

MEMORANDUM

Agenda Item No. 7(A)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: December 5, 2017

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Ordinance relating to public private partnerships and unsolicited proposals; amending sections 2-8.1 and 2-11.1 and creating section 2-8.2.6 of the Code; repealing existing code provisions relating to unsolicited proposals and adopting revised policies and procedures regarding Public Private Partnerships and unsolicited proposals consistent with state law; establishing procedure to apply the Cone of Silence to solicitations for public private partnerships and providing exception; providing that the Board may by two-thirds vote of the members present waive the application of County ordinances in connection with public private partnerships; limiting availability of bid protests in public private partnership solicitations; delegating authority to County Mayor to prepare and advertise requests for qualifications for public private partnerships

The attached substitute was prepared at the request of the Prime Sponsor Commissioner Jose "Pepe" Diaz. The substitute differs from the original item in that it:

1. Clarifies that it is the intent of the Board to take advantage of all public records and public meeting exceptions and to protect the confidentiality of exempt documents to the maximum extent available by law, and directs the Mayor to implement the intent of the section through specifications, processes and protocols;
2. Identifies the Office of the Inspector General specifically as having jurisdiction to oversee the process;
3. Directs the County Mayor to make a quarterly report to the Board of unsolicited proposals that the Mayor decides not to evaluate, and provides that the Board may direct the Mayor to evaluate any such proposal;
4. Provides that to be considered a P3 Qualifying Project the potential contribution of the private sector must outweigh the complexity and additional up-front time and costs which may be attendant to the contemplated procurement;
5. Clarifies that the Cone of Silence is imposed upon formal issuance, as opposed to advertisement, of the RFQ and RFP; and
6. Makes technical changes and corrects scrivener's errors.

Additionally, the substitute item was amended at the 11-17-17 Government Operations Committee to remove language relating to the inclusion of stipend payments in a Request for Proposals (RFP) for a P3 project to be made from the County to short-listed proposers submitting compliant proposals.

Subsections (h) and (i) of Rule 5.06 of the Board's Rules of Procedure provide that where double underlining and double strike-through would not clearly show the differences between an original item and a substitute or committee amendments, comments may instead be provided. Consistent with this rule, (i) substitute changes have been incorporated into this item and the preceding comprehensive description of the differences between the original item and the substitute is provided; and (ii) the committee amendment is shown with double underlining and double strike-through.

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



Abigail Price-Williams
County Attorney

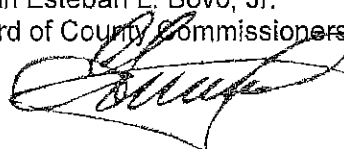
APW/lmp

Memorandum



Date: December 5, 2017

To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

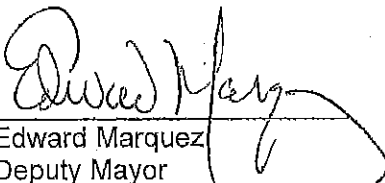
From: Carlos A. Gimenez 
Mayor

Subject: Fiscal Impact Statement for Ordinance Relating to Public Private Partnerships and Unsolicited Proposals

The proposed ordinance amends Sections 2-8.1 and Section 2-11.1 of the Code of Miami-Dade County and creates Section 2-8.2.6 to revise the County's policies and procedures regarding Public Private Partnerships (P3) and unsolicited proposals to be consistent with state law. More specifically, the proposed ordinance establishes a two-step procurement process for P3 Qualifying Projects, which requires three separate approvals by the Board of County Commissioners (Board) and a value for money analysis to be reported to the Board confirming that the proposed P3 project is in the best interest of the County.

The proposed ordinance also amends the Cone of Silence to exempt certain meetings involving the discussion of unsolicited proposals. The ordinance further clarifies that the Cone of Silence will terminate upon the County Mayor filing a written recommendation with the Clerk of the Board with respect to the Request for Qualifications process and that it will subsequently be reimposed upon advertisement of the Request for Proposals.

