

Memorandum



Date: April 4th, 2018

Agenda Item No. 14(B)1

April 10, 2018

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

From: Carlos A. Gimenez
Mayor

A handwritten signature in blue ink, appearing to read "Carlos A. Gimenez", written over a blue circular stamp.

Subject: Recommendation Related to the Evaluation of Unsolicited Proposal Received for the Design, Build, Finance, Operation, and Maintenance of a New Civil and Probate Courthouse

Recommendation

Through Resolution No. R-189-18, the Board of County Commissioners (Board) overturned my recommendation to reject the unsolicited proposal submitted by New Flagler Courthouse Development Partners (NFCDP) for the delivery of a new civil and probate courthouse (Courthouse Project). In overturning my recommendation, the Board directed the Administration to continue evaluating the unsolicited proposal, to add an alternative site to the County's published Request for Qualifications (RFQ) solicitation, and to issue a report to the Board after completing its evaluation. The Administration was directed to provide recommendations related to the appropriate 1) procurement method, 2) disposition of the existing courthouse, and 3) site for the Courthouse Project. Due to the rolling submission of supplemental material by NFCDP, this evaluation could not be completed by March 22, 2018 as requested by the Board.

It should be noted that NFCDP has requested that the majority of its proposal, including financial information related to project costs, be treated as confidential under Section 255.065 of the Florida Statutes. A copy of NFCDP's confidentiality request is attached to this report as Attachment 1. This confidentiality request severely limits the Administration's ability to transparently inform the Board of the impact of pursuing the unsolicited proposal in comparison to the project and competitive process that is underway. As a result, critical information pertaining to the financial impact and structure of the unsolicited proposal cannot be communicated in this report for the benefit of the Board or Miami-Dade County taxpayers. Accordingly, the substantive information provided herein is limited to: 1) material in which confidentiality was waived by NFCDP, 2) statements made publicly by NFCDP representatives, and 3) information that was independently obtained by County staff and its outside advisors.

After further evaluation of both the unsolicited proposal and supporting documents submitted by NFCDP, I am recommending that the County take the following actions:

- Reject the unsolicited proposal and move forward with the two-step competitive P3 solicitation that is underway;
- Dispose of the existing civil courthouse through a separate competitive process that maximizes the revenue received by the County; and
- Select the Children's Courthouse Site, as it is likely to result in the most cost effective and expedient delivery of the Courthouse Project while preserving the parcel of land identified by NFCDP for potential future sale or lease.

A detailed justification for each recommendation is further described in the report below. The Board's rejection of these recommendations in favor of NFCDP's preferred project and procurement process would place the County in the difficult and untenable position of cancelling a solicitation that has been modeled after P3 industry best practices, issuing a new P3 solicitation for which limited competition is expected, selecting a preferred developer without committed prices or clear project costs, and executing a 30-year operations and maintenance contract with minimal

leverage to conduct meaningful negotiations. These actions are clearly not in the County's best interest.

If the Board chooses to overturn the current recommendation, the Board should be prepared to award a long-term contract through a process that will have the effect of a bid waiver, as the use of NFCDP's recommended procurement process is unlikely to yield interest from other qualified P3 developers. The County has undertaken extensive market research activities in support of the Courthouse Project and the County's planned procurement process ensures that the Courthouse Project proceeds in a manner that will generate substantial market competition and will produce the best value to the County. The process identified by the unsolicited proposer only benefits NFCDP and requires the County to put its full faith in NFCDP's willingness to agree to a fair deal for Miami-Dade County taxpayers.

This recommendation is being made after a thorough evaluation of NFCDP's proposed procurement process, project scope, financial structure, and qualifications to complete the Courthouse Project. This evaluation also included an analysis conducted by the County's P3 financial advisor, KPMG LLP (KPMG). A report summarizing KPMG's analysis is attached to this report as Attachment 2.

Pursuant to the evaluation of the unsolicited proposal by staff and KPMG, which permitted an 'apples-to-apples' comparison, we have determined that the unsolicited proposal would be substantially more expensive to the County than the proposals expected to be received under the current two-step RFQ/RFP procurement process.

Background

On November 4, 2014, Miami-Dade County voters were presented with a ballot question requesting authorization to issue \$390 million in general obligation bond debt to replace the County's historic but aging Dade County Courthouse located at 73 W. Flagler Street (Historic Courthouse). The voters definitively rejected the proposal by a 2-1 margin, with approximately 64 percent of voters rejecting the proposed project. Notwithstanding voter disapproval, the County has a responsibility to provide appropriate courthouse facilities pursuant to Article 5 of the Florida Constitution. Since that vote, this Board has validated the need for the Courthouse Project through two separate task forces and has evaluated alternative delivery options through the P3 Task Force, which included a number of industry experts.

Consistent with its obligations under the Florida Constitution, the Board directed the Administration to issue a two-step solicitation for a public-private partnership (P3) to design, build, finance, operate, and maintain a new courthouse facility through Resolution No. R-151-15. This method allows the County to complete the project with payments made on an annual basis through legally available, non-ad valorem revenue sources. Prior to the formal RFQ issuance, NFCDP submitted its unsolicited proposal for a similar project located at an alternative site adjacent to the Historic Courthouse ("Flagler Site"). An initial evaluation of the unsolicited proposal was completed and a recommendation to the Board was presented to reject the unsolicited proposal on February 21, 2018. That recommendation was overturned by the Board through Resolution No. R-189-18.

Procurement Process Recommendation

In December 2017, the Board adopted Ordinance No. 17-94, sponsored by Commissioner Jose "Pepe" Diaz, to create a legislative framework for P3 projects in the County ("P3 Ordinance"). The P3 Ordinance aligned the County's procurement methods with industry best practices and the State of Florida's P3 and unsolicited proposal law while creating a uniform and competitive environment that supports the County's desire to achieve positive outcomes for P3 projects.

