

## **Amendment to the DeKalb County Purchasing Policy**

### **Policy to Govern Public-Private Facilities and Infrastructure Partnerships**

#### **PART I. Purpose and Scope**

The Public-Private Facilities and Infrastructure Act of 2015 provides a process for local governments to partner with private entities for the development of projects for public use if the public entities determine there is a public need for such projects and that private involvement may provide such projects to the public in a timely or cost-effective fashion.

The following policy shall govern the process for receiving, reviewing, and approving unsolicited proposals for qualifying projects meeting a public purpose or public need by DeKalb County.

In the event of any conflict between these Regulations and the PPFIA, the terms of the PPFIA shall control.

#### **PART II. Terms and Definitions**

The words defined in this Part shall have the meanings set forth therein wherever they appear in these Regulations. Terms which are not specifically defined herein shall have their usual and customary meanings.

“**CEO**” means the Chief Executive Officer of DeKalb County or his or her designee.

“**Comprehensive agreement**” means the written agreement between the private entity and the DeKalb County as required pursuant to the PPFIA.

“**Develop**” or “**development**” means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand.

“**Interim agreement**” means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

“**Private entity**” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

“**PPFIA**” means the Public-Private Facilities and Infrastructure Act of 2015 (O.C.G.A. Section 36-91-110, *et seq.*), as it now exists or as it may be hereafter amended.

“**Qualifying Project**” means any project selected in response to a request from DeKalb County or submitted by a private entity as an unsolicited proposal in accordance with the PPFIA and subsequently reviewed and approved by DeKalb County as meeting a public purpose or public need. A “Qualifying Project” shall not include and shall have no application to any project involving:

- (1) The generation of electric energy for sale pursuant to Chapter 3 of Title 46 of the Official Code of Georgia Annotated;
- (2) Communications services pursuant to Articles 4 and 7 of Chapter 5 of Title 46 of the Official Code of Georgia Annotated;
- (3) Cable and video services pursuant to Chapter 76 of title 36 of the Official Code of Georgia Annotated; or
- (4) Water reservoir projects as defined in paragraph (10) of O.C.G.A. § 12-5-471, which shall be governed by Article 4 of Chapter 91 of Title 36 of the Official Code of Georgia Annotated.

“**Revenue**” means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project.

“**Unsolicited Proposal**” means a written proposal for a qualifying project that is received by DeKalb County and is not in response to any request for proposal for a qualifying project issued by DeKalb County.

“**State**” means the State of Georgia.

## **PART II. Enactment.**

### **A. Time Period for Receiving Unsolicited Proposals and Format for Submissions.**

(1) Time Period. Unsolicited proposals for qualifying projects may be received by DeKalb County throughout the calendar year. Such unsolicited proposals shall be in writing and shall be delivered to the Chief Procurement Officer with a copy to the Chief Operating Officer. Should a proposer have any questions, please contact the Chief Procurement Officer via email at [mnbutler@dekalbcountyga.gov](mailto:mnbutler@dekalbcountyga.gov).

(2) Format for Submissions. Unsolicited proposals shall contain, at a minimum, the following information:

- (a) a project description,
- (b) a project feasibility statement,
- (c) a proposed project schedule,
- (d) a project financing plan,
- (e) a business case statement that shall include a basic description of any direct and indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data,
- (f) a description of any anticipated public support or opposition,
- (g) qualifications and experience,
- (h) names and addresses of persons who may be contacted,
- (i) an affidavit stating that the proposer understands that any proposal may be used as the basis for a subsequent solicitation to obtain the proposed services, and

(j) any additional information as may be reasonably requested to comply with the requirements of the PPFIA.

(k) Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by DeKalb County. Such proposals may also include any additional pertinent information as determined by the proposer.

(3) Only proposals complying with the requirements of these policies and the PPFIA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format should be considered by DeKalb County for further review. If any information necessary to make a meaningful evaluation is missing, such information can be requested from the proposer. Unsolicited proposals are subject to the Open Records Act.