The proposed ordinance requires the Administration to undertake a value for money analysis, advertise solicitations in a newspaper of general circulation, and allows the Administration to offer stipends to proposers in exchange for the conveyance of intellectual property rights contained in proposals. While components of the proposed ordinance may have a fiscal impact, these impacts may be offset by potential cost savings achieved through the P3 delivery method. As such, the fiscal impact can only be determined on a project by project basis. The proposed policies and procedures will be administered by existing County staff and it is not anticipated that additional staffing or operational resources will be required to implement the proposed ordinance.


Edward Marquez
Deputy Mayor

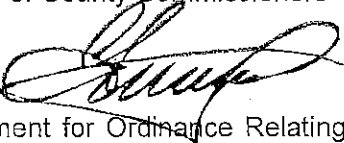
Fis00418 172014

Memorandum



Date: December 5, 2017

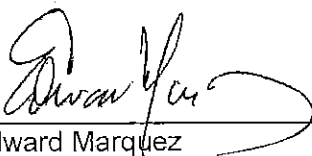
To: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

From: Carlos A. Gimenez
Mayor 

Subject: Social Equity Statement for Ordinance Relating to Public Private Partnerships and Unsolicited Proposals, Amending Sections 2-8.1 and 2-11.1, and Creating Section 2-8.2.6 of the Code to Revise Policies and Procedures Regarding Public Private Partnerships and Unsolicited Proposals To Be Consistent with State Law

The proposed ordinance amends Sections 2-8.1 and Section 2-11.1 of the County Code and creates Section 2-8.2.6 of the Code to adopt procedures regarding public private partnerships (P3) and to revise the County's existing procedures related to unsolicited proposals to be consistent with state law. The proposed legislation may facilitate the use of this project delivery method through the creation of P3-specific procurement processes.

The proposed legislation does not have a direct social impact, as the County already has the authority to procure and award contracts for P3 projects. However, to the extent that the proposed ordinance increases the usage of the P3 project delivery method, indirect social impacts may be realized. The community benefits that may be derived from P3 projects include economic stimulus and job creation due to the availability of alternative financing options to procure public infrastructure projects and the addition of critical public facilities that may not otherwise be completed through traditional delivery methods. Some P3 projects, but not all, include the private operation and/or maintenance of public facilities. There may be a social impact in the event that these functions are currently performed by County employees, however, that impact can only be determined on a case by case basis. The proposed legislation includes four separate Board approvals during various phases of the project, which will provide the County and the general public with meaningful opportunities to consider the social and community impact of a proposed P3 project prior to contract award.



Edward Marquez
Deputy Mayor




MEMORANDUM

(Revised)

TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: December 5, 2017

FROM: 
Abigail Price-Williams
County Attorney

SUBJECT: 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 ____, 3/5's ____, unanimous ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 7(A)

12-5-17

ORDINANCE NO. _____

ORDINANCE RELATING TO PUBLIC PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS; AMENDING SECTIONS 2-8.1 AND 2-11.1 AND CREATING SECTION 2-8.2.6 OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA; REPEALING EXISTING CODE PROVISIONS RELATING TO UNSOLICITED PROPOSALS AND ADOPTING REVISED POLICIES AND PROCEDURES REGARDING PUBLIC PRIVATE PARTNERSHIPS AND UNSOLICITED PROPOSALS CONSISTENT WITH STATE LAW; ESTABLISHING PROCEDURE TO APPLY THE CONE OF SILENCE TO SOLICITATIONS FOR PUBLIC PRIVATE PARTNERSHIPS AND PROVIDING EXCEPTION; PROVIDING THAT THE BOARD MAY BY TWO-THIRDS VOTE OF THE MEMBERS PRESENT WAIVE THE APPLICATION OF COUNTY ORDINANCES IN CONNECTION WITH PUBLIC PRIVATE PARTNERSHIPS; LIMITING AVAILABILITY OF BID PROTESTS IN PUBLIC PRIVATE PARTNERSHIP SOLICITATIONS; DELEGATING AUTHORITY TO COUNTY MAYOR TO PREPARE AND ADVERTISE REQUESTS FOR QUALIFICATIONS FOR PUBLIC PRIVATE PARTNERSHIPS; AND PROVIDING SEVERABILITY, INCLUSION IN THE CODE, AND AN EFFECTIVE DATE

