

## CHAPTER 2024-96

### Committee Substitute for House Bill No. 781

An act relating to unsolicited proposals for public-private partnerships; amending s. 255.065, F.S.; authorizing, rather than requiring, a responsible public entity to publish notice of an unsolicited proposal for a qualifying project in a specified manner and that other proposals for the same project will be accepted; authorizing a responsible public entity to proceed with an unsolicited proposal for a qualifying project without a public bidding process if the responsible public entity holds a public meeting that meets certain requirements and holds a subsequent public meeting at which the responsible public entity makes a certain determination; requiring the responsible public entity to consider certain factors; requiring the responsible public entity to publish a certain report in the Florida Administrative Register for a certain period of time in certain circumstances; revising certain determinations that a responsible public entity must make before approving a comprehensive agreement; conforming provisions to changes made by the act; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present paragraphs (c) through (f) of subsection (3) of section 255.065, Florida Statutes, are redesignated as paragraphs (e) through (h), respectively, new paragraphs (c) and (d) are added to that subsection, and paragraph (b) and present paragraph (d) of that subsection and paragraph (c) of subsection (5) of that section are amended, to read:

255.065 Public-private partnerships.—

(3) **PROCUREMENT PROCEDURES.**—A responsible public entity may receive unsolicited proposals or may solicit proposals for a qualifying project and may thereafter enter into a comprehensive agreement with a private entity, or a consortium of private entities, for the building, upgrading, operating, ownership, or financing of facilities.

(b)1. The responsible public entity may request a proposal from private entities for a qualifying project or, if the responsible public entity receives an unsolicited proposal for a qualifying project and the responsible public entity intends to enter into a comprehensive agreement for the project described in the unsolicited proposal, the responsible public entity may ~~shall~~ publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the responsible public entity has received a proposal and will accept other proposals for the same project.

2. The timeframe within which the responsible public entity may accept other proposals shall be determined by the responsible public entity on a project-by-project basis based upon the complexity of the qualifying project

and the public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. If approved by a majority vote of the responsible public entity's governing body, the responsible public entity may alter the timeframe for accepting proposals to more adequately suit the needs of the qualifying project. A copy of the notice must be mailed to each local government in the affected area.

(c) The responsible public entity may proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process if the responsible public entity holds a duly noticed public meeting at which the proposal is presented and affected public entities and members of the public are able to provide comment and at a second duly noticed public meeting determines that the proposal is in the public's interest. In making the public interest determination, the responsible public entity must consider all of the following factors:

1. The benefits to the public.
2. The financial structure of and the economic efficiencies achieved by the proposal.
3. The qualifications and experience of the private entity that submitted the proposal and such entity's ability to perform the project.
4. The project's compatibility with regional infrastructure plans.
5. Public comments submitted at the meeting. The responsible public entity must provide a statement that explains why the proposal should proceed and addresses such comments.

(d) If the responsible public entity decides to proceed with an unsolicited proposal without engaging in a public bidding process, the responsible public entity must publish in the Florida Administrative Register for at least 7 days a report that includes all of the following:

1. The public interest determination required under paragraph (c).
2. The factors considered in making such public interest determination.
3. The responsible public entity's findings based on each considered factor.

(f)(d) Before approving a comprehensive agreement, the responsible public entity must determine that the proposed project:

1. Is in the public's best interest, if the proposal was solicited. If the proposal was unsolicited, the responsible public entity must determine that the proposed project has been determined to be in the public's interest in accordance with paragraph (c).

2. Is for a facility that is owned by the responsible public entity or for a facility for which ownership will be conveyed to the responsible public entity. For a proposed project that was unsolicited, if ownership will not be conveyed to the responsible public entity within 10 years after initial public operation begins, the public benefits apart from ownership must be identified and stated by the responsible public entity in the public interest determination required under paragraph (c).

3. Has adequate safeguards in place to ensure that additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the responsible public entity.

4. Has adequate safeguards in place to ensure that the responsible public entity or private entity has the opportunity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.

5. If the proposal was solicited, will be owned by the responsible public entity upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

(5) PROJECT QUALIFICATION AND PROCESS.—

(c) After the public notification period has expired in the case of an unsolicited proposal that is submitted and noticed for public bidding, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer and negotiate with the second-ranked or subsequent-ranked firms, in the order consistent with this procedure. If only one proposal is received, the responsible public entity may negotiate in good faith, and if the responsible public entity is not satisfied with the results of the negotiations, the responsible public entity may terminate negotiations with the proposer. Notwithstanding this paragraph, the responsible public entity may reject all proposals at any point in the process until a contract with the proposer is executed.

Section 2. This act shall take effect July 1, 2024.

Approved by the Governor April 15, 2024.

Filed in Office Secretary of State April 15, 2024.