The format and information to be included in any unsolicited proposal are as follows:

(a) Project Description

(i) Provide a description of the project, including the location of the project, the conceptual design of such facility or facilities, and a conceptual plan for the provision of services or technological infrastructure.

(ii) Identify and fully describe the scope of work to be performed by the proposer with enough detail to allow a full analysis.

(iii) Identify and fully describe any work to be performed by DeKalb County.

(iv) Identify any anticipated adverse social, economic, and environmental impacts of the project.

(v) Identify the projected positive social, economic, and environmental impacts of the project.

(vi) State assumptions related to ownership, legal liability, law enforcement, and operation of the project and the existence of any restrictions on DeKalb County's use of the project.

(b) Project Feasibility Statement

(i) A feasibility statement that includes:

(A) The method by which the private entity proposes to secure any necessary property interests required for the project;

(B) A list of all permits and approvals required for the project from local, state, or federal agencies; and

(C) A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;

(ii) Provide a list of any contingencies that must occur for the project to be successful.

(iii) Provide a list of any other assumptions relied on for the project to be successful.

(iv) Provide information relative to ongoing maintenance and operational costs after the project is completed.

(c) Project Schedule

(i) A schedule for initiation, construction, and completion of the project to include the proposed major responsibilities and timeline for activities to be performed by both DeKalb County and the private entity.

(ii) A schedule for obtaining all federal, state, and local permits and approvals required for the project.

(d) Project Financing Plan

(i) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; and description of user fees, lease payments and other service payments over the term of the proposed comprehensive agreement (as defined in the PPFIA); and a methodology and circumstances for changes to such user fees, lease payments and other service payments over time.

(ii) Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.

(iii) Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of DeKalb County's credit or revenue.

(iv) Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

(4) The unsolicited proposal may include financing options, including the imposition of user fees, lease payments or other service payments. Such financing arrangements may include the issuance of debt instruments, equity, or other securities or obligations. Depending on DeKalb County's authority and the circumstances of each transaction, financing options might also include the use of special purpose entities, sale and lease back transactions, enhanced use leasing, development agreements, conduit financing, and other methods allowed by law. Notwithstanding the foregoing, DeKalb County shall not loan money to a private entity in order to finance all or a portion of the qualifying project.

(a) Business Case Statement

(i) A business case statement that shall include a basic description of any direct or indirect benefits that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data.

(ii) Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state. Project benefits to be considered are those occurring during the construction, renovation, expansion, or improvement phase and during the life cycle of the project.

(iii) Describe the anticipated significant benefits to the community, region, or state, including anticipated benefits to the economic condition of DeKalb County and whether the project is critical to attracting or maintaining competitive industries and businesses to DeKalb County or the surrounding region.

(iv) Provide relevant proposer cost, quality, methodology, and process for identifying the project and time frame data.

(b) Contacts

(i) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal.

(ii) Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach, and how each partner and major subcontractor in the structure fits into the overall team.

(iii) Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.

**B. Procedures for the Financial Review and Analysis of an Unsolicited Proposal.**

(1) Upon receipt of an unsolicited proposal, the CEO shall:

(a) Send the proposer an acknowledgement of receipt of the unsolicited proposal and provide that DeKalb County will conduct a review of that proposal and either

(i) reject the unsolicited proposal; or

(ii) accept the unsolicited proposal and seek competing bids for the proposed project as required pursuant to these Regulations and the PPFIA.