WHEREAS, Miami-Dade County's infrastructure, its mass transit facilities, roads and bridges, airports and seaport, fuel supply facilities, medical and nursing care facilities, recreational facilities, court facilities, sporting facilities and water and wastewater facilities all are vital and foundational elements for the proper functioning of this County and require significant and on-going improvements and upgrades; and

WHEREAS, the Board finds that it is in the public's best interest to provide for the construction or upgrade of such infrastructure and facilities; and

WHEREAS, funding, designing and constructing the County's infrastructure and facility needs requires substantial resources which may not be readily available from traditional governmental sources and procurement methods; and

WHEREAS, likewise, operating and maintaining the County's infrastructure and facilities also requires substantial resources and manpower which may be accomplished at a lower cost and with less risk by utilizing innovative methodologies developed and implemented by the private sector; and

WHEREAS, this Board finds that public-private partnerships may be effectively utilized to meet Miami-Dade County's long-term infrastructure and facility needs by improving the schedule for delivery, lowering costs and providing other benefits to the public; and

WHEREAS, on February 3, 2015, through adoption of Resolution No. R-1022-13, this Board created the Public Private Partnership Program of Miami-Dade County and called for the Mayor to develop and deliver to the Board a Public Private Partnership Plan; and

WHEREAS, this Board created the Miami-Dade County Public Private Partnership Task Force (the "P3 Task Force"), through its adoption of Resolution No. R-150-15; and

WHEREAS, the P3 Task Force made several recommendations to the Board to change existing County ordinances and policies to advance the public-private partnership arrangements to improve Miami-Dade County's aging infrastructure and facilities; and

WHEREAS, among other recommendations, the P3 Task Force recommended that the County's process for receiving and evaluating unsolicited proposals be harmonized with the process set forth in Florida statutory law; and

WHEREAS, this Board wants to enact this ordinance to facilitate the solicitation and award of public-private partnership agreements consistent with State of Florida law and the recommendations of public sector and private business leaders to facilitate the improvement and operations of County infrastructure and facilities,

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

Section 1. Section 2-8.1 of the Code of Miami-Dade County, Florida, is hereby amended as follows:¹

Sec. 2-8.1 – Contracts and purchases generally.

* * *

(k) >>Reserved.<< [[Unsolicited Proposals.

~~(1) — Any person or legal entity may submit an unsolicited proposal to the County 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 mean transit structures, housing structures, roads, bridges, streets, highways, drainage, underground excavation, piping and all structures incidental thereto regardless of cost and any other public building with estimated cost in excess of fifteen million dollars (\$15,000,000.00).~~

~~(2) — The County 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 Mayor or his designee and required to review the proposal, and will not be greater than the direct costs associated with evaluating the unsolicited~~

¹ Words stricken through and/or [[double bracketed]] shall be deleted, words underscored and/or >>double arrowed<< shall be added. Remaining provisions are now in effect and remain unchanged.

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.

- (3) ~~The County 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 County's further evaluation of the proposal. The Mayor or his designee shall refund any portion of the initial processing fee paid which in the discretion of the Mayor or his designee exceeds the direct costs associated with evaluating the proposal.~~
- (4) ~~Upon receipt of an unsolicited proposal or group of proposals and payment of any required fees by the proposer or proposers, the Mayor or his designee 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 Mayor or his designee 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 Board; however, the Board shall not grant more than one such extension. Final determination of whether to publish a proposal shall be made by the Board of County Commissioners. Following such determination, the Mayor or his designee 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 Mayor or his designee and the proposer. The proposal shall be published not later than thirty (30) days following acceptance by the Board of County Commissioners.~~
- (5) ~~In his/her sole and absolute discretion, the County 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 Board of County Commissioners. The Mayor or his designee shall provide a written explanation of the reasons for rejection in the item requesting ratification. It is not the intention or obligation of the County to correct and/or assist in the preparation of an unsolicited proposal in any manner.~~
- (6) ~~In determining whether to accept the unsolicited proposal for publication, the County 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~~

