

MEMORANDUM

Agenda Item No. 11(A)(18)

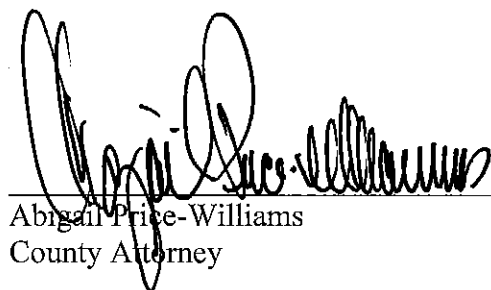
TO: Honorable Chairman Esteban L. Bovo, Jr.
and Members, Board of County Commissioners

DATE: June 5, 2018

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution directing the County Mayor to reject the current Public Private Partnership RFQ for a project to design, build, finance, operate, and maintain a new county civil courthouse ("project"); overturning the County Mayor's recommendation to reject the unsolicited proposal for the project; and directing the County Mayor to publish a new hybrid solicitation for the project and submit periodic reports to the Board regarding the status of the solicitation

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.



Abigail Price-Williams
County Attorney

APW/cp



MEMORANDUM
(Revised)

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

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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. 11(A)(18)
6-5-18

RESOLUTION NO. _____

RESOLUTION DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO REJECT THE CURRENT PUBLIC PRIVATE PARTNERSHIP RFQ FOR A PROJECT TO DESIGN, BUILD, FINANCE, OPERATE, AND MAINTAIN A NEW COUNTY CIVIL COURTHOUSE ("PROJECT"); OVERTURNING THE COUNTY MAYOR'S RECOMMENDATION TO REJECT THE UNSOLICITED PROPOSAL FOR THE PROJECT; AND DIRECTING THE COUNTY MAYOR OR MAYOR'S DESIGNEE TO PUBLISH A NEW HYBRID SOLICITATION FOR THE PROJECT AND SUBMIT PERIODIC REPORTS TO THE BOARD REGARDING THE STATUS OF THE SOLICITATION

WHEREAS, Article V, section 14 of the Florida Constitution provides that counties are required to fund the cost of construction, operations and maintenance of facilities for the state trial courts; and

WHEREAS, the Miami-Dade County Courthouse located at 73 W. Flagler Street ("1928 Courthouse") is in need of substantial repairs; and

WHEREAS, due to its age and the growth of the civil justice system, the 1928 Courthouse is overcrowded and faces a wide range of problems due to its design, its spacing, and the functions it seeks to accommodate; and

WHEREAS, the Perez and Perez and Dan L. Wiley and Associates' Court Master Plan conducted on behalf of Miami-Dade County ("Court Master Plan") has analyzed the needs of the county civil court system and the condition of the 1928 Courthouse has recommended the construction of a new county civil courthouse; and

WHEREAS, the condition of the 1928 Courthouse presents extraordinary challenges to the delivery of essential services, constitutes an immediate need to Miami-Dade County, and requires quick action; and

WHEREAS, on May 16, 2017, this Board adopted Resolution No. R-559-17 directing the County Mayor to solicit interest from companies to design, build, finance, operate and maintain a new county civil courthouse based on the recommendations contained in the Court Master Plan; and

WHEREAS, accordingly, the County undertook a value for money analysis on the different contracting and procurement methodologies for the new county civil courthouse and began drafting the solicitation documents to select a team for the development and operations of the new county civil courthouse; and

WHEREAS, on January 18, 2018, the County received an unsolicited proposal, pursuant to Section 2-8.2.6 of the County Code, proposing to design, build, finance, operate and maintain a new county civil courthouse (“Unsolicited Proposal”) at a site adjacent to the 1928 Courthouse (the “Flagler Site”); and

WHEREAS, on January 31, 2018, the County Mayor published a Request for Qualifications, in accordance with Section 2-8.2.6 of the County Code, to shortlist proposers for a public private partnership to design, build, finance, operate and maintain a new county civil courthouse at a site adjacent to the Children’s Courthouse (the “Children’s Courthouse Site”) in accordance with the requirements of the Court Master Plan previously approved by the Board (“P3 RFQ”); and

