Town of Lauderdale-By-The-Sea

Workshop Town Commission

Agenda

Wednesday, May 7, 2025

5:00 PM

Jarvis Hall 4505 N. Ocean Drive
www.Lauderdalebythesea-fl.gov

LAUDERDALE-BY-THE-SEA TOWN COMMISSION

Mayor Edmund Malkoon
Vice Mayor Randy Strauss
Commissioner Richard DeNapoli
Commissioner John A. Graziano
Commissioner Theo Poulopoulos

Linda Connors, Town Manager
Susan Trevarthen, Town Attorney
Katrina Adler, Town Clerk

Workshop Town Commission

Wednesday, May 7, 2025, 5:00 PM
Jarvis Hall 4505 N. Ocean Drive

1. **CALL TO ORDER, MAYOR EDMUND MALKOON**

2. **PLEDGE OF ALLEGIANCE TO THE FLAG**

3. **PUBLIC COMMENTS**

4. **DISCUSSION ITEM**

   4.a. Exploring P3 Model for Redevelopment of Town Properties

5. **ADJOURNMENT**

THE TOWN OF LAUDERDALE-BY-THE-SEA WILL FURNISH APPROPRIATE AUXILIARY AIDS AND SERVICES NECESSARY TO AFFORD INDIVIDUALS AN EQUAL OPPORTUNITY TO PARTICIPATE IN MEETINGS OF THE TOWN COMMISSION. IN ACCORDANCE WITH THE AMERICANS WITH DISABILITIES ACT AND FLORIDA STATUTE 286.26, PERSONS WITH DISABILITIES NEEDING SPECIAL ACCOMMODATION TO PARTICIPATE IN THIS PROCEEDING

SHOULD CONTACT THE TOWN CLERK NO LATER THAN TWO (2) DAYS PRIOR TO THE MEETING AT (954) 640-4200 FOR ASSISTANCE.

IF ANY PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE TOWN COMMISSION WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH MEETING OR HEARING, HE/SHE WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSES MAY NEED TO ENSURE THAT A VERBATIM RECORDING OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

PROCEDURES FOR PUBLIC COMMENTS:
Public Comments may address issues that are not on this meeting's agenda, but should relate to the business of the Town, and should not contain personal attacks. If your comment requires follow up, the Town Manager will have a staff person respond to your concerns, and will advise us of the outcome.

The Town Clerk will read off the names of those who have signed up to speak. When your name is called, please come to the podium, state your name for the record, and indicate whether you are a Town resident. Do not state your address. You have up to three minutes to make your comments, but there is no requirement to use the entire time. If you wish to address a particular Commissioner or member of Town Administration, please do so by use of their title.

If you wish to approach the Commission dais to hand out a document or for some other reason, please request permission and state your reason for doing so. All documents to be provided to the Commission should be handed to the Town Clerk for distribution.

These procedures have been developed to assure that the Town Commission meeting time is efficiently used, and that meetings are conducted in a polite and respectful manner. More information on the decorum rules for Town Commission meetings is available in Section 2-23 of the Town Code of Ordinances.

INVOCATION:
The Invocation before each Town Commission meeting is a voluntary service of a private citizen, offered to serve the spiritual needs of the members of the Town Commission and solemnize the meeting. It is not intended to be an opportunity to advance or disparage one faith or belief over another. The views expressed in the Invocation have not been previously reviewed by the Town and do not necessarily represent the beliefs of any Town employee or official. No person is required to be present at or participate in the Invocation, and the decision whether to be present or participate in the Invocation will not affect any person's right to actively participate in the official business of the Town or obtain any benefit from the Town. The Town's written Invocation policy is available on its website, and upon written request to the Town Clerk.all static

Agenda Item No: 4.a.

Town Commission Agenda Item Report

Meeting Date: May 7, 2025
Submitted By: Susan Trevarthen, Town Attorney
Submitting Department: Legal
Item Type: Presentation
Agenda Section:DISCUSSION ITEM

Subject Title: Exploring P3 Model for Redevelopment of Town Properties

Explanation: The Town Commission is exploring options to improve or replace its existing public safety facilities, which are currently located on Town-owned properties. One potential approach is the use of a public-private partnership (P3) to design, finance, and construct a new municipal facility. This item provides an overview of the P3 model to support the Commission's evaluation.

Recommendation: Staff recommends that the Town Commission determine whether to pursue a P3 model as the preferred approach for improving or replacing its public safety facilities.