~~County resources; the need for the proposed project; the scientific, technical or socioeconomic merits of the proposal; the contribution of the proposal to the County'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 County to proceed with implementation of the proposal; and any other information the County deems appropriate for such initial evaluation.~~

- ~~(7) Any unsolicited proposal shall include sufficient detail and information for the County to evaluate the proposal in an objective and timely manner and to determine if the proposal meets the above criteria and benefits the County. If such proposal is not deemed by the County to be complete or in sufficient detail, it may be rejected at the sole discretion of the Mayor or his designee. The Mayor or his designee 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 Board of County Commissioners. It is not the intent or obligation of the Mayor or his designee to assist the proposer in completing the proposal and the Mayor or his designee shall bear no responsibility to itemize or advise the proposer of the incomplete items or terms of the proposal.~~
- ~~(8) Any unsolicited proposal shall contain at a minimum the following items, as appropriate to the proposed project:~~
- ~~(a) Information and supporting documentation necessary for the County to evaluate the factors listed in paragraph (6) above.~~
 - ~~(b) A site plan indicating the location of the project proposed.~~
 - ~~(c) A description of the project, including the conceptual design of the facility.~~
 - ~~(d) 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.~~
 - ~~(e) A statement setting forth a method by which the private entity proposes to secure any property interests required for the proposed project.~~
 - ~~(f) A list of all public utilities, railroad lines, navigable waters and flight paths, if any, that will be crossed or affected by the proposed project and a statement of the plan to accommodate such crossings or effects.~~
 - ~~(g) 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 or 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 County.

- ~~(h) Names and addresses of persons who may be contacted for further information concerning the request.~~
 - ~~(i) Information on how the project would benefit small and community based contractors within Miami Dade County.~~
 - ~~(j) A financial plan for the entire time period of the proposed private entity involvement in the project.~~
 - ~~(k) Performance guarantees, if any, and any proposed bonding to be provided by the proposer.~~
 - ~~(l) 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.~~
 - ~~(m) A list of all engineering or construction firms to be proposed on the project and their qualifications and a description of their role in the proposal.~~
 - ~~(n) A listing of all proposed obligations and requirements of the County and any other governmental agencies, including, but not limited to, contributions to the project financing, staffing and permitting.~~
 - ~~(o) A listing of all small business enterprises (as defined in applicable County ordinances) that will participate in the project and the proposed scope of work of each.~~
 - ~~(p) Such additional material and information that a responsible public entity may reasonably expect, in order to review and evaluate such proposal.~~
- ~~(9) — The County 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 County may seek further clarification of the proposal.~~
- ~~(10) — If the County accepts the unsolicited proposal for publication, then the Mayor or his designee shall publish a competitive solicitation statement that the County has received a proposal and will accept, for ninety (90) days after the initial date of the publication, other proposals for the same project purpose (the "Response Period"). Such period may be extended by the Board of County Commissioners, upon written request by the Mayor or his designee explaining why a longer period for response is in the best interest of the County. The Mayor or his designee shall identify the procedures that will be used for evaluating the proposals in the notice or in a subsequent publication. Once the County 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 County a proposal in terms not less favorable to the County than the original proposal.