In accordance with the P3 Ordinance and the P3 Task Force recommendations, the County issued RFQ-00820 for the Courthouse Project as part of a two-step solicitation. The submissions will be evaluated by a selection committee comprised of key personnel identified by the courthouse users and County staff. The evaluation will result in a shortlist of two to three developer teams. At the conclusion of the RFQ evaluation process, the County intends to issue a draft Request for Proposals (RFP) to those shortlisted developer teams, each of which will have the opportunity to participate in a series of one-on-one meetings to provide input on the RFP documents and ultimately to submit proposals that capitalize on innovative design and construction concepts. This procurement process was validated by the developer responses to the Expression of Interest (EOI) issued by the County as directed by the Board through Resolution No. R-559-17.

The procurement process suggested by NFCDP deviates substantially from the process recommended by County staff, the County's P3 advisor, and market feedback received through the EOI and is likely to result in limited or no competition. The NFCDP process would require the County to cancel the existing solicitation and issue a new solicitation using a Predevelopment Agreement (PDA) process. The PDA solicitation would only ask prospective developers to submit their qualifications, preliminary design concepts, project approach, and **indicative pricing** as part of their proposal. The County would then select a preferred developer early in the process, with the actual negotiation of critical contract terms, such as project pricing, designs, and performance standards, occurring after a developer has already been selected.

NFCDP submitted a procurement timeline that does not appear to provide the County with a realistic opportunity to evaluate proposals, draft contract documents, and conduct negotiations. It also does not appear to include Board review or consideration of contract award recommendations. As such, County staff evaluated NFCDP's proposed procurement process and created an estimated timeline to complete the required activities in an expedited manner, as requested by the Board. A comparison of the County's projected timelines is contained in the table below, illustrating that both processes are estimated to take the same amount of time.

Procurement Process Comparison*	
Option 1 - County's Two-Step P3 Procurement Process	
RFQ Issued	January 2018
Development of RFP and Comprehensive Project Agreement	January - June 2018
RFQ Responses Received	May 2018
RFQ Evaluation, Shortlist Recommendation	May 2018
Draft RFP Issued	June 2018
Meetings with Shortlisted Developers	June - August 2018
BCC Approval of Final RFP	October 2018
RFP Responses Received	January 2019
RFP Evaluation	January – February 2019
BCC Project Agreement Approval	April 2019
Option 2 - Unsolicited Procurement Process	
Unsolicited Proposal Received	January 2018
Unsolicited Proposal Evaluation	January – April 2018
RFQ/RFP Issued	May 2018

RFQ/RFP Responses Received	July 2018
RFQ/RFP Evaluation	August 2018
BCC Approval of Predevelopment Agreement	October 2018
Development of Project Agreement	November 2018 - February 2019**
BCC Project Agreement Approval	April 2019

**These timelines were constructed based on estimates provided by County staff, the P3 and unsolicited proposal requirements outlined in Section 255.065 of the Florida Statutes and Section 2-8.2.6 of the Miami-Dade County Code, and assumes that committee review is required for contract awards, pursuant to the Board's Rules of Procedures contained in Section 2-1 of the Miami-Dade County Code.*

***Assumes the County can leverage the material currently being created for the preferred two-step process to shorten the time required to complete the Project Agreement in the unsolicited process*

County staff also evaluated the impact of each procurement process on market competition and determined that the County's two-step procurement process has a significantly higher likelihood of achieving market competition from highly qualified developers for the Courthouse Project. The alternative process proposed by NFCDP is not expected to yield competition from experienced P3 project developers, as the work already performed by NFCDP creates a competitive disadvantage to other qualified developers. In addition, the compressed proposal timeline suggested by NFCDP does not provide a meaningful opportunity for other developer teams to prepare proposals that meet the County's objective to facilitate substantial market competition to drive down the project cost.

It is anticipated that the P3 industry will view the Board's adoption of NFCDP's proposed procurement process as a clear preference for a specific developer and qualified P3 developers will not participate in such a process. Further, it is expected that such a decision would have a direct impact on the credibility of the County's emerging P3 program and consequently, the County's ability to access qualified P3 developers for other potential P3 projects, including transportation projects related to the SMART Plan.

Based on County staff estimates, the procurement timeline for both processes is substantially similar and the selection of the unsolicited proposal process will not result in a shorter procurement process. Moreover, the use of the unsolicited proposal process is likely to result in a significantly higher cost to the County for the Courthouse Project as a result of reduced competition and limited negotiation leverage. **Accordingly, it is recommended that the Board approve the continued use of the two-step P3 procurement that is already underway.**

Disposition of Historic Courthouse Recommendation

NFCDP's proposed project scope includes the purchase of the Historic Courthouse, which it intends to develop as a boutique hotel. County staff initially considered requiring any potential developer for the Courthouse Project to include a plan to acquire the Historic Courthouse. However, it was advised that such a requirement would be difficult to evaluate and may impact competition.