Exhibits:
1. P3 Powerpoint Presentation 5-2-25 V3
2. P3 Statute - Section 255.065, Florida Statutes
3. HB 781 (2024) Bill Analysis-Unsolicited Proposals for P3s

Public-Private Partnerships

Lauderdale-By-The-Sea Town Commission Workshop

May 2025

Agenda

1. **Background**
    - Existing facilities/conditions and public safety needs
2. **Public-Private Partnership (P3) Model**
    - Overview of P3 structure and benefits
    - Procurement and financing options under Florida law
    - Examples of P3 projects
3. **Next Steps**
    - Key considerations for Commission direction

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Existing Conditions & Public Safety Needs

- Existing Fire Station (Yellow)
  - Approx. 2,500 sq. ft.
  - Aging facility; limited capacity for equipment and personnel
- Public Safety Offices (Red)
  - Acquired in 2008
  - Approx. 7,000 sq. ft. (Structure)
  - Approx. 12,502 sq. ft.(Site)
  - Administrative offices for public safety contractors
  - Not purpose-built for public safety operations
- Apartment Building Site (Purple)
  - Acquired in 2023
  - Approx. 12,502 sq ft (Site)

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Matrix Assessment (2021)

- Comprehensive Organizational Evaluation and Operations Audit of the Fire Department identified deficiencies in current facilities
- Key findings highlighted the need for a modern, adequately sized Public Safety Complex to meet current and future demands
- Required facility Size: 24,363 sq. ft. (Size requirements have changed)
- Includes: BSO Administrative space, Volunteer Fire/EMS contractor administrative space, bays and crew quarters, Emergency operations space, Community safety functions

What is a Public-Private Partnership?

- Public-private partnerships (P3s) are contractual arrangements between public entities and private sector entities that facilitate increased private sector involvement in the funding and execution of public building and infrastructure projects.
- These agreements enable the collaboration of skills and assets from both public and private sectors to provide services or facilities for the benefit of the general public, with the private sector assuming a share of the project risks.
- Examples include mass transit, parking garages, airports, seaports, housing, hospitality, courthouses, city halls, public safety facilities, utilities, and other public facilities.
- P3 may or may not include a revenue producing use.

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What are the benefits of Public-Private Partnerships?

- Benefits of project delivery
  - Cost effective and faster project delivery
  - Private financing
  - Reduces government risk
- Benefits of revenue-producing component
  - Promotes economic growth
  - Additional tax revenue and fees
  - Monetize under utilized property

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How are Public-Private Partnerships procured?

UNSOLICITED V. SOLICITED PROPOSALS

P3 STATUTE (OPTIONAL) AND/OR TOWN ADOPTED PROCEDURES

What are the differences between procurement methods?

Who drives the procurement method?	Unsolicited proposal is privately driven. Solicited proposal is government driven.
How much discretion does the Town have over the decision-making process?	There is less discretion when using P3 Statute versus Town procedures. Town must follow specific procedures and make specified findings under P3 Statute .

Regardless of method, hiring of outside professionals will be necessary, with costs recovered from the private proposer, and upfront deposit will be required.

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Florida’s P3 Statute

- Section 255.065 facilitates the use of public-private partnerships to address Florida’s infrastructure needs (i.e., constructing/upgrading facilities used predominantly for public purposes)
- Provides flexibility, promotes investment, and encourages innovation in public infrastructure projects
- The statute is intended to supplement, not limit, existing procurement authority