(b) Establish a new committee or select an existing committee (the “Evaluation Committee”) to review the unsolicited proposal. If a new committee is established, it should be composed of no less than three individuals with diverse skill sets to adequately review the proposal;

(c) Decide whether it will engage independent advisors, as provided in Section C below, to assist (and not be a member of) the Evaluation Committee in its review of the unsolicited proposal, which may include an attorney, financial advisor, architectural and/or engineering consultant or other advisers or consultants; and

(d) For those unsolicited proposals that contemplate development or redevelopment of a qualifying project on land owned in whole or in part by DeKalb County, the CEO shall provide a copy of such unsolicited proposal to the DeKalb County Board of Commissioners along with the names of the individuals comprising the Evaluation Committee for such unsolicited proposal.

(2) The Evaluation Committee, together with any independent advisors, shall perform the following financial review and analysis of the unsolicited proposal:

(a) A cost-benefit analysis;

(b) Evaluation of the public need for or benefit derived from the qualifying project;

(c) Evaluation of the estimated cost of the qualifying project for reasonableness in relation to similar facilities;

(d) Evaluation of the source of funding for the project;

(e) Consideration of plans to ensure timely development or operation;

(f) Evaluation of risk sharing, including cost or completion guarantees, added value, or debt or equity investments by the private entity;

(g) Consideration of any increase in funding, dedicated revenue source, or other economic benefit that would not otherwise be available; and,

(h) Consideration of any comments or concerns submitted by any DeKalb County Commissioner(s) in response to the unsolicited proposal.

(3) After reviewing the proposal, the Evaluation Committee shall make a recommendation to the CEO to reject or accept the unsolicited proposal.

(4) Discussions between the CEO and the proposer about the need for infrastructure improvements shall not limit the ability of DeKalb County to later determine to use standard procurement procedures to meet its infrastructure needs. The CEO retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

**C. Criteria for Identifying and Appointing Independent Advisors.**

(1) Unsolicited proposals which have technical, complex, or specialized information may require additional support from one or more third-party independent advisors to assist in their evaluation and review. Independent advisors may include attorneys, financial advisors, engineering consultants or other advisers or consultants as determined by the CEO, in his or her sole discretion, to be reasonably required to review any unsolicited proposal. Independent advisors shall have no affiliation with the private entity submitting an unsolicited proposal.

(2) A private entity assumes all risk in submission of an unsolicited proposal, and DeKalb County shall not incur any obligation to reimburse a private entity for any costs, damages, or loss of intellectual property incurred by a private entity in the creation, development, or submission of a proposal or unsolicited proposal for a qualifying project.

**D. Procedures for Determining Release of Information in Unsolicited Proposal.**

DeKalb County may, in its sole discretion, use any portion of an unsolicited proposal in preparing a request for proposal as described in paragraph E below. Unsolicited proposals are subject to the Open Records Act.

**E. Request for Proposals.**

(1) Within 60 days of receipt of a recommendation from the Evaluation Committee as provided in paragraph B(3) above, the CEO shall decide whether to approve or reject such unsolicited proposal. If the CEO approves the unsolicited proposal, the Department of Purchasing and Contracting shall seek competing proposals for the qualifying project by issuing a request for proposal for not less than 90 days and that in all other aspects complies with DeKalb County's Purchasing Policy.

(2) The Department of Purchasing and Contracting shall notify the Board of Commissioners upon any issuance of a request for proposals being issued in response to any such unsolicited proposal.

(3) The request for proposal shall include the criteria for selecting among competing proposals as provided in paragraph G below.

(4) During evaluation, the Department of Purchasing and Contracting may seek written clarification from any proposer regarding the contents of the proposer's response. A request for written clarification may be made when a proposer's response contains conflicting information or is so ambiguous that it is possible for a reasonable person to attribute different meanings to the ambiguous portion of the proposer's response. A request for written clarification may not be used to negotiate (i.e., request the supplier to revise or improve the proposer's response). Written clarifications received from the supplier will become part of that proposer's response.