To confirm this advice, County staff and KPMG performed a series of interviews in July 2017 with qualified market participants, including: 1) P3 developers, 2) traditional real estate developers, and 3) commercial real estate advisors, brokers, and national real estate valuation experts. A summary of the market responses is included in the table below:

Market Research Summary		
P3 Developer	Transaction Recommendation	Potential Interest
Skanska	Separate Transactions	Courthouse Project only
Meridiam	Separate Transactions	Courthouse Project only
Star Infrastructure	Separate Transactions	Courthouse Project only
Plenary Group	Separate Transactions	Courthouse Project only (Preferred) or Combined through a Master Developer Approach (Alternative)
Real Estate Developer	Transaction Recommendation	Potential Interest
Codina Partners	Separate Transactions	Real Estate Acquisition only
Mana Properties	Separate Transactions	Real Estate Acquisition only
Florida East Coast Industries*	Combined Transactions	Combined Courthouse Project and Real Estate Acquisition
Real Estate Advisory Firm	Transaction Recommendation	
CBRE PIES	Separate transactions or master developer approach	
CBRE Valuation Advisory	Separate transactions to maximize asset value	
Joseph J. Blake & Associates	Separate transactions to maximize asset value	
Integra Realty Resources	Separate transactions to maximize asset value	
HFF	Separate transactions to maximize asset value	

*Florida East Coast Industries is the Program Manager in NFCDP's unsolicited proposal.

After taking into consideration the above market feedback, County staff concluded that including the Historic Courthouse in the solicitation would not be in the County's best interest, as it would result in reduced competition. In addition, it is anticipated that inclusion of the Historic Courthouse in the existing solicitation would result in the County receiving less than the property's appraised value due to increased developer risks in a combined process.

An appraisal completed in 2018 shows that the value of the Historic Courthouse has increased in value by 27 percent since 2014. The value of the property is projected to continue growing in a manner consistent with the value of other properties located in downtown Miami. In addition, its sale through a separate process will provide a significant sum of revenue that can be used to offset the County's expected annual availability payment to the selected Courthouse Project developer.

In an effort to provide additional information in this report to quantify the impact of including the Historic Courthouse in the existing solicitation, the County requested that NFCDP allow the County to publicly release its proposed acquisition price for the Historic Courthouse. However, NFCDP declined to waive its confidentiality request.

To achieve the maximum competition and value, it is recommended that the County dispose of the Historic Courthouse through a separate competitive bidding process.

Courthouse Project Site Recommendation

In accordance with Resolution No. R-189-18, the Internal Services Department issued an addendum to RFQ-00820 to add the Flagler Site as a potential site for the Courthouse Project. A comparison of both potential sites is included in the table below and an aerial comparison is attached to this report as Attachment 3.

Courthouse Project Site Comparison		
	Site 1	Site 2
	Children's Courthouse Site	Flagler Site
Site Ownership	County	County
Proximate Location	Adjacent to Existing Children's Courthouse	Across the Street from Historic Courthouse
Current Use	Surface Parking	Public Park and ADA Parking
Estimated Lot Size	42,000 Square Feet	21,000 Square Feet
Planned Future Use	Government Facility Only	Possible sale or lease as part of the Cultural Center Plaza parcel
Master Plan Site Reference*	Referenced on Pages 361-371, see excerpt in Attachment 4.	Site not referenced in the Master Plan, however the larger Cultural Center Plaza site was evaluated. Referenced on Pages 333-345, see excerpt in Attachment 5.
Recent Environmental Remediation Completed?	Yes	No
Project Site Conditions	<ul style="list-style-type: none"> - Requires identification of temporary secured parking for courts personnel during construction - Requires coordination with Children's Courthouse users to minimize operational impact during construction 	<ul style="list-style-type: none"> - Requires permanent closure of SW 1 Avenue - Requires City of Miami zoning approval for increased intensity - Potentially subject to Federal Transportation Administration (FTA) regulatory approval and repayment of any FTA funds used to purchase the Site - Requires relocation of ADA parking to alternative location - Requires relocation of Art in Public Places sculpture to alternative location - Removes green space designated in the Downtown Government Center Master Plan - Requires coordination with Department of Transportation and Public Works, Department of Cultural Affairs, History Miami, and the Public Library System due to proximity to existing facilities

*The Civil and Probate Courts Master Plan can be found at: <http://www.miamidade.gov/procurement/library/civil-probate-court-master-plan.pdf>

The table above demonstrates that the Children's Courthouse Site is the most build-ready site among the two identified project sites and minimizes the County's risk of unanticipated cost increases and project delays. The use of the Flagler Site would reduce the County's revenue potential, as it is part of the Cultural Center Plaza parcel that is currently under evaluation for

potential commercial redevelopment. The Flagler Site contributes approximately \$14 million out of the approximated \$124 million value of the Cultural Center Plaza parcel.

The County's potential use of the Flagler Site is also constrained due to its small size. County staff estimates that the allowed development intensity on the site is approximately 462,000 square feet and the use of the site would require additional approvals and bonuses from the City of Miami to achieve the square footage required by the Civil and Probate Courts Master Plan. No such restriction applies to the Children's Courthouse Site. The Civil and Probate Courts Master Plan references the entire parcel of the Cultural Center Plaza and was not limited to the much smaller footprint identified by NFCDP and referenced in this report as the Flagler Site. The use of the Children's Courthouse Site will eliminate costs associated with permanently relocating ADA Parking, Art and Public Places installations, and public green space.

Accordingly, it is recommended that the Board select the Children's Courthouse Site as the site for the Courthouse Project to allow the County to maximize potential revenue sources and minimize unfavorable site conditions that may result in project delays and increased project costs.

Next Steps

The County continues to encourage the submission of new and innovative project proposals from the private development community. However, the use of the unsolicited proposal process for the Courthouse Project is not appropriate. The County recognizes the substantial interest and enthusiasm that NFCDP has demonstrated in its proposal and through its public statements to the Board. As such, NFCDP is encouraged to submit its qualifications as part of the fair and competitive solicitation that is underway. Statements of Qualifications will be accepted for *RFQ-00820, Design, Build, Finance, Operate, and Maintain Civil and Probate Courthouse* until May 2, 2018.