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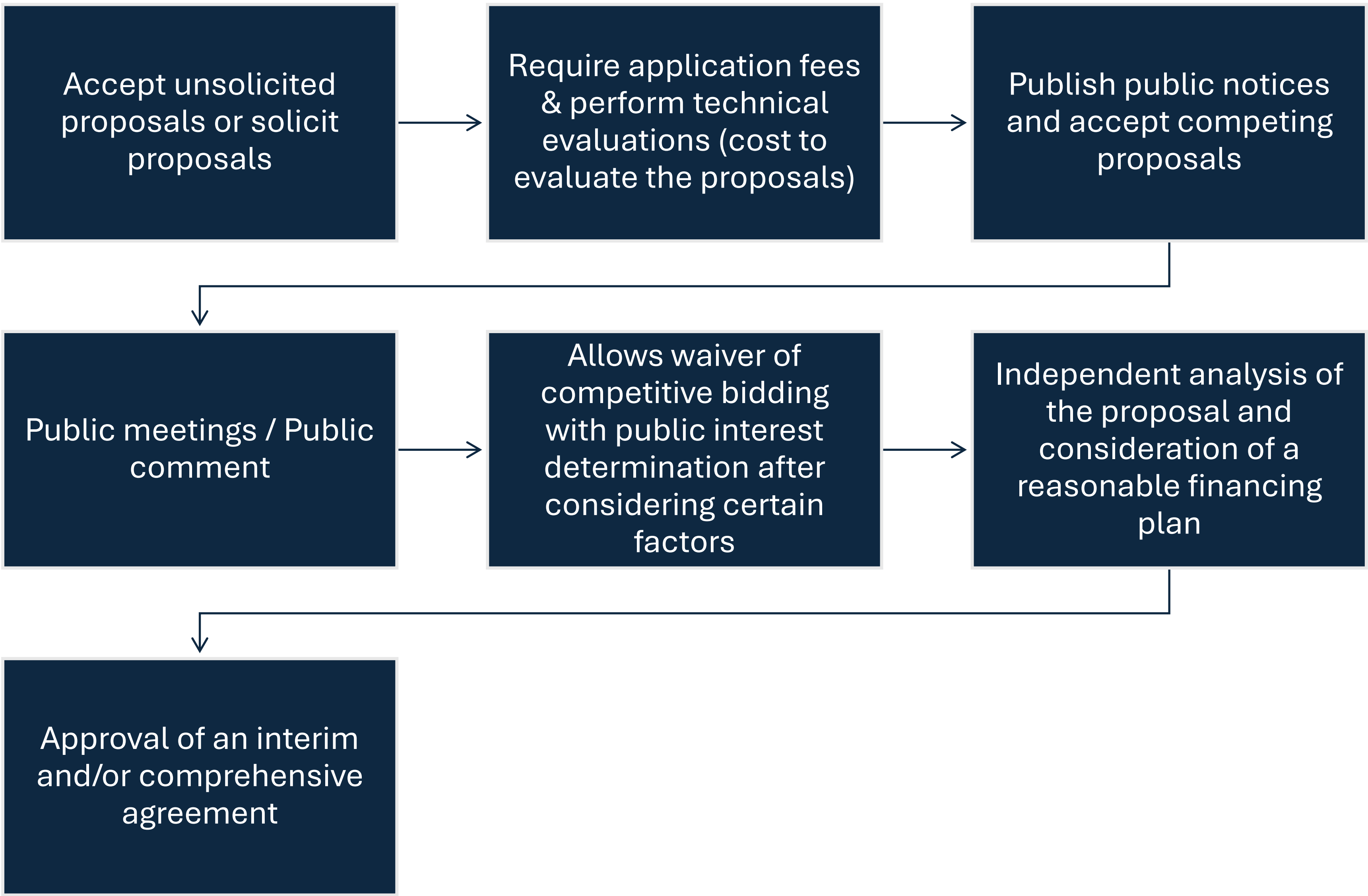
P3 Statute Summary



Applicable Town Purchasing Procedures

- The Town has not adopted specific procedures for P3s
- Purchasing Manual requires formal competitive bidding if the cost of a purchase related to the development of a public facility, utility, building, or land exceeds $25,000
- Town Commission may waive purchasing requirements when they find that an alternative purchasing method is in the best interest of the Town
- Purchasing Manual also includes procedures for the disposition/leasing of property, which may be waived if not statutorily required.
- If the Town elects not to follow the P3 Statute, we recommend adopting Town procedures

What are the different delivery methods?

Spectrum of higher risk transfer to the private sector

DBB+M	Design-Bid-Build+Maintain. This is a conventional delivery model with nearly all risk borne by the government. It involves public financing, potential grant money, and maintenance provided by the government
DB+M	Design-Build+Maintain- Design and construction risk is shifted to the developer. It involves public financing, potential grant money, and maintenance provided by the government
DBFM	Design-Build-Finance-Maintain- Design, construction, finance provided by developer. Maintenance risk may be shifted to the developer under a separate contract or retained by the government
DBFOM	Design-Build-Finance-Operate-Maintain- All risk shifted to developer (if private operation is an option)

P3 Example: Clay County Fire Stations

Project Overview:

Fire Station #1: Size: 12,000–15,000 sq ft; Features: 4–5 apparatus bays
Site Area: 4.24 acres

Fire Station #22: Size: 16,000–19,000 sq ft; Features: 5–6 apparatus bays; one or two-story design; Site Area: 1.73 acres

Procurement Method: Initiated through an unsolicited proposal, subjecting project to competitive solicitation process (P3 Statute no longer requires).