WHEREAS, on February 6, 2018, this Board adopted Resolution No. R-156-18 directing the County Mayor or County Mayor's Designee to include in any solicitation for a new county civil courthouse the key factors of the Court Master Plan; and

WHEREAS, on February 8, 2018, the County Mayor recommended rejection of the Unsolicited Proposal prior to evaluation, in accordance with Section 2-8.2.6(3)(a)(ii) of the County Code, arguing that the Children's Courthouse Site was superior to the Flagler Site for the construction of the new county civil courthouse; and

WHEREAS, on February 21, 2018, this Board, in accordance with Section 2-8.2.6(3)(a)(ii) of the County Code, adopted a motion memorialized in Resolution No. R-189-18, overturning the County Mayor's recommendation to reject the Unsolicited Proposal prior to evaluation and directed the County Mayor or County Mayor's designee to complete the evaluation of the Unsolicited Proposal and to report back to the Board at the April 10, 2018 meeting; and

WHEREAS, Resolution No. R-189-18 additionally directed the County Mayor to issue an addendum to the P3 RFQ procurement to add the Flagler Site as a potential location for the construction of a new county civil courthouse; and

WHEREAS, Resolution No. R-189-18 further directed the County Mayor to report back to the Board with a recommendation for a location for the new county civil courthouse and recommendation for an appropriate procurement method, consistent with the processes set forth in Section 2-8.2.6 of the County Code, for the selection of a vendor to design, build, finance, operate and maintain the new county civil courthouse taking into account both the ongoing P3 RFQ process and the Unsolicited Proposal process and be designed to select the project and proposer which offer the best value to the County for the ultimate site to be selected by the Board; and

WHEREAS, on April 4, 2019, the County Mayor filed a report recommending that the Board reject the Unsolicited Proposal, chose the Children's Courthouse as the location for the new county civil courthouse, and solicit the sale or lease of the 1928 Courthouse through separate solicitation; and

WHEREAS, on April 10, 2018, this Board accepted the County Mayor's recommendation to solicit the sale or lease of the 1928 Courthouse through a separate procurement and deferred the decision on the selection of procurement method and site selection of the new county civil courthouse to a later date; and

WHEREAS, on April 10, 2018, this Board further directed the County Mayor to submit a report with additional information regarding the selection of the site for the new county civil courthouse; and

WHEREAS, on April 13, 2018, the County Mayor transmitted a memo to this Board informing the Board that on April 9, 2018, the County's P3 financial advisor, KPMG LLP, transmitted confidential information including the Unsolicited Proposal to a competitor of the Unsolicited Proposal and, as a result, the County removed KPMG from the courthouse project; and

WHEREAS, on May 2, 2018, four responses were received by the due date for the ongoing P3 RFQ and such responses are currently being evaluated by a selection committee to short-list proposers in accordance with Section 2-8.2.6 of the County Code for P3 Qualifying Projects; and

WHEREAS, the unsolicited proposer, after the disclosure of its confidential Unsolicited Proposal, did not submit a response to the P3 RFQ by the due date for such responses and thus may not be considered as a responsive proposer to the P3 RFQ; and

WHEREAS, on May 10, 2018, the County Mayor filed a report providing additional information regarding the selection of a site for the construction of the new county civil courthouse and recommending that the Board: (a) reject the Unsolicited Proposal and provide the unsolicited proposer with notice of the County's intended decision in accordance with Section 255.065(15)(b)(1) of the Florida Statutes; (b) proceed with the current P3 RFQ/RFP process on an expedited basis as the County's selected procurement process; and (c) select the Children's Courthouse site for the construction of the new county civil courthouse; and

WHEREAS, prior to the May 15, 2018 meeting of this Board, the County's new consultant for public private partnerships, hired after the removal of KPMG, was not provided complete copies of the submittals for the P3 RFQ process and the Unsolicited Proposal prior to rendering their advice to the County on solicitation methodology; and

