposal and recommend its rejection to the Board. At the completion of the review of the unsolicited proposal, the County Mayor shall refund any portion of the application fee paid which in the discretion of the County Mayor exceeded the costs associated with evaluating the unsolicited proposal.
- v. If the County Mayor elects to evaluate an unsolicited proposal that has been submitted with the application fee and all of the information and materials required pursuant to this section, the County Mayor shall have ~~[[90]]~~>>60<< days to evaluate the unsolicited proposal >>if the unsolicited proposal involves only one department or is for a Qualifying Project valued below \$100,000,000.00 and 90 days if the unsolicited proposal involves two or more departments or is for a Qualifying Project valued at or greater than \$100,000,000.00<<. In the event that ~~[[90 days is]]~~>>such timeframes are<< insufficient

to complete an evaluation, the County Mayor may ~~[[request]]~~ >> submit a report to the Chairperson of the Board to be forwarded to all Commissioners notifying the Board that << an extension of ~~[[this]]~~ >> these << time >> frames is necessary to evaluate the unsolicited proposal. << ~~[[from the Board.]]~~ At >> or prior to << the completion of the >> 60 or << 90 day review period, unless extended by the >> the County Mayor upon notice to the << Board, the County Mayor shall >> either: (1) prepare a solicitation for a P3 Qualifying Project or a Non-P3 Qualifying Project for the same project purpose as the unsolicited proposal in accordance with the County's general procurement rules; or (2) << submit an item to the Chairperson of the Board for placement on the appropriate agenda of the Board containing a recommendation to ~~[[:(1) either]]~~ reject the unsolicited proposal ~~[[:(2) publish a solicitation for a P3 Qualifying Project for the same project purpose as the unsolicited proposal as set forth herein; (3) publish a solicitation for a Non-P3 Qualifying Project for the same project purpose as the unsolicited proposal in accordance with the County's general procurement rules; or (4)]]~~ >> or << to take any other such action as may be appropriate. >> If the County Mayor elects or the Board directs the County Mayor or Mayor's designee to prepare a solicitation for a P3 Qualifying Project or a Non-P3 Qualifying Project for the same project purpose as an unsolicited proposal, the County Mayor shall, within 130 days of the receipt of the unsolicited proposal, submit an item to the Chairperson of the Board for placement on the appropriate agenda of the Board seeking approval to publish a solicitation for the same project purpose as the unsolicited proposal along with the proposed solicitation prepared by the County Mayor. <<

- vi. The Board shall have final discretion in its determination of whether to publish a solicitation for the same project purpose as an unsolicited proposal >> and the form and contents of the solicitation <<. ~~[[Any Board]]~~ >> The << determination to treat the unsolicited proposal as a P3 Qualifying Project shall be made in accordance with the factors set forth in paragraph (b) below.

- vii. In the event the Board determines to issue a solicitation for the same project purpose as an unsolicited proposal for a Non-P3 Qualifying Project, the solicitation shall contain a description of the project purpose consistent with the unsolicited proposal and sufficient criteria to allow a comparison of the unsolicited proposal with other proposals which may be offered in response to the solicitation. The solicitation for the Non-P3 Qualifying Project for the same project purpose approved for publication shall be published in the manner and for the time periods set forth in the law, including those periods of extension which may be authorized by the Board by resolution and in accordance with paragraph (c) below.

* * *

Section 2. If any section, subsection, sentence, clause or provision of this ordinance is held invalid, the remainder of this ordinance shall not be affected by such invalidity.

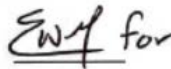
Section 3. It is the intention of the Board of County Commissioners, and it is hereby ordained that the provisions of this ordinance, including any sunset provision, shall become and be made a part of the Code of Miami-Dade County, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word “ordinance” may be changed to “section,” “article,” or other appropriate word.

Section 4. This ordinance shall become effective ten (10) days after the date of enactment unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

PASSED AND ADOPTED:

December 1, 2021

Approved by County Attorney as
to form and legal sufficiency:

Handwritten signature of Eduardo W. Gonzalez, appearing as "EWG for".

Prepared by:

Handwritten signature of Eduardo W. Gonzalez, appearing as "EWG".

Eduardo W. Gonzalez
Monica Rizo Perez

Prime Sponsor: Chairman Jose "Pepe" Diaz