P3 Model: Design+Build+Finance

Design and Construction: Fortress Secured, LLC

Financing and Timeline:

- 2023 RFP required proposals to include financing options. April 22, 2024 - Clay County approved Comprehensive Agreement.
- Estimated project completion timeline: 18 months to complete the design-build process with an 11-month construction window.

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P3 Example: Broward County Supervisor of Elections Office

Project Overview: RFP called for a state-of-the-art, 155,000 sq ft facility serving as the main office, early voting site, and ballot drop-off location.

Procurement Method: Initiated through an unsolicited proposal, subjecting project to competitive solicitation process (P3 Statute no longer requires)

Design & Construction: Designed by PGAL and constructed by CORE Construction.

What are key factors to considers?

- Procurement Method: Unsolicited or solicited; Follow State law and/or adopt Town procedures
- Identify key objectives and scope of the public safety building
- Hiring consultants to assist in the evaluation of P3, such as appraisers and financial consultants
- Acceptable ownership and financial arrangement- long term lease, Town debt, cash reserves, etc.
- What delivery model (e.g., DBB+F) should be used to accomplish this project and the level of risk to the Town

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Next Steps

P3 statute requires public entities to retain financial advisor and third-party architectural/engineering reviewer. These professionals can be retained without following specific statutory procedures or are already retained by the Town.

Consider updating the Matrix assessment or find another method to refine scope and size of public safety facility to improve quality of proposals.

Establish cost recovery fees for solicited or unsolicited proposals.

Direction to staff whether to prepare solicitation or wait to see if unsolicited proposal is submitted.

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THANK YOU!

The 2024 Florida Statutes (including 2025 Special Session C)

255.065 Public-private partnerships.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located.

(b) "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand.

(c) "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement.

(d) "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project.

(e) "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project.

(f) "Operate" means to finance, maintain, improve, equip, modify, or repair.

(g) "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 private business entity.

(h) "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.

(i) "Qualifying project" means:

1. A facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity;

2. An improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector;

3. A water, wastewater, or surface water management facility or other related infrastructure; or

4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section.

(j) "Responsible public entity" means a county, municipality, school district, special district, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.

(k) "Revenues" means the income, earnings, user fees, lease payments, or other service payments relating to the development or operation of a qualifying project, including, but not limited to, money received as grants or otherwise from the Federal Government, a public entity, or an agency or instrumentality thereof in aid of the qualifying project.

(l) "Service contract" means a contract between a responsible public entity and the private entity which defines the terms of the services to be provided with respect to a qualifying project.

(2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that there is a public need for the construction or upgrade of facilities that are used predominantly for public purposes and that it is in the public's interest to provide for the construction or upgrade of such facilities.

(a) The Legislature also finds that:

1. There is a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects serving a public purpose, including educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities within the state which serve a public need and purpose, and that such public need may not be wholly satisfied by existing procurement methods.

2. There are inadequate resources to develop new educational facilities, transportation facilities, water or wastewater management facilities and infrastructure, technology infrastructure, roads, highways, bridges, and other public infrastructure and government facilities for the benefit of residents of this state, and that a public-private partnership has demonstrated that it can meet the needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public.

3. There may be state and federal tax incentives that promote partnerships between public and private entities to develop and operate qualifying projects.

4. A procurement under this section serves the public purpose of this section if such procurement facilitates the timely development or operation of a qualifying project.

(b) It is the intent of the Legislature to encourage investment in the state by private entities; to facilitate various bond financing mechanisms, private capital, and other funding sources for the development and operation of qualifying projects, including expansion and acceleration of such financing to meet the public need; and to provide the greatest possible flexibility to public and private entities contracting for the provision of public services.

(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.

(a)1. The responsible public entity may establish a reasonable application fee for the submission of an unsolicited proposal under this section.

2. A private entity that submits an unsolicited proposal to a responsible public entity must concurrently pay an initial application fee, as determined by the responsible public entity. Payment must be made by cash, cashier's check, or other noncancelable instrument. Personal checks may not be accepted.