- (11) ~~Proposal documents submitted by private entities are public records under Chapter 119, Florida Statutes (Florida's Public Records Law), subject to any exemption otherwise provided by law. Any competing proposer may request and receive a copy of such proposal, and the County reserves the right to publish such unsolicited proposal and solicit competing proposals within the Response Period. Proposers are advised to familiarize themselves with the provisions of the Public Records Law and to seek legal advice regarding any proprietary or intellectual property rights which they may have in the proposal. In no event shall the County be liable to a proposer for the disclosure of all or a portion of a proposal submitted under this subsection.~~
- (12) ~~When the private entity requests that the County not disclose information that is exempt from the disclosure requirements of the Public Records Law, the private entity must (i) invoke the exemption when the data or materials are submitted to the County 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 County'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 County's need to maintain certain information confidential may be taken into consideration in the County's decision not to publish a solicitation.~~
- (13) ~~After the Response Period has expired, the Mayor or his designee 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.~~
- (14) ~~The Mayor or his designee may 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.~~
- (15) ~~If only one proposal is received, the Mayor or his designee may 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.~~
- (16) ~~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 County, 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.~~

~~(17) 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. The Code of Silence provided for in this Code shall be imposed only following the publication of the competitive solicitation.~~

~~(18) Nothing in this ordinance shall affect the County Manager's authority to recommend a waiver of competitive bids when he determines such waiver to be in the best interest of the County.]]~~

* * *

Section 2. Section 2-8.2.6 of the Code of Miami-Dade County, Florida, is hereby created as follows:

>>Section 2-8.2.6. Public-private partnerships; Unsolicited Proposals.

(1) Policy and Intent. The Board hereby fully adopts, for the County and for the benefit of the residents of the County, the legislative findings and intent set forth in section 255.065, Florida Statutes, as may be amended from time to time, relating to unsolicited proposals, public records and public meetings exceptions, and public private partnerships. This section of the Code is cumulative and supplemental to all other authority and power vested in Miami-Dade County by the Home Rule Charter, the laws of the State of Florida and the Code. This section of the Code provides an alternative method of contracting and shall not be deemed to limit the power or authority of the Board or the County Mayor to procure, finance, operate or maintain any public improvement or services. It is the intent of the County that the public records and public meetings exceptions set forth in section 255.065(15), Florida Statutes, as may be amended, will apply to records and meetings arising from the process set forth herein. In particular, and without prejudice to the generality of the intent stated in the prior sentence, the County shall protect the confidentiality of documents exempt from disclosure to the maximum extent provided by law. The County Mayor shall develop specifications, processes and protocols for training County personnel to give effect to the intent of this policy.

(2) Definitions. Except as otherwise specifically set forth herein, the County adopts the definitions set forth in section 255.065, Florida Statutes, (including the capitalized terms within the definitions set forth below of special application to the County), as

may be amended from time to time. For purposes of this section, the following definitions shall apply to the County:

- a. “Authorizing Resolution” is a resolution passed by the Board upon its own initiative or upon a recommendation of the County Mayor to treat an unsolicited proposal or a Qualifying Project as a P3 Qualifying Project.
 - b. “County Mayor” wherever used in this section shall be deemed to include the County Mayor and his or her designee(s).
 - c. “Non-P3 Qualifying Project” are those Qualifying Projects approved for publication via the unsolicited proposal process set forth in this section but are not deemed a P3 Qualifying Project via an Authorizing Resolution.
 - d. “P3” is a contractual arrangement between the County and a Private Entity to design, build, finance, operate, and/or maintain an improvement by the Private Entity with the public improvement remaining in County ownership and control or reverting to County control at the end of the contract term.
 - e. “P3 Qualifying Project” is a Qualifying Project as that term is defined in section 255.065, Florida Statutes which the Board determines is appropriate for a P3 in the Authorizing Resolution.
 - f. “Responsible public entity” shall mean Miami-Dade County, inclusive of all of its agencies and instrumentalities.
 - g. “Value for Money Analysis” or “VfM Analysis” is a process used to compare the financial impacts of a P3 method of delivery with the financial impacts for the traditional public delivery alternative. Generally, the VfM will estimate the present value of the life-cycle cost of a project where the County finances, designs, builds, maintains and/or operates such project through the procurement process commonly used by the County for the procurement of similar goods and services versus the present value of payments to be made to a private entity for undertaking the same project on behalf of the County. A VfM may also assess the value of any risks retained by the County, opportunity costs, and ancillary costs borne by the County in using a P3.
- (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. 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 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 days to evaluate the unsolicited proposal. In the event that 90 days is insufficient to complete an evaluation, the County Mayor may request an extension of this time from the Board. At the completion of the 90 day review period, unless extended by the Board, the County Mayor shall 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) to take any other such action as may be appropriate.