In consideration of the above, a rejection of the unsolicited proposal continues to be in the County's best interest. Should you require additional information, please contact Tara C. Smith, Director of the Internal Services Department, at 305-375-5893, or me directly.

- c: Honorable Bertila Soto, Chief Judge, Eleventh Judicial Circuit
- Harvey Ruvin, Clerk of the Courts
- Abigail Price-Williams, County Attorney
- Geri Bonzon-Keenan, First Assistant County Attorney
- Office of the Mayor Senior Staff
- Tara C. Smith, Director, Internal Services Department

NFCDP

January 5, 2018

VIA FIRST CLASS MAIL AND EMAIL

Honorable Carlos A. Giménez
Mayor Miami-Dade County
Stephen P. Clark Center
111 N.W. 1st Street
Miami, Florida 33128

Re: Formal Request for Confidentiality with Respect to NFCDP Proposal for Delivery of New Courthouse and Associated Facilities in Miami, Florida

Dear Mayor Giménez:

Simultaneously with submitting our Unsolicited Proposal to design, construct, finance and maintain for Miami-Dade County a new civil courthouse, New Flagler Courthouse Development Partners, LLC ("NFCDP") hereby invokes the exemption from public records disclosure provided in Section 2-8.1(k) (12) of the Metropolitan Miami-Dade Code which adopts by reference Chapter 119, Florida Statutes. NFCDP seeks confidentiality under Section 119.071(1) (b), Florida Statutes, "until such time as the agency provides notice of an intended decision or until 30 days after opening the [] proposals [] whichever is earlier."

The scope of disclosure sought is the entirety of the Unsolicited Proposal which reveals in detail the substantial work undertaken to prepare a site plan, architectural design, the costs of construction derived from that design, the detailed financial presentation, the value placed by the proposer on the purchase of what will become surplus County property, the details of the financing plan and the talents and experiences of the team proposing the Facility. Were these details made public, it would provide an unfair competitive advantage to any subsequent proposer who would, by simply taking the work product prepared by NFCDP duplicate that work without incurring the cost borne by NFCDP in submitting this Proposal. Florida law provides for non-disclosure in instances such as this. From the public perspective, non-disclosure is necessary to incentivize the kind of undertaking presented in this Unsolicited Proposal. Were the County to untimely publish this work to competitors it would have a distinct chilling effect on the willingness of others to expend the magnitude of resources invested in this Proposal.

It is not our intention to exclude from an initial review the ultimate users of the facility – the civil division of the Circuit Court. Indeed, we believe the judicial officers who have worked long and hard to identify the needs of the justice system should be included at the outset. To that end, we would suggest that Chief Judge Soto be asked by your offices to identify a discrete number of judges and court personnel who would be given immediate access to the Proposal providing that those provided such access would agree that the Proposal would remain confidential in whole or in part until and unless the County determines to make part or all of the Proposal public as provided by law.

Prior to making a decision in whole or in part on this request of confidentiality we would urge the County to participate in discussions with us regarding what, if any, part of this Unsolicited Proposal could be made public prior to the time periods provided in Florida law referenced above.

Respectfully,

Florida East Coast Industries, LLC



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Executive Director
Florida East Coast Industries
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Hunt Development Group, LLC



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Attachments:

Cover Letter

Proposal with Appendices



March 30, 2018

Tara C. Smith, Director
Miami-Dade County Internal Services Department
111 NE 1st Street, Suite 2100
Miami, FL 33128

Re: Review of Unsolicited Proposal from New Flagler Courthouse Development Partners

Dear Ms. Smith:

At the direction of the Board of County Commissioners (Board), Miami-Dade County (the "County") has been asked to evaluate the unsolicited proposal submitted by the New Flagler Courthouse Development Partners (NFCDP), including supplemental information provided by NFCDP at the County's request (collectively, the "Unsolicited Proposal").

Enclosed please find a report, prepared by KPMG LLP (KPMG) at the request of the County, containing comments and observations relating to KPMG's financial and commercial review of the NFCDP Unsolicited Proposal for the Design-Build-Finance-Operate-Maintain (DBFOM) of the Civil and Probate Courthouse (Project).

Please note that certain findings, considerations, and observations from KPMG's analysis have been redacted from the enclosed report, as directed by the County Attorney's Office due to NFCDP's confidentiality request.

Please contact me if you have any questions on the material enclosed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Guy Wilkinson".

Guy Wilkinson, Principal
KPMG LLP

NFCDP Unsolicited Proposal Review

March 30, 2018

Comments and Observations

EXECUTIVE SUMMARY

In January 2018, Miami-Dade County (County) received an unsolicited proposal (Unsolicited Proposal) from the New Flagler Courthouse Development Partners (NFCDP) for the Design-Build-Finance-Operate-Maintain (DBFOM) of the Civil and Probate Courthouse (Project). At the direction of the Board of County Commissioners (Board) the County has been asked to evaluate the Unsolicited Proposal materials, including supplemental information provided by NFCDP at the County's request.