**F. Procedures for Posting and Publishing Notice of the Opportunity to Offer Competing Proposals.**

(1) Notices for requests for proposals for qualifying projects shall be posted by DeKalb County in a consistent manner with other notices posted for public works bidding as provided by O.C.G.A. § 36-91-1 *et seq.*

(2) Notices for requests for proposals that are advertised in the legal organ shall be advertised a minimum of two times, with the first advertisement occurring at least ninety days prior to the deadline for receipt of competing proposals. The second advertisement shall follow no earlier than six weeks from the first advertisement.

(3) Notices for requests for proposals that are advertised solely on the Internet shall be posted continuously at least ninety days prior to the deadline for receipt of competing proposals. Inadvertent or unintentional loss of Internet service during the advertisement period shall not require the contract award or bid or proposal opening to be delayed.

**G. Procedures for Processing, Review, and Consideration of Competing Proposals.**

(1) After the deadline for the receipt of competing proposals, the Department of Purchasing and Contracting shall reconvene the Evaluation Committee to review, evaluate, and score the responses.

(2) The criteria to be used in the evaluation of competing proposals for a qualifying project shall be determined by the Evaluation Committee prior to submitting a request for proposal for such qualifying project. The Evaluation Committee shall establish a scoring matrix for review of responses to a request for proposal. The scoring matrix can be weighted in any fair manner to adequately assess the critical elements of a proposal, with the most likely highest weighted categories being (a) project financing and (b) qualifications and experience.

(3) There are several factors that the Evaluation Committee may use when evaluating and selecting an unsolicited proposal, including, but not limited to, the following:

(a) Qualifications and Experience: Factors to be considered to determine whether the proposer possesses the requisite qualifications and experience include:

- (i) Experience with similar projects;
- (ii) Demonstration of ability to perform work;
- (iii) Leadership structure;
- (iv) Project manager's experience;
- (v) Management approach;
- (vi) Financial condition; and
- (vii) Project ownership.

(b) Project Characteristics: Factors to be considered in determining the project characteristics include:

- (i) Project definition;
- (ii) Proposed project schedule;
- (iii) Operation of the project;
- (iv) Technology; technical feasibility;
- (v) Conformity to laws, regulations, and standards;
- (vi) Environmental impacts;
- (vii) Condemnation impacts;
- (viii) State and local permits; and
- (ix) Maintenance of the project.

(c) Project Financing: Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

- (i) Cost and cost benefit to DeKalb County;
- (ii) Financing and the impact on the debt burden of DeKalb County or appropriating body;
- (iii) Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
- (iv) Opportunity costs assessment;
- (v) Estimated cost;
- (vi) Life-cycle cost analysis;
- (vii) The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
- (viii) Such other items as the Evaluation Committee deems appropriate.

(d) In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of DeKalb County, or if financing such a project may impact DeKalb County's debt rating or financial position, DeKalb County may select its own finance team, source, and financing vehicle.

(e) Project Benefit and Compatibility: Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

- (i) Community benefits;
- (ii) Community support or opposition, or both;
- (iii) Public involvement strategy;
- (iv) Compatibility with existing and planned facilities; and
- (v) Compatibility with local, regional, and state economic development efforts.

(f) Other Factors: Other factors that may be considered in the evaluation and selection of competing proposals include:

- (i) The proposed cost of the qualifying project;
- (ii) The general reputation, industry experience, and financial capacity of the private entity;
- (iii) The proposed design of the qualifying project;
- (iv) The eligibility of the project for accelerated documentation, review, and selection;

- (v) Local citizen and government comments;
  - (vi) Benefits to the public, including financial and nonfinancial;
  - (vii) The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
  - (viii) The private entity's plans to employ local contractors and residents;
  - (ix) The recommendation of a committee of representatives of members of DeKalb County and the appropriating body which may be established by the CEO to provide advisory oversight for the project; and
  - (x) Other criteria that the CEO deems appropriate.
- (4) Upon completion of the processing, review, and consideration of competing proposals, a recommendation of award shall be made to the Board of Commissioners in accordance with the other provisions of the DeKalb County Purchasing Policy.

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