WHEREAS, on May 15, 2018 this Board deferred discussion of the procurement of a new county civil courthouse until the June 5, 2018 meeting to allow the Board to consider an action item to select a procurement method for the selection of a vendor to design, build, finance, operate and maintain the new county civil courthouse; and

WHEREAS, this Board desires to overturn the County Mayor's recommendation to reject the Unsolicited Proposal and desires to publish a new solicitation for the same project purpose, the construction of a new county civil courthouse; and

WHEREAS, this Board desires that such solicitation be published in a manner that will allow the current proposers responding to the P3 RFQ to participate without additional unreasonable delays or costs while, at the same time, allowing the unsolicited proposer who has been harmed during the process of review of their proposal to compete on a level playing field with the other proposers; and

WHEREAS, this Board desires that a hybrid solicitation be issued adopting elements of the preferred solicitation methodology of both the County Mayor and the unsolicited proposer; and

WHEREAS, this Board desires that such solicitation be conducted with the highest level of public transparency including, but not limited to, conducting all meetings with any short-listed vendors in publicly noticed and open meetings; and

WHEREAS, this Board desires that such solicitation preserve the benefits of competitive procurement throughout the selection and evaluation process; and

WHEREAS, this Board desires that the County Mayor or County Mayor's designee be directed to conduct this solicitation in an expeditious manner,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board hereby rejects all responses submitted to the P3 RFQ, cancels the current solicitation, and hereby provides notice of the County's intent to reissue a competitive solicitation for the project purpose identified in the Unsolicited Proposal in accordance with the provisions of Section 2-8.2.6 of the County Code and this Resolution, and to permit the responses provided by the P3 RFQ proposers to be utilized in the new solicitation.

Section 2. In accordance with Section 2-8.2.6(3)(a)(v) of the County Code, this Board overturns the County Mayor's recommendation to reject the Unsolicited Proposal. This Board accepts the project purpose identified in the Unsolicited Proposal as the construction of a new county civil courthouse in accordance with the requirements set forth in the Court Master Plan

without the included sale of the 1928 Courthouse which shall be sold or leased through a separate solicitation. As this Board is directing the County Mayor or County Mayor's designee to issue a solicitation for the project purpose as described herein, the Unsolicited Proposal shall remain confidential until a notice of intended decision is released by this Board.

Section 3. The County Mayor or County Mayor's designee is directed to publish a hybrid solicitation for the project purpose identified herein as follows:

- A. The solicitation shall be a request for proposals ("RFP") which shall include the evaluation of both qualification and price. The solicitation shall consist of two phases which will be conducted sequentially. Phase I of the RFP will be based on general qualifications and will result in a short-list of no more than three proposers or teams of proposers to proceed to phase II. Phase II of the RFP shall be based on further elaboration of the qualifications of the short-listed proposers or teams of proposers as well as price. The RFP shall have two submittal deadlines - one for each of the two phases - and will provide that the phase II provisions may be modified by the County until opening of phase II submittals.
- B. For phase I of the RFP, the RFP shall include, among other criteria, the identification of key participants in each proposer team, including the general contractor, lead designer, courthouse consultant (if not the same as the lead designer), proposed operator, and equity members of the finance team. The RFP shall require each proposer to identify: (1) experience; (2) key personnel assigned to the project; (3) approach to providing the services sought; (4) any innovative design ideas or implementation methodologies to both reduce the cost of construction and operation and maintenance of the project; and (5) financial capacity. The Statements of Qualifications submitted

by proposers in response to the County's existing P3 RFQ may be considered upon the consent of said proposers for this RFP and any proposer may enhance their prior submission in accordance with the terms of this solicitation. The requirements of phase I of the RFP shall be drafted to ensure that the Statements of Qualifications submitted in response to the P3 RFQ shall be responsive to the similar areas of evaluation in phase I of the RFP.