- 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. Any Board 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.
- b. Authorizing Qualifying Projects as P3 Qualifying Projects.
- i. A P3 Qualifying Project requires Board approval via an Authorizing Resolution. A project shall only be a P3 Qualifying Project when the potential contribution of the private sector, which may include innovation, capital or other resources and expertise outweigh the complexity and additional up-front time and costs which may be attendant to the contemplated procurement. Approval of a Qualifying Project as a P3 Qualifying Project must be justified based on: a favorable initial comparative analysis of the relative benefit-cost of developing the Qualifying Project, utilizing alternative development approaches, with the results of such analysis reflected in financial and economic terms; the complexity of the Qualifying Project; the schedule and budget challenges; risk shifting; and creative financing opportunities available through or with a private entity. Unless otherwise prohibited by law, the Board may by resolution, at its option, and by two-thirds vote of the members present, waive the requirements of this ordinance and any other provisions of the Code in connection with the procurement or contracting of a P3 Qualifying Project, upon a finding that such waiver is in the best interest of the County.
 - ii. If the Board approves an unsolicited proposal or a Qualifying Project as a P3 Qualifying Project, then the Board shall provide guidance for special factors to be considered before publication of a solicitation for the same project purpose of the unsolicited proposal or the P3

solicitation such as criteria and material assumptions to be used for the VfM Analysis, design and construction, labor considerations, or any other factor related to the specific project. Any proposed Authorizing Resolution shall set forth the proposed material assumptions and parameters to be approved by the Board.

- iii. The County Mayor shall undertake a VfM Analysis on all P3 Qualifying Projects prior to publication of a solicitation for the same project purpose of the applicable unsolicited proposal or for the P3 Qualifying Project utilizing the material assumptions and parameters approved by the Board. The County shall only publish solicitations for the same project purpose of unsolicited proposals for P3 Qualifying Projects or for P3 Qualifying Projects where the VfM Analysis supports a determination, which determination shall be based on the material assumptions and parameters approved by the Board in the Authorizing Resolution that a P3 method for the P3 Qualifying Project is in the best interest of the County. The County Mayor shall submit a written report to the Board on the results of any VfM Analysis conducted of a P3 Qualifying Project.

- iv. All solicitations for P3 Qualifying Projects shall consist of two separate but related competitive processes to select a qualified proposer. The first shall be a Request for Qualifications (“RFQ”) where the County shall select the best proposers on the basis of their qualifications to contract for and perform the P3 Qualifying Project. The second shall be a Request for Proposals (“RFP”) where the best or short-listed proposers resulting from the RFQ can offer proposals to contract for and perform the P3 Qualifying Project. Each of the RFQ and RFP processes shall be separately advertised and evaluated, and the County Mayor shall be authorized, but not required to utilize a separate selection committee for the evaluation of each. The Cone of Silence provided for under section 2-11.1 of the Code shall be imposed upon formal issuance of the P3 Qualifying Project RFQ and terminate upon the County Mayor filing with the Clerk of the Board a written recommendation in connection with the RFQ process. The Cone of Silence shall subsequently be imposed upon formal issuance of the RFP and terminate upon the County Mayor filing with the Clerk of the Board a written recommendation in connection with the RFP Process.

