

## Administrative Order



**Administrative Order No.:** 3-65

**Title:** UNSOLICITED PROPOSALS

**Ordered:** 3/29/2022

**Effective:** 3/29/2022

### **AUTHORITY:**

The Miami-Dade County Home Rule Charter, including among others, Sections 2.02A and 5.02; Section 255.065, Florida Statutes; Section 2-8.2.6 of the Code of Miami-Dade County, Florida; and Administrative Order 1-1, Administrative Orders and Implementing Orders.

### **POLICY:**

It is the policy of Miami-Dade County to accept Unsolicited Proposals for Qualifying Projects pursuant to Section 2-8.2.6 of the Code of Miami-Dade County and in accordance with Section 255.065, Florida Statutes.

### **SCOPE:**

The purpose of this Administrative Order ("AO") is to establish procedures governing the operation, roles and responsibilities of County administrative departments to process Unsolicited Proposals received by the County for Qualifying Projects. This AO sets forth processes and protocols for County personnel to give effect to the intent of the policy. The provisions of this AO shall apply to all County departments.

### **RESPONSIBILITY:**

This AO establishes the Internal Services Department (ISD), the central procurement agency for the County, as the entity responsible for managing the unsolicited proposal process. ISD shall establish and maintain procurement policies and standard documents, such as guidelines for use by County departments, and shall be responsible for training County personnel on the Unsolicited Proposal process.

### **DEFINITIONS:**

The word "day" means calendar days.

The words "Miami-Dade County Code" refers to Section 2-8.2.6 of the Code of Miami-Dade County, Florida entitled "Public-private partnerships; unsolicited proposals."

The words "Non-P3 Qualifying Project" mean those Qualifying Projects approved for publication via the unsolicited proposal process but are not deemed a P3 Qualifying Project as further defined and set forth in the Miami-Dade County Code.

The words "P3 Qualifying Project" mean a Qualifying Project which the Board of County Commissioners (Board) determines is appropriate for a Public-Private Partnership (P3) in the Authorizing Resolution as further defined and set forth in the Miami-Dade County Code.

The words “Qualifying Project” mean a facility or project that serves a public purpose, as further defined in Section 255.065, Florida Statutes. A Qualifying Project will involve the building, upgrading, operating, ownership, or financing of facilities.

The words “Unsolicited Proposal” mean a proposal, as defined in Section 255.065, Florida Statutes, submitted to Miami-Dade County for a Qualifying Project with defined detail beyond a conceptual level.

The words “User Department” mean the County department that owns the property that is the subject of the proposed Qualifying Project and/or that would have oversight of the proposed Qualifying Project.

**PROCUREMENT PROCEDURES AND RECEIPT OF AN UNSOLICITED PROPOSAL:**

It is the responsibility of ISD to maintain procurement procedures for the compliance assessment, initial review, and evaluation of an Unsolicited Proposal. ISD shall publish relevant information for the public on the County’s Unsolicited Proposal process on the Miami-Dade County website, including 1) relevant State of Florida and Miami-Dade County legislation, and 2) how and where to submit an Unsolicited Proposal to the County.

ISD shall serve as the central depository and recipient for any Unsolicited Proposal received by a User Department. The User Department, entity or individual under the purview of the County Mayor which receives an Unsolicited Proposal shall within three (3) days of receipt notify the ISD Director, or designee, of the receipt thereof and shall provide a copy of the Unsolicited Proposal to the ISD Director. If the User Department has not yet been provided a copy of the Unsolicited Proposal, ISD shall provide a copy of the Unsolicited Proposal to the Director of the User Department. ISD shall notify the County Mayor that an Unsolicited Proposal was received. ISD shall provide a copy of the Unsolicited Proposal to the Office of the Inspector General and the Commission on Ethics and Public Trust.

The ISD Director, or designee, shall assign personnel to manage the Unsolicited Proposal process. The assigned ISD personnel shall, at a minimum, provide guidance to the User Department on the established procurement procedures, including any applicable confidentiality or public records exemptions in existence or known, and maintain records on evaluation decisions to ensure consistency, integrity and fairness in the treatment of Unsolicited Proposals. Should a consultant or advisor be warranted to assist with the evaluation of the Unsolicited Proposal, ISD will assist in the hiring of the consultant or advisor for the User Department following the applicable County contracting procedures. The User Department will appoint personnel with the appropriate administrative, technical and/or financial expertise to assist in the review and evaluation of the Unsolicited Proposal and to work with ISD on processing the Unsolicited Proposal to meet the timelines established per the Miami-Dade County Code.

**COMPLIANCE ASSESSMENT OF AN UNSOLICITED PROPOSAL:**

ISD and the User Department shall work together to assess whether an Unsolicited Proposal is compliant with the submission requirements. The County Attorney’s Office will be consulted regarding compliance with the applicable Miami-Dade County Code provisions, and on any other requirements, as needed.