The following points represent a summary of key comments and observations for the County's consideration relating to the Unsolicited Proposal materials received:

- **Unsolicited Proposal proposes cancellation and disruption of current, active competitive procurement process:**
 - The Unsolicited Proposal proposes a fundamental change to the competitive two-step (RFQ/RFP) procurement approach the County has already initiated in the market, proposing instead an abbreviated one-step procurement followed by a Pre-Development Agreement (PDA) exclusive negotiating period.
 - The County has issued an RFQ to the market and is engaged in an active, open competitive two-step procurement. The County's current approach seeks firstly to select a short-list of qualified proposers based on an evaluation of financial and technical qualifications in the RFQ and then to solicit a committed fixed price and advanced technical proposals for the Project through an RFP where specific scope parameters and performance specifications are provided to the short-list and all teams bid on the a well-defined scope and set of commercial terms.
 - In the County's current two-step procurement process, committed bids for the Project will be tendered during a period of competitive tension, where the County has leverage. Importantly, under NFCDP's PDA process, there would be no financial commitment, firm price proposal, or advanced technical proposal for the Project at proposal submission stage.
- **The Unsolicited Proposal may limit competition for the Project and undermine County credibility for future P3 procurements:**
 - The County has issued an RFQ to the market and is engaged in an active, open competitive two-step procurement. Cancelling the current procurement that represents the culmination of significant pre-procurement activities and marketing by the County may likely have an adverse impact on competition for this Project and for future County P3 projects.
 - Market perception that active procurements can be disrupted by unsolicited proposals for exclusive negotiation rights may undermine the credibility of the County and its ability to run an unbiased competitive process. This may result in diminished investment of time and resources by the market for the Project and may impact future P3 opportunities in the County.

- **PDA approach envisioned in the Unsolicited Proposal is unlikely to provide best value to County as the needs and commercial structure are already well-defined by the County:**
 - PDAs are traditionally better-suited to projects where the public owner is unable to define the project scope and/or preferred commercial structure without significant direct interaction with the private sector market. This is not the case for the County on this Project where there is clear direction and preference on both aspects.
 - The County may forfeit negotiating leverage and control over outcomes in an exclusive negotiating period. Through its Master Plan, the County has already determined its baseline requirements regarding scope and the roles and responsibilities of both the County and the selected developer (Developer). The County has also provided the market with clarity on its preferred commercial and financial structure which will be refined, along with the Project technical requirements, at RFP stage. There is little additional benefit the County can derive from an exclusive negotiating period given the current level of Project scoping.
 - Unsolicited proposal processes were intended to be used for ideas that are not actively being pursued by the County or where they are already in procurement.
- **NFCDP's proposed schedule is optimistic and does not appear feasible:**
 - NFCDP's proposed procurement schedule is highly optimistic and does not appear feasible when compared to the most recently closed precedent PDA transaction in the market.
 - NFCDP schedule assumes a substantially compressed timeframe for key activities prior to selection of a preferred proposer including RFP development by the County, proposal development by the market, and for evaluation of proposal responses by the County.
 - The proposed schedule suppresses the amount of time prospective proposers are given to develop their proposals from both a financial and technical perspective and to conduct due diligence on the site in a way that can help the market reduce levels of contingency baked into their pricing. As a result, the schedule is heavily biased toward NFCDP because they are the proposer of the unsolicited concept and have had more time to develop, test, and vet their proposal. Other prospective proposers recognize this the competitive advantage afforded to NFCDP and may choose not to bid.

PRELIMINARY COMMENTS AND OBSERVATIONS

Based on the review of NFCDP materials, the following sections highlight preliminary comments and observations for the County's consideration.

SECTION 1: PROCUREMENT PROCESS CONSIDERATIONS & OBSERVATIONS

The Unsolicited Proposal proposes a fundamental change to the procurement approach and a departure from the competitive two-step process the County has initiated in the market.

NFCDP's Unsolicited Proposal proposes entering into an interim agreement with the County in the form of a PDA. The Unsolicited Proposal anticipates that upon acceptance by the County of the Unsolicited Proposal, the County would cancel the current procurement and create a new solicitation package to invite bidders to respond to a one-step procurement process for the Project covering qualifications, approach, indicative pricing and design. NFCDP envisions that the County would then select a preferred proposer or Developer to execute a PDA which would set forth obligations during a predevelopment phase. Under NFCDP's process, there would be no financial commitment, firm price proposal, or advanced technical proposal for the Project at proposal submission stage.

This approach is fundamentally different from the current and ongoing procurement approach being used by the County and is traditionally employed by the majority of jurisdictions in the U.S. who are utilizing P3 delivery.

Based on the recommendation of the County's P3 Task Force and feedback received from the market, the County elected to utilize a two-step (RFQ/RFP) procurement process for the P3 delivery of the Project. This recommendation was based on industry best practice and the County's view of various benefits associated with this process. Key principles of a two-step procurement process include:

- **Encourages Greater Competition** – A two-step process is open to a full range of potential market participants designed, in the first step (RFQ), to select a short-list of qualified proposers on the basis of their financial and technical qualifications. The second-step (RFP) is designed to facilitate an unbiased competition between the Short-Listed Respondents on the specific parameters for the Project identified by the County to bid back a technical proposal that addresses the Project needs and the committed pricing to deliver the Project.
- **Promotes Transparency & Level-Playing Field** – In the two-step process, the County has determined its baseline requirements prior to the procurement process regarding scope and the roles and responsibilities of both the County and the selected Developer. The County is also able to provide the market with clarity on its preferred commercial and financial structure and the technical requirements of the Project. This upfront investment of time and effort by the County to articulate its needs early on means that all prospective bidders are competing in an environment of transparency, on a level-playing field, and for the exact same Project.
- **Drives Greater Value by Holding Competitive Tension Longer into the Procurement Process** – Generally, a two-step process drives greater value to the project sponsor because the process allows for substantive negotiation with proposers during a period with real competitive tension at play. This dynamic allows the County to retain better leverage when negotiating key contract terms, project risks and allocation, technical preferences, and other areas of the draft documents

during the industry review period. Negotiating during the period in which there is competitive tension amongst the Short-Listed Respondents enhances value by reducing contingency pricing, uncertainty, risk, and other challenges of negotiating with a single Developer after losing competitive leverage.