- v. The County Mayor’s recommendation with respect to the RFQ process shall be exempt from, and not subject to, bid protests under Section 2-8.4 of this Code.

c. Publishing Solicitations for P3 Qualifying Projects and for Non-P3 Qualifying Projects

i. Design Professionals. As to any publication and solicitation for a P3 Qualifying Project or Non-P3 Qualifying Project that involves architecture, engineering, or landscape architecture, the County must select an architect, a landscape architect, or a qualified engineer licensed in Florida to:

1. Review the initial and subsequent proposals to ensure that the Qualifying Project meets certain quality standards, proper space utilization, proper budget estimates, reasonable design and construction schedules, and sustainable design and construction standards consistent with public projects; and

2. Prepare a design criteria package to be included in the RFP solicitation, which design criteria package must include the criteria set forth in section 255.065(3)(c), Florida Statutes.

Such professionals shall advise the County through completion of the design and construction of the Non-P3 Qualifying Project or P3 Qualifying Project, as applicable.

ii. Advertisement for P3 Qualifying Projects.

1. Upon the adoption of an Authorizing Resolution the County Mayor is delegated the authority to prepare and advertise RFQs for P3 Qualifying Projects.

2. The Board, upon reviewing the recommendation(s) of the County Mayor resulting from the RFQ, shall: (a) approve the selection of no more than four proposers from proposers competing under the RFQ (the "short-listed proposers") as qualified to proceed to participate in the RFP; (b) reject all recommended proposers and direct the County Mayor to re-advertise the RFQ for the P3 Qualifying Project; or (c) reject all recommended proposers and proceed no further on soliciting the P3 Qualifying Project.

3. If the Board approves the short-listed proposers, the County Mayor shall prepare the RFP for the P3 Qualifying Project seeking proposals only from the approved short-listed proposers and shall submit such RFP to the Board for approval via

resolution before its issuance to the short-listed proposers. After Board approval, the County Mayor is delegated the authority to issue necessary addenda, clarifications and corrections to the RFP subject to any limitations set forth in the resolution approving the RFP.

4. ~~[[The County may, at its option, include in the RFP a stipend to be paid to short listed proposers who have submitted compliant proposals but were not selected for contract award as consideration for the proposers' submission of intellectual property in the proposals and the time, effort and expense in responding to the RFP. Such stipend shall be paid only subject to the terms and conditions specified in the approved RFP. Prior to providing a stipend payment to an unsuccessful proposer, the unsuccessful proposer shall grant the County a non-exclusive, perpetual right to use the proposer's intellectual property submitted in response to the RFP or authorize a third party to use such intellectual property in any future County project. Such grant shall include, but not be limited to, any ideas, concepts, designs or approaches submitted by the unsuccessful proposer.]]² The County may also, at its option, include in the RFP the ability of proposers to submit alternate technical concepts that incorporate technical innovation and creativity into their proposals.~~

5. The County Mayor shall publish notice of the RFQ and the RFP for the P3 Qualifying Project, in accordance with the provisions of any of the applicable solicitation documents and the requirements of law. The County shall determine the timeframe during which it will accept proposals on a project-by-project basis based on the complexity of the P3 Qualifying Project and the public benefit to be gained by allowing a longer or shorter period of time within which proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days but no more than 120 days after the initial date of publication. The Board may by majority vote alter the time periods to accept proposals to more adequately suit the needs of the P3 Qualifying Project. A copy of the notice must be sent to each local government in the affected area.

² Committee amendments are indicated as follows: Words double stricken through and/or [[double bracketed]] are deleted, words double underlined and/or >>double arrowed<< are added.

iii. Evaluation and Award of P3 Qualifying Projects and Non-P3 Qualifying Projects.

