



# Miami-Dade Legislative Item File Number: 180885

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**File Number:** 180885      **File Type:** Report      **Status:** Approved  
**Version:** 0      **Reference:**      **Control:** County Commission  
**File Name:** RECOMMENDATION RELATED TO THE EVALUATION **Introduced:** 4/5/2018  
**Requester:** Mayor      **Cost:**      **Final Action:** 4/10/2018  
**Agenda Date:** 4/10/2018 **Agenda Item Number:** 14B1

**Notes:** Title: RECOMMENDATION RELATED TO THE EVALUATION OF UNSOLICITED PROPOSAL RECEIVED FOR THE DESIGN, BUILD, FINANCE, OPERATION, AND MAINTENANCE OF A NEW CIVIL AND PROBATE COURTHOUSE

**Indexes:** NONE **Sponsors:** NONE

**Sunset Provision:** No      **Effective Date:**      **Expiration Date:**

**Registered Lobbyist:** None Listed

## Legislative History

Acting Body	Date	Agenda Item	Action	Sent To	Due Date	Returned	Pass/Fail
Board of County Commissioners	4/10/2018	14B1	Approved				P

**REPORT:** Commissioner Heyman made a motion that the RFQ be adjusted to include the Flagler site as a proposed site for the Master Plan blueprint. This motion was seconded by Commissioner Jordan. Following further discussion; Chairman Bovo asked Assistant County Attorney Oren Rosenthal to clarify the motion on the floor. Assistant County Attorney Oren Rosenthal clarified that the motion made by Commissioner Heyman was to designate the Flagler Street site as the location for the new Civil Courthouse and to direct the administration to amend the RFQ to designate the Flagler Street site as the location for the new County Civil Courthouse. He explained that this portion would be bifurcated from the resolution; and that no motion had been made on the actual report yet. Following further discussion, it was moved by Commissioner Heyman to designate the Flagler Street site as the location for the new County Civil Courthouse. This motion was seconded by Commissioner Jordan and upon being put to a vote, failed by a vote of 4-7 (Commissioners Diaz was absent; District 5-Vacant; Chairman Bovo, Commissioners Jordan, Heyman and Sosa voted Yes; Commissioners Edmonson, Levine Cava, Martinez, Monestime, Moss, Souto and Suarez voted No). Commissioner Martinez made a motion to designate the Children's Courthouse site as the location for the new County Civil Courthouse; this motion died for a lack of a second. It was moved by Commissioner Suarez to consider the Flagler Street site and the Children's Court site and to use the competitive

process, with no disposition of the current Civil Courthouse and for the Mayor to submit a report regarding the both sites by May 1, 2018. Mayor Gimenez pointed out that the sale of the current Civil Courthouse was included in the unsolicited proposal. Commissioner Martinez said he was not in support of including the sale of the current Civil Courthouse; he felt mixing this process would devalue the historic courthouse. He suggested separating the sale of the current civil courthouse building. With regards to the motion made by Commissioner Suarez, Chairman Bovo noted it seemed the unsolicited bid was in jeopardy. He noted that he feared that unsolicited bidders would be precluded from being able to participate in the process that the Administration has set up. Mayor Gimenez explained that unsolicited proposers were not precluded from responding to an RFQ. Commissioner Heyman suggested only voting on the 2 locations and to bifurcate and handle each issue that has been discussed separately. It was moved by Commissioner Suarez to consider the Flagler Street site and the Children's Court site. This motion was seconded by Commissioner Moss and upon being put to a vote passed by a vote of 10-1 (Commissioner Diaz was absent; District 5-Vacant; Chairman Bovo, Commissioner Monestime, Edmonson, Heyman, Sosa, Suarez, Levine Cava, Moss, Souto, and Martinez voted Yes; Commissioner Jordan voted No). Following further discussion; it was moved by Commissioner Suarez to defer the foregoing report. This motion was seconded by Commissioner and upon being put to a vote failed by a vote of 5-5 (Commissioner Diaz and Souto were absent; District 5-Vacant; Commissioners Sosa, Levine Cava, Martinez and Edmonson voted No; Chairman Bovo, Commissioners Moss, Suarez, Monestime and Jordan voted Yes ). Commissioner Heyman made a motion to issue a separate solicitation for the disposition of the existing courthouse and to have that solicitation be timed to coincide with the solicitation for the selection of a company to construct the new courthouse, coordinate these two processes but through two separate competitive bidding solicitations. This motion was seconded by Commissioner Sosa and upon being put to a vote, passed by a vote of 11-1 (Commissioner Diaz was absent; District 5-Vacant; and Commissioner Suarez voted No). It was moved by Commissioner Heyman to take no action on the unsolicited proposal now, and to continue with both processes until after the RFQ has been responded to. This motion was seconded by Commissioner Jordan and upon being put to a vote, passed by a vote of 11-0 (Commissioner Diaz was absent; and District 5-Vacant). It was moved by Commissioner Moss to accept the report. This motion was seconded by Commissioner Suarez and upon being put to a vote, passed by a vote of 11-0 (Commissioner Diaz was absent; and District 5-Vacant).

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Office of the Chairperson	4/5/2018	Additions		4/10/2018	
Ed Marquez	4/5/2018	Assigned	Office of Agenda Coordination	4/5/2018	4/5/2018

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### Legislative Text

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**TITLE**

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

**HEADER**

Date: April 4th, 2018

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

From: Carlos A. Gimenez  
Mayor

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

## **STAFF RECOMMENDATION**

### 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 Meridian 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	Site 1	Site 2	Children's Courthouse Site	Flagler Site
Ownership	County	County	Proximate	Adjacent to Existing Children's Courthouse
Current Use	Surface Parking	Public Park	and ADA Parking	Estimated
Lot Size	42,000 Square Feet	21,000 Square Feet	Planned	Future Use
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	- Requires identification of temporary secured parking for courts personnel during construction			

- Requires coordination with Children's Courthouse users to minimize operational impact during construction

- 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

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