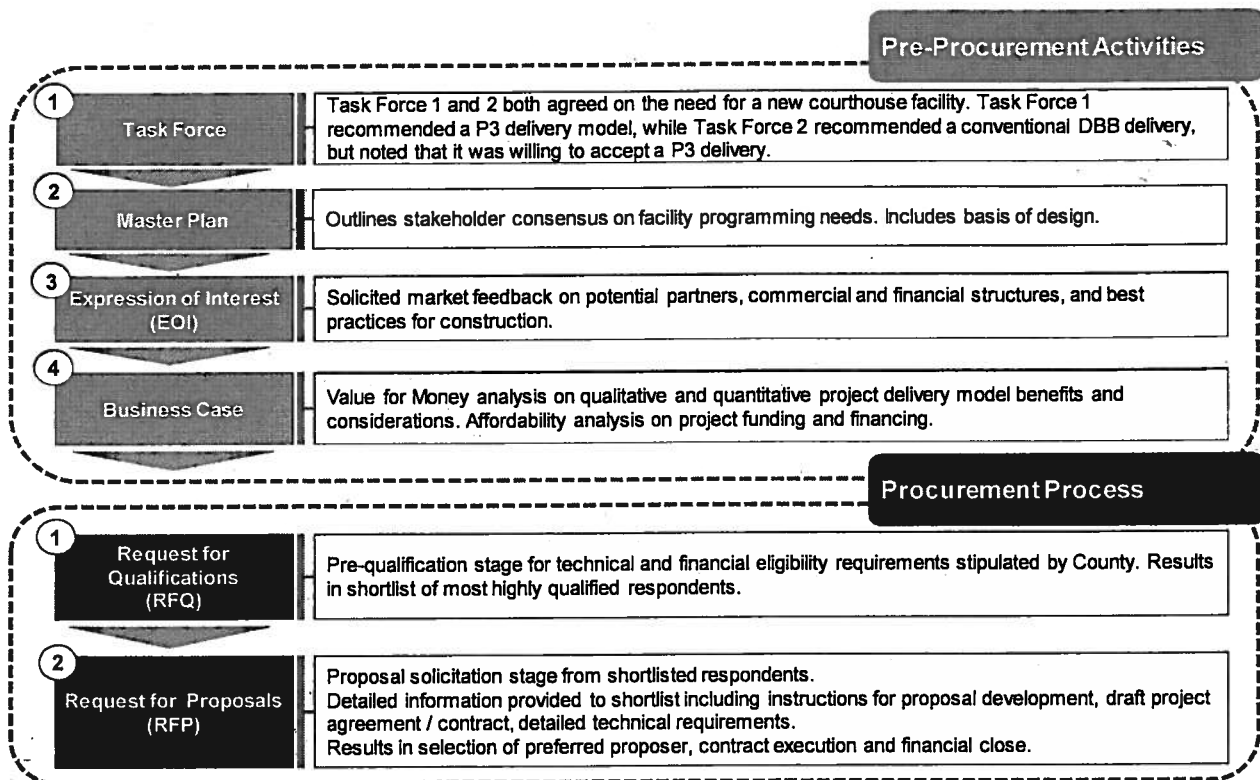
- **County in Control** – The two-step process allows the County to retain more control during the course of the procurement and increases certainty of outcome. Once a preferred proposer is selected, the County loses leverage that was previously afforded it by means of competitive tension. Further, the rigor of the County having to define and articulate its desired outcomes to the market helps achieve a greater level of compliance with County and stakeholder requirements for the Project for the facility and ongoing performance specifications.
- **Results in Committed Pricing & Proposal** – A key benefit to the two-step process that the County has initiated is that it is designed to result in the bid-back of advanced technical proposals and committed pricing from the three to four Short-Listed Respondents. This level of commitment from proposers however is predicated on early investment by the County during the RFP phase to provide clarity on scope and technical specifications, present a fully developed draft Project Agreement and allow for a process and period of industry review, and provide the proposers with an opportunity to undertake due-diligence during the RFP phase.
- **Expedience to Financial Close** – Finally, the two-step process also results in a quicker process to financial close once a preferred proposer is selected. The in-depth robust, iterative industry review period is instrumental in helping the parties negotiate key terms and issues in the draft Project Agreement and Technical Provisions while there is competitive tension in RFP phase. This dynamic results in a quicker process to commercial and financial close and prevents a protracted negotiation post-selection from occurring.

Typically PDAs work best for large projects that require significant interaction with the private developer market, are relatively undefined in terms of scope and cost, have not achieved environmental approval, or may utilize different commercial structures that require additional preliminary screening.

This profile is contrary to the County's Project where to-date, substantial work has been undertaken in an effort to define and advance the Project. In particular the completion of the Master Plan and Task Force efforts to define the scope and delivery method of the Project and the development of a Business Case to determine the preferred commercial structure have resulted in a Project definition that can be competitively bid in the market.

The pre-procurement activities undertaken to define the Project are outlined in the graphic below:

Figure 1: County Pre-Procurement Activities



The County's pre-procurement efforts culminated in the January 2018 issuance of an RFQ for the Project as defined by the Board and by stakeholders. The County is underway with development of RFP documents including a draft Project Agreement and a complete set of Technical Provisions – leveraging the 2017 Master Plan – to be included in the RFP to Short-Listed Respondents. Essentially the County is ready to articulate to present its needs and the commercial parameters it is looking for in a way that leverages competition and innovation from the market to achieve committed bids and best value for the County. For these reasons, entering into a PDA agreement with a singular Developer to define the Project is unlikely to result in greater value to the County than the outcome of a competitive two-step process for this particular Project.