The steps to determine if the Unsolicited Proposal has met the submission requirements are outlined below:

**1. Department Responsibilities**

ISD and the User Department will jointly assess the Unsolicited Proposal for compliance with the submission requirements including confirmation that the initial application fee and all material and information set forth per Miami-Dade County Code is included in the Unsolicited Proposal. ISD will provide guidance and materials for this compliance assessment, such as a checklist of the mandatory items to inform the County personnel performing the assessment. ISD will document the results of the compliance assessment.

**2. Notification of Missing Information/Opportunity to Cure**

If the Unsolicited Proposal does not meet Miami-Dade County Code requirements, ISD will notify the proposer in writing, including advising the proposer of any missing information. If the deficiency is due to missing information, the proposer will be afforded time to cure the proposal deficiency by providing the required information, within 7 days or such shorter period as reasonably determined by the County. If the information is not provided by the period specified, ISD shall notify the proposer that the submission has failed to meet the requirements for an Unsolicited Proposal and cannot be considered. If the submission fails to meet the requirements for an Unsolicited Proposal, the initial application fee will be returned to the proposer.

**3. Proposer Notification**

Once an Unsolicited Proposal meets the submission requirements set forth in the Miami-Dade County Code, it shall be considered complete and will proceed to the initial review phase. The timeline for the initial review phase, as specified per the Miami-Dade County Code, starts when the Unsolicited Proposal is considered complete. ISD will notify the proposer in writing that the proposal is moving to the initial review phase to determine whether to evaluate the Unsolicited Proposal.

**INITIAL REVIEW TO DETERMINE WHETHER TO EVALUATE:**

Within the specified timeframe per the Miami-Dade County Code, the County shall complete the initial review of the Unsolicited Proposal to determine whether the Unsolicited Proposal warrants further evaluation.

The steps for this initial review are outlined below:

**1. Department Responsibilities**

ISD and the User Department shall work together to effectuate the initial review of the Unsolicited Proposal. ISD will provide guidance on the Unsolicited Proposal process and materials for the review.

**2. Purpose**

This initial review shall establish whether there is an interest by the User Department to proceed with the proposed Qualifying Project, determine if sufficient

information was provided for the County to devote further resources during the next phase to evaluate the Unsolicited Proposal, and explore whether there are any material restrictions or impediments to proceeding with the proposed Qualifying Project.

Examples of factors the User Department would consider, among other items, are whether a) the proposed Qualifying Project makes sense (e.g., the scope and terms can be understood, the County would consider developing the project, and the project timing works for the County); b) there are any other alternative or competing plans or uses for the subject property; c) there are any legal constraints or impediments; d) there are any public ownership considerations for the Qualifying Project; e) it aligns with the County's strategic plan, User Department's mission and/or typical services, and the County's environmental sustainability policies and goals; and f) the Qualifying Project has a reasonable chance of successful completion.

### **3. Recommendation to the County Mayor**

After this initial review of the Unsolicited Proposal, the User Department shall recommend to the County Mayor whether to evaluate the Unsolicited Proposal.

### **4. County Mayor Determination**

If the County Mayor elects to evaluate an Unsolicited Proposal, the initial application fee will be deposited for the County's use per Miami-Dade County Code and the County personnel shall proceed to the evaluation phase.

If the County Mayor elects not to evaluate an Unsolicited Proposal, the initial application fee must be returned. For any Unsolicited Proposal the County Mayor has elected not to evaluate, ISD shall prepare and submit to the County Mayor a report for transmittal to the Board, as required per Miami-Dade County Code. Note that notwithstanding the County Mayor's election not to evaluate an Unsolicited Proposal, the Board may direct the County Mayor to evaluate such Unsolicited Proposal.

### **5. Proposer Notification**

ISD shall notify the proposer in writing of the County Mayor's determination whether to evaluate the Unsolicited Proposal.

### **EVALUATION OF AN UNSOLICITED PROPOSAL:**

If the County Mayor elects to evaluate an Unsolicited Proposal or the Board directs the County Mayor to evaluate an Unsolicited Proposal, such evaluation shall be completed within the specified timeframe per Miami-Dade County Code. If additional time is needed to complete an evaluation, the User Department shall prepare and submit such request to the County Mayor for approval and transmittal to the Board.

The steps to evaluate an Unsolicited Proposal are outlined below:

**1. Department Responsibilities**

ISD and the User Department shall work together to effectuate the timely, comprehensive evaluation of the Unsolicited Proposal. The evaluation criteria may include scientific, technical, operational and financial factors, among other factors, as well as criteria related to public interest such as need, socioeconomic impact, community equity, and the County's goals and objectives. ISD will provide guidance and materials for the evaluation, such as a checklist to inform the evaluators of the typical and/or suggested evaluation items. The User Department will document the evaluation conducted.

**2. Costs Covered by the Application Fee**

The initial application fee will be used to cover the County's costs to evaluate the Unsolicited Proposal per Miami-Dade County Code. If the initial application fee does not cover the County's costs, ISD must request in writing the additional amounts required. The County must stop its review of the Unsolicited Proposal if the proposer fails to pay the additional amount per the deadline established in the Miami-Dade County Code.