3. If the initial application fee does not cover the responsible public entity's costs to evaluate the unsolicited proposal, the responsible public entity must request in writing the additional amounts required. The private entity must pay the requested additional amounts within 30 days after receipt of the notice. The responsible public entity may stop its review of the unsolicited proposal if the private entity fails to pay the additional amounts.

4. If the responsible public entity does not evaluate the unsolicited proposal, the responsible public entity must return the application fee.

5. If the responsible public entity chooses to evaluate an unsolicited proposal involving architecture, engineering, or landscape architecture, it must ensure a professional review and evaluation of the design and construction proposed by the initial or subsequent proposers to assure material quality standards, interior space utilization, budget estimates, design and construction schedules, and sustainable design and construction standards consistent with public projects. Such review shall be performed by an architect, a landscape architect, or an engineer licensed in this state qualified to perform the review, and such professional shall advise the responsible public entity through completion of the design and construction of the project.

(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 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.

(e) If the solicited qualifying project provided in paragraph (b) includes design work, the solicitation must include a design criteria package prepared by an architect, a landscape architect, or an engineer licensed in this state which is sufficient to allow private entities to prepare a bid or a response. The design criteria package must specify reasonably specific criteria for the qualifying project such as the legal description of the site, with survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria for the qualifying project; cost or budget estimates; design and construction schedules; and site development and utility requirements. The licensed design professional who prepares the design criteria package shall be retained to serve the responsible public entity through completion of the design and construction of the project.

(f) 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.

(g) Before signing a comprehensive agreement, the responsible public entity must consider a reasonable finance plan that is consistent with subsection (9); the qualifying project cost; revenues by source; available financing; major assumptions; internal rate of return on private investments, if governmental funds are assumed in order to deliver a cost-feasible project; and a total cash-flow analysis beginning with the implementation of the project and extending for the term of the comprehensive agreement.

(h) In considering an unsolicited proposal, the responsible public entity may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.

(4) PROJECT APPROVAL REQUIREMENTS.—An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following material and information, unless waived by the responsible public entity:

(a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.

(b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.

(c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.

(d) The name and address of a person who may be contacted for additional information concerning the proposal.

(e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.

(f) Additional material or information that the responsible public entity reasonably requests.

Any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.

(5) PROJECT QUALIFICATION AND PROCESS.—

(a) The private entity, or the applicable party or parties of the private entity's team, must meet the minimum standards contained in the responsible public entity's guidelines for qualifying professional services and contracts for traditional procurement projects.

(b) The responsible public entity must:

1. Ensure that provision is made for the private entity's performance and payment of subcontractors, including, but not limited to, surety bonds, letters of credit, parent company guarantees, and lender and equity partner guarantees. For the components of the qualifying project which involve construction performance and payment, bonds are required and are subject to the recordation, notice, suit limitation, and other requirements of s. 255.05.

2. Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.

3. Ensure that the comprehensive agreement addresses termination upon a material default of the comprehensive agreement.

(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.

(d) The responsible public entity shall perform an independent analysis of the proposed public-private partnership which demonstrates the cost-effectiveness and overall public benefit before the procurement process is initiated or before the contract is awarded.

(e) The responsible public entity may approve the development or operation of an educational facility, a transportation facility, a water or wastewater management facility or related infrastructure, a technology infrastructure or other public infrastructure, or a government facility needed by the responsible public entity as a qualifying project, or the design or equipping of a qualifying project that is developed or operated, if:

1. There is a public need for or benefit derived from a project of the type that the private entity proposes as the qualifying project.

2. The estimated cost of the qualifying project is reasonable in relation to similar facilities.

3. The private entity’s plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.

(f) The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing, and evaluating the request, including, but not limited to, reasonable attorney fees and fees for financial and technical advisors or consultants and for other necessary advisors or consultants.

(g) Upon approval of a qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend the commencement date.

(h) Approval of a qualifying project by the responsible public entity is subject to entering into a comprehensive agreement with the private entity.

(6) INTERIM AGREEMENT.—Before or in connection with the negotiation of a comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement. The interim agreement is discretionary with the parties and is not required on a qualifying project for which the parties may proceed directly to a comprehensive agreement without the need for an interim agreement. An interim agreement must be limited to provisions that:

(a) Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.

(b) Establish the process and timing of the negotiation of the comprehensive agreement.

(c) Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.