- C. The qualitative proposals received in response to phase I of the RFP shall be evaluated, scored and ranked. A maximum of 3 proposers ("Top Ranked") shall be invited to advance to phase II of the RFP.
- D. The County Mayor or County Mayor's designee shall utilize Perez and Perez, currently under contract with Miami-Dade County for this purpose, to complete a design criteria package based on the requirements of the Court Master Plan. In accordance with Florida Statutes § 255.065, this shall be the design criteria package for the solicitation, and shall govern the design and performance parameters of the new county civil courthouse. The design criteria package need not be completed prior to the issuance of the RFP, but must be completed sufficiently in advance of the due date of the phase II submittal for the RFP such that the Top Ranked proposers have sufficient time to familiarize themselves with the design criteria package and prepare a detailed response to phase II of the RFP. The submittal requirements for phase II of the RFP shall be updated after the issuance of the RFP with, at a minimum, the final design criteria package, an outline of a comprehensive agreement, and a pre-development agreement.
- E. The Top Ranked proposers' responses to phase II of the RFP shall be evaluated on, among other criteria, each proposer's: (a) preconstruction fee, stated as a not to exceed

lump sum, which will be the amount necessary for the payment of all consultants in developing the design through the moment of approval of the guaranteed maximum price for the entire project and all preconstruction activities including, but not limited to, environmental studies, surveys, title work and geotechnical studies; (b) the total buy-out price stated as a not to exceed lump sum for the purchase from the developer of all services performed prior to reaching a comprehensive agreement for the purchase of all project costs, including the preconstruction fee, (c) a construction management fee, stated as a percentage of total direct construction costs, which represents the total fee of the contractor for performing the work, and includes all direct cost of the contractor, home office overhead, and profit, (d) a general conditions fee, stated as a percentage of total direct construction costs, which represents the site overhead costs of the work, (e) a surety fee, stated as a percentage of total direct construction costs, representing the cost of bonding and insuring the work, (f) a statement of assumptions and any limitations in response to the County's phase II requirements, (g) any additional innovative design ideas or implementation methodologies to both reduce the cost of construction and operation and maintenance of the project, (h) proposer's approach to delivery of a new civil courthouse and operations and maintenance over a thirty year period, and (i) conceptual plans and renderings. The proposals submitted by the Top Ranked proposers in response to phase II of the RFP would then be evaluated and scored, with greater weight given to the finite price points such as the proposed fees and percentage on fees.

- F. The Top Ranked proposer would be recommended for negotiation with the County, but until a guaranteed maximum price is agreed to and established, the County would be

entitled to negotiate and enter into contract with lower ranked proposers until a successful contract is established.

G. In accordance with Section 2-11.1 and Administrative Order 3-27, the cone of silence would be imposed on the RFP upon its issuance and would not be lifted until the County Mayor makes a recommendation as to a Top Ranked proposer and corresponding contract.

Section 4. The County Mayor or County Mayor's designee is directed to publish such solicitation as expeditiously as possible.

Section 5. The County Mayor or County Mayor's designee is further directed to expeditiously provide the County's consultant for public private partnerships a complete copy of the submittals for the P3 RFQ process and the Unsolicited Proposal so that the consultant may provide fully informed advice to the County.

Section 6. The County Mayor or County Mayor's designee is directed to reject any additional unsolicited proposals for the construction of a new county civil courthouse pursuant to Section 2-8.2.6 of the County Code without further evaluation.

Section 7. The County Mayor or County Mayor's designee shall provide reports every thirty (30) days from the effective date of this Resolution on the status of the procurement of the new county civil courthouse until a recommendation to award a contract for such construction is submitted by the County Mayor for approval to this Board. Such reports shall be placed on agendas of the Board of County Commissioners pursuant to Ordinance No. 14-85.

The Sponsor of the foregoing resolution is Commissioner Sally A. Heyman. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by _____ and upon being put to a vote, the vote was as follows:

Esteban L. Bovo, Jr., Chairman	
Audrey M. Edmonson, Vice Chairwoman	
Daniella Levine Cava	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Rebeca Sosa
Sen. Javier D. Souto	Xavier L. Suarez
District 5 - Vacant	

The Chairperson thereupon declared the resolution duly passed and adopted this 5th day of June, 2018. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA

BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Oren Rosenthal
Hugo Benitez
Monica Rizo