**3. Use of Consultants and Advisors**

The evaluation may include seeking advice of County personnel and/or outside advisors or consultants using County contracts.

**4. Analysis of the Project**

The analysis to be completed for a Qualifying Project will depend on the project proposed. The areas of analysis may include, but are not limited to, the operational impacts to the County; cost to the County; the project's contributions to the County's community vision; initiatives such as the environment, economy, engagement and equity priorities in the Thrive305 Action Plan; and Values-Based procurement consistent with Board policies.

The evaluation shall include a financial analysis. A typical financial analysis will include, at a minimum, a review of the cost of the Qualifying Project, proposed funding sources, and financial viability. If the User Department is considering, at this point, that the unsolicited proposal process may result in recommending to the Board proceeding with a P3 Qualifying Project, then a Value for Money (VfM) Analysis should be performed. A VfM Analysis is a process used to compare the financial impacts of a P3 method of delivery with the traditional public delivery method. The analysis of the delivery method may include separating the project components into individual projects. The analysis should demonstrate the cost-effectiveness and overall public benefit before the procurement process is initiated. ISD will assist in obtaining a financial consultant to perform the analysis for the User Department following the applicable County contracting procedures. Note that if the Board adopts an Authorizing Resolution for a P3 Qualifying Project, then a VfM Analysis will be required prior to publication of a solicitation.

**5. Property Restrictions**

If the Unsolicited Proposal involves the use, development, lease or management of County-owned real property, or acquisition of non-County property, the User Department, in conjunction with ISD, shall order title work and ascertain any restrictions or obligations set forth elsewhere such as grants or contracts that may restrict the use of the property. The User Department shall discuss the results of the title work and any other restrictions or obligations with the applicable County department.

**6. Public Input**

If the Unsolicited Proposal is offering a Qualifying Project for public infrastructure or a facility, the User Department personnel shall seek public input on the Qualifying Project, as applicable, and will take this input into consideration during its evaluation. The User Department should engage the County's Communications and Customer Experience Department and each local municipality that the Qualifying Project will be located in, if applicable, for assistance with garnering the public input.

**7. Small Business Participation**

The evaluation shall include a review of how the proposed Qualifying Project would benefit small and community based contractors within the County and the proposed scope of each County certified Small Business Enterprise (SBE) proposed to participate in the Qualifying Project. As part of this evaluation, ISD will provide a copy of the Unsolicited Proposal to its Small Business Development Division (SBD). SBD will review the information and confirm whether the proposed firms are certified SBEs and whether the proposed scope of work can be performed by SBE firms.

SBD may provide recommendations, if any, to maximize SBE participation should the project move forward. The SBD findings shall be considered by ISD and the User Department evaluating the Unsolicited Proposal.

**RECOMMENDATION RESULTING FROM EVALUATION:**

At the conclusion of the evaluation phase, a recommendation will be submitted to the Board for a final determination.

The steps to prepare and submit to the Board the recommendation on an Unsolicited Proposal are outlined below:

**1. Recommendation to the County Mayor**

The User Department shall be responsible for recommending to the County Mayor whether to (1) prepare a solicitation for the same project purpose as the Unsolicited Proposal, or (2) reject the Unsolicited Proposal or take any other action as may be appropriate. The User Department's recommendation to the County Mayor shall include the SBD findings and recommendations.

If the User Department recommends preparing a solicitation for the same project purpose as the Unsolicited Proposal, such recommendation shall include whether the solicitation should be a Non-P3 Qualifying Project or P3 Qualifying Project.

This recommendation shall be provided to the County Mayor no later than 15 days before the County Mayor's deadline to make a recommendation. This deadline may differ depending on the recommendation per the Miami-Dade County Code.

**2. County Mayor Recommendation**

The County Mayor's recommendation on the Unsolicited Proposal to proceed or not, including a justification for the recommendation, shall be submitted to the Chairperson of the Board for placement on the appropriate agenda of the Board.

If the County Mayor recommends publication of a solicitation for the same project purpose as the Unsolicited Proposal, such recommendation shall include whether the project will be a Non-P3 Qualifying Project or P3 Qualifying Project, along with a copy of the solicitation if required per Miami-Dade County Code. A Qualifying Project can only be a P3 Qualifying Project if the Board adopts an Authorizing Resolution (as such term is defined in the Miami-Dade County Code).

**3. Proposer Notification**

ISD shall notify the proposer in writing of the County Mayor's recommendation.

**PUBLICATION OF A SOLICITATION:**

If the Board directs or approves the publication of a solicitation for the same project purpose as the Unsolicited Proposal, ISD or the User Department shall manage the solicitation process, in accordance with established policies and procedures in applicable law for the type of solicitation directed by the Board. The User Department shall prepare the County's scope of services to be included in the solicitation.

**ETHICS:**

County employees must discharge their duties in processing an Unsolicited Proposal impartially to assure fair access to governmental procurement. County employees must observe the ethical standards prescribed in Section 2-11.1 of the Code and the Conflict of Interest and Code of Ethics Ordinance.

County Mayor