Below are additional considerations relating to a PDA approach:

- PDA process is more susceptible to scope creep as the County will be defining the full scope of the Project during the predevelopment phase and lacks competitive leverage to push back.
- There are fewer opportunities for innovation to achieve cost savings in a non-competitive procurement for an undefined Project after a PDA award.
- Lack of competition and lack of committed pricing limits flexibility for negotiation of optimal terms contained within the Project Agreement for the County.
- Lack of committed pricing leaves the negotiation open and at risk to market fluctuations for a longer period of time than if firm financial bid-backs bids were received at proposal submission.
- A limit on the final cost of the Project is not defined prior to the predevelopment phase.

- PDAs often allow for Developers to have the right of first refusal to deliver the Project. If the Developer chooses not to proceed with the Project under this provision, or in the event of PDA termination more generally as may be stipulated in the PDA, the County would have to re-procure and reimburse costs of Developer for pre-development activities. Effectively, the County would be taking on significant pre-development risk related to the Project upon entering into the PDA. This is notably different than in a two-step process where if the County fails to get to commercial close with preferred proposer the County could have the fallback position of going to the second highest rated proposer and still move swiftly to commercial and financial close.
- County would incur costs for drafting and negotiating the PDA.
- Under a PDA, at selection of a preferred Developer it is unclear if a Project is bankable (able to obtain debt financing and reach financial close) creating uncertainty for the County as compared to a competitive two-step process with committed pricing requirements.
- Even if a collaborative environment has been established for the predevelopment phase, there is limited incentive for the Developer and the County to fully share information and therefore less likely to be a transparent process.

Review of NFCDP's Arguments for the Proposed Procurement Process

In their Unsolicited Proposal, NFCDP outlines a series of advantages in the procurement method they propose which merit further consideration:

Figure 2: Review of NFCDP summary arguments for Unsolicited Proposal procurement process

Argument in Unsolicited Proposal ¹	Consideration
a) Shortening the procurement process, which is critical in the current, volatile interest rate and construction cost markets (e.g., potential steel tariffs would directly impact pricing and a spike in interest rates could more than offset any potential benefit from separating out the sale of the old courthouse or from a conventional two-stage P3 procurement.	<ul style="list-style-type: none"> - The PDA procurement process as outlined by NFCDP is aggressive in comparison to recently completed PDA processes. - The most recent P3 utilizing a PDA – the Denver Great Hall Project – took 26 months to achieve financial close while NFCDP estimates 11 months. - The County's ongoing two-step procurement approach for the Project is forecast take less than 26 months. - Market risk is intrinsic in all development and P3 projects and is arguably more acute in PDA procurements where there is no committed pricing required at proposal submission. - Accelerating the selection of a preferred proposer without pricing or proposal commitments does not, in fact, ensure an accelerated process overall.
b) Allowing true collaboration between the County, the developer team and project stakeholders to jointly and transparently optimize/refine the design, scope, cost, and schedule of the Project and eliminate unnecessary contingencies and potential windfall for the developer	<ul style="list-style-type: none"> - Collaboration between the County and the Developer is important but offers most value to the County when discussed in environment of competitive tension and if the Project was undefined.

¹ Reflects points outlined in supplemental materials submitted by NFCDP on March 5, 2018 in connection with the Unsolicited Proposal.

	<ul style="list-style-type: none"> - In the case of the Project at hand however, the County has completed a considerable amount of work to-date to define and articulate and define the Project scope through the Master Plan. Further clarity on scope and the County's needs will be developed and communicated to proposers as part of the Technical Provisions. - The ongoing two-step procurement will leverage this information and provide an iterative process for communication with proposers in the one-on-one meetings to address terms, concepts and other concerns. - The RFP process will also provide time for bidder diligence to take place that will minimize unnecessary contingencies. - Finally, proposers will compete to submit a fixed price proposal. - The above factors in the envisioned two-step process help mitigate the risk for unnecessary contingencies and any windfall returns for a Developer more effectively than a PDA approach.
c) Allowing the public sector, after completion of each predevelopment phase milestone with definitive technical, financial, and legal deliverables, the opportunity to cancel the Project or change the delivery method resulting in a more flexible and less costly procurement for the County and bidding teams	<ul style="list-style-type: none"> - PDA termination provisions on both sides would need to be negotiated and agreed during the PDA development, however either party could ultimately opt to terminate their involvement. - If the County chose to opt out of the PDA, it would result in a material schedule setback for Project delivery, potential termination payment for bidder aborted costs and re-procurement costs to the County. - PDA termination could create significant delay and risk of triggering reimbursement for aborted bidder costs as there would be no other viable alternative Developer for the County to negotiate with unless the County pursued a re-procurement.
d) Elimination of contingencies in advance of execution of definitive project documentation	<ul style="list-style-type: none"> - In a PDA scenario, the County takes on pre-development risk upon entering into the PDA wherein the County would need to re-procure and reimburse costs of the Developer for pre-development activities if unable to come to terms on a development agreement. - A two-step procurement process with committed pricing requires significant 'skin in the game' from the proposers who must prepare significantly more advanced technical proposals and obtain firm financing commitments and proposal security until financial close. - A well-structured two step procurement is arguably more effective at minimizing and eliminating contingencies based on the incentives

	driven by competition to provide the best, committed pricing to the County.
e) Elimination of the County's cost and time of preparing design criteria and unnecessary subsidy of preparation of redundant bidder information.	<ul style="list-style-type: none"> - Among the drivers for the two-step P3 approach is to seek innovation through a competitive procurement which would not be achieved under a PDA structure. - Further, the County would still have to work closely with the Developer during the PDA phase to develop the design criteria and Technical Provisions related to performance specifications which would require resources, oversight, and incur costs for each. - A stipend subsidy is an optional feature that the County can elect to include or may choose to forego.