1. After the deadline for submitting proposals has expired, the County Mayor shall evaluate and rank proposals in order of preference based on the criteria advertised for the project. The County Mayor may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The County Mayor may then begin negotiations with private entities as set forth in the solicitation document in order to reach an interim or comprehensive agreement.
2. The County, in its discretion, reserves the right to reject all proposals at any point in the process prior to the full execution of an interim or comprehensive agreement with a private entity. Such rejection of proposals shall be made by Board resolution upon the County Mayor's recommendation or upon the Board's own initiative.
3. Before approving a comprehensive agreement, as such term is described below and in section 255.065, Florida Statutes, with any private entity, the County must determine that the proposed project is in the public's best interest; is for a public improvement that is owned by the County or for which ownership will be conveyed to the County; and has adequate safeguards in place to ensure that (A) 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 County and (B) there is opportunity for the County or the private entity to add capacity to the proposed project.
4. Any award of a contract for a Non-P3 Qualifying Project or for a P3 Qualifying Project under this section, be it an interim agreement, as such term is described below and in section 255.065, Florida Statutes, or a comprehensive agreement, shall be approved by the Board.
5. The only recommendations that can be protested under this section utilizing the bid protest procedures provided for in the Code are recommended contract awards arising from the publication of solicitations for the same project purpose of an

unsolicited proposal or a solicitation for a P3 Qualifying Project. Such protest procedures may be waived, however, in accordance with the Code.

6. Nothing in this section shall affect the County Mayor's authority to recommend a waiver of competitive bids when the County Mayor determines such waiver to be in the best interest of the County.

iv. Contracting for P3 Qualifying Projects and Non-P3 Qualifying Projects. Any contract with a private entity for a Non-P3 Qualifying Project or a P3 Qualifying Project must, at a minimum, ensure: that provision is made for the private entity's performance and payment of subcontractors including, but not limited to, compliance with section 255.05, Florida Statutes; the most efficient pricing of the security package that provides for the performance and payment of subcontractors; and that the comprehensive agreement addresses termination upon a material default by the private entity.

1. Interim Agreement. Before or in connection with the negotiation of a comprehensive agreement, the County may enter into an interim agreement with the private entity proposing a Non-P3 Qualifying Project or a P3 Qualifying Project, all in accordance with the provisions of section 255.065(6), Florida Statutes, as may be amended.

2. Comprehensive Agreement. Any comprehensive agreement entered into between the County and a private entity for a Non-P3 Qualifying Project or a P3 Qualifying Project must comply with the provisions set forth in section 255.065(7)(a), Florida Statutes, as may be amended, and may also include those provisions set forth in section 255.065(7)(b), (8) and (9), Florida Statutes, as may be amended.

1. As part of any comprehensive agreement, the County may provide services to the private entity but the County must be fully reimbursed for the provision of any such services.

2. The full faith and credit of the County may not be pledged to secure the financing of the private entity for any Non-P3 Qualifying Project or any P3 Qualifying

Project. The assumption of the development or operation of a Non-P3 Qualifying Project or of a P3 Qualifying Project does not obligate the County to pay any obligation of the private entity from sources other than revenues from the Non-P3 Qualifying Project or the P3 Qualifying Project, as applicable, unless otherwise stated in the comprehensive agreement.<<

Section 3. Section 2-11.1 of the Code of Miami-Dade County, Florida, is hereby amended as follows:

Sec. 2-11.1 – Conflicts of Interest and Code of Ethics Ordinance

* * *

(t) *Cone of Silence*

- 1. Contracts for the provision of goods and service other than audit and independent private sector inspector general (IPSIG) contracts.

* * *

(c) Exceptions

- (i) The provisions of this ordinance shall not apply to oral communications at pre-bid conferences, oral presentations before selection committees duly noticed as a public meeting, recorded contract negotiations and contract negotiation strategy sessions in compliance with the exemption in Florida Statutes Section 286.0113, >>any portion of a meeting discussing an unsolicited proposal in compliance with the exemptions in section 255.065, Florida Statutes,<< public presentations made to the Board of County Commissioners during any duly noticed public meeting or communication in writing at any time with any County employee, official or member of the Board of County Commissioners unless specifically prohibited by the applicable RFP, RFQ or bid documents. The bidder or proposer shall file a copy of any written communication with the Clerk of the Board. The Clerk of the Board shall make copies available to any person upon request.

Section 4. 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 5. 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 6. 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:

Approved by County Attorney as
to form and legal sufficiency:



Prepared by:

Eduardo W. Gonzalez

Prime Sponsor: Commissioner Jose "Pepe" Diaz