SECTION 2: SCHEDULE CONSIDERATIONS & OBSERVATIONS

Observations on Schedule Review

NFCDP provided a high level schedule for the PDA approach in its supplemental Unsolicited Proposal materials in response to the County's request for clarification.

NFCDP outlines an 11-month procurement schedule (approximately) from the issuance of an RFP to financial close. When compared to the Denver Great Hall Project which reached financial close in December 2017 and is the most recently closed precedent PDA project in the P3 market, the NFCDP schedule appears highly optimistic.

The table below presents a comparison of key milestones in the project schedules:

Figure 3: Schedule Comparison

Milestone ¹	NFCDP Unsolicited Proposal		Denver Great Hall Project (Actual)	
	Date	Period	Date	Period
Issue RFP	Apr 2018	-	Sep 2015	-
Selection of Preferred Proposer	Jul 2018	3 mo	Jun 2016	8mo
Execution of PDA	Aug 2018	1 mo	Aug 2016	2 mo
Financial Close	Mar 2019	7 mo	Dec 2017	16 mo
Total Procurement Time		11 mo		26 mo

¹Represents key milestones identified by NFCDP but not inclusive of all activities during procurement

Additional key observations regarding the NFCDP schedule include:

- **No two-step process envisioned:** NFCDP does not suggest utilizing a two-step procurement employing a RFQ/RFP approach to selection of a preferred proposer. Instead they propose going straight to an RFP process which may hinder the County's ability to evaluate financial and technical qualifications and selection of the most qualified team.
- **Aggressive schedule suppresses competition:**
 - There is insufficient time anticipated for the County to develop the RFP documents including the Instructions to Proposers, the draft Project Agreement, and Technical Provisions that will

provide guidance and a level playing field on which prospective proposers will bid. The County risks forfeiting control and leverage during the period in which there is competitive tension in the procurement, over its ability to articulate its desired outcomes.

- The proposed schedule suppresses the amount of time prospective proposers are given to develop their proposals and to conduct due diligence that would help reduce levels of contingency baked into their pricing. As a result, the schedule is heavily biased toward NFCDP who has had more time to develop, test, and vet their proposal. Other prospective proposers may choose not to bid as a result of a perceived competitive advantage to NFCDP. The net impact of these factors conspire to erode competition for the project and undermine the validity of an unbiased competitive process.
- The NFCDP schedule does not appear to allocate a reasonably realistic timeframe for the County's review of proposals and approval for selection of a preferred proposer.

■ **Critical path activities do not appear to be taken into consideration in the schedule presented:**

- NFCDP does not appear to take into account the following:
 - The process and time required for the iterative development and negotiation of a Project Agreement that will govern the relationship between parties for the duration of the contract.
 - The process and time required for the development of the Technical Provisions, in particular for the long-term operations of the Project over the duration of the contract term and the facility management standards and specifications against which the performance-based Availability Payment will be subject.
 - The activities and time required related to County approvals necessary for the procurement process.
 - A separate commercial close prior to financial close which will require the arrangement of financing while negotiating and developing the Project Agreement.

SECTION 3: FINANCIAL CAPACITY CONSIDERATIONS & OBSERVATIONS

This Section 3 highlighted findings from the financial capacity analysis completed including key observations related to the relationship of NFCDP's Major Participants and financial capacity considerations and observations for each firm identified by NFCDP based on the financial statements and related information provided by NFCDP.

The findings, considerations, and observations from this analysis have been redacted in this memo as directed by the County Attorney's Office due to NFCDP's confidentiality request.

SECTION 4: FINANCIAL MODEL CONSIDERATIONS & OBSERVATIONS

This Section 4 highlighted findings from the analysis completed relating to the review of the NFCDP financial model and financial proposal materials including analysis and observations related to the review of Project cost assumptions in the NFCDP financial model as compared to the Project cost estimates developed by the County and the County's Technical Advisors as part of the County's Value for Money analysis completed in September 2017 and a comparative County scenario to the NFCDP Unsolicited Proposal. This section also included analysis regarding the comparison of the Availability Payment requirements by the County for the Project between the NFCDP Unsolicited Proposal, the County's Value for Money analysis and a comparative County scenario to the NFCDP Unsolicited Proposal.

The findings, considerations, and observations from these analyses have been redacted in this memo as directed by the County Attorney's Office due to NFCDP's confidentiality request.

APPENDIX A – FINANCIAL INFORMATION SUBMISSION SUMMARY

This Appendix A included a summary of the supplemental financial information that was furnished by NFCDP in response to the County's request dated February 26, 2018.

The findings, considerations, and observations from this analysis have been redacted in this memo as directed by the County Attorney's Office due to NFCDP's confidentiality request.

APPENDIX B – FINANCIAL CAPACITY INDUSTRY BENCHMARKS

This Appendix B included a summary of the industry benchmarks that were used to compare against key ratios of the supplemental financial information that was furnished by NFCDP in response to the County's request dated February 26, 2018.

The findings, considerations, and observations from this analysis have been redacted in this memo as directed by the County Attorney's Office due to NFCDP's confidentiality request.

APPENDIX C – FINANCING ASSUMPTIONS

This Appendix C included a summary analysis of the financing assumptions that were used for the Availability Payment comparison for the scenarios identified and analyzed in Section 4, including from the NFCDP financial model.

The findings, considerations, and observations from this analysis have been redacted in this memo as directed by the County Attorney's Office due to NFCDP's confidentiality request.

ATTACHMENT 3
MIAMI-DADE COUNTY CIVIL COURTHOUSE
POTENTIAL SITE LOCATION MAP



Shown for informational purposes only. Not to scale.

Attachment 4