(7) COMPREHENSIVE AGREEMENT.—

(a) Before developing or operating the qualifying project, the private entity must enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement must provide for:

1. Delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.

2. Review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.

3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the comprehensive agreement.

4. Maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.

5. Monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.

6. Periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.

7. Procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.

8. Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.

9. Duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.

(b) The comprehensive agreement may include:

1. An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.

2. A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.

3. A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.

(8) FEES.—A comprehensive agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The following provisions apply to the comprehensive agreement:

(a) The responsible public entity may develop new facilities or increase capacity in existing facilities through a comprehensive agreement with a private entity.

(b) The comprehensive agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.

(c) The responsible public entity may lease existing fee-for-use facilities through a comprehensive agreement.

(d) Any revenues must be authorized by and applied in the manner set forth in the comprehensive agreement.

(e) A negotiated portion of revenues from fee-generating uses may be returned to the responsible public entity over the life of the comprehensive agreement.

(9) FINANCING.—

(a) A private entity may enter into a private-source financing agreement between financing sources and the private entity. A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.

(b) The responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.

(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity's facility to liens in violation of s. 11.066(5), or secure financing of the responsible public entity by a mortgage on, or security interest in, the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by the responsible public entity, and any such provision is void.

(10) POWERS AND DUTIES OF THE PRIVATE ENTITY.—

(a) The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.

2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.

3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity in accordance with the provisions of the comprehensive agreement.

4. Comply with the comprehensive agreement and any lease or service contract.

(b) Each private facility that is constructed pursuant to this section must comply with the requirements of federal, state, and local laws; state, regional, and local comprehensive plans; the responsible public entity's rules, procedures, and standards for facilities; and such other conditions that the responsible public entity determines to be in the public's best interest and that are included in the comprehensive agreement.

(c) The responsible public entity may provide services to the private entity. An agreement for maintenance and other services entered into pursuant to this section must provide for full reimbursement for services rendered for qualifying projects.

(d) A private entity of a qualifying project may provide additional services for the qualifying project to the public or to other private entities if the provision of additional services does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the comprehensive agreement.

(11) EXPIRATION OR TERMINATION OF AGREEMENTS.—Upon the expiration or termination of a comprehensive agreement, the responsible public entity may use revenues from the qualifying project to pay current operation and maintenance costs of the qualifying project. If the private entity materially defaults under the comprehensive agreement, the compensation that is otherwise due to the private entity is payable to satisfy all financial obligations to investors and lenders on the qualifying project in the same way that is provided in the comprehensive

agreement or any other agreement involving the qualifying project, if the costs of operating and maintaining the qualifying project are paid in the normal course. Revenues in excess of the costs for operation and maintenance costs may be paid to the investors and lenders to satisfy payment obligations under their respective agreements. A responsible public entity may terminate with cause and without prejudice a comprehensive agreement and may exercise any other rights or remedies that may be available to it in accordance with the provisions of the comprehensive agreement. The full faith and credit of the responsible public entity may not be pledged to secure the financing of the private entity. The assumption of the development or operation of the qualifying project does not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues from the qualifying project unless stated otherwise in the comprehensive agreement.

(12) SOVEREIGN IMMUNITY.—This section does not waive the sovereign immunity of a responsible public entity, an affected local jurisdiction, or an officer or employee thereof with respect to participation in, or approval of, any part of a qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project. A county or municipality in which a qualifying project is located possesses sovereign immunity with respect to the project, including, but not limited to, its design, construction, and operation.

(13) DEPARTMENT OF MANAGEMENT SERVICES.—

(a) A responsible public entity may provide a copy of its comprehensive agreement to the Department of Management Services. A responsible public entity must redact any confidential or exempt information from the copy of the comprehensive agreement before providing it to the Department of Management Services.

(b) The Department of Management Services may accept and maintain copies of comprehensive agreements received from responsible public entities for the purpose of sharing comprehensive agreements with other responsible public entities.

(c) This subsection does not require a responsible public entity to provide a copy of its comprehensive agreement to the Department of Management Services.

(14) CONSTRUCTION.—

(a) This section shall be liberally construed to effectuate the purposes of this section.

(b) This section shall be construed as cumulative and supplemental to any other authority or power vested in or exercised by the governing body of a county, municipality, special district, or municipal hospital or health care system including those contained in acts of the Legislature.

(c) This section does not affect any agreement or existing relationship with a supporting organization involving such governing body or system in effect as of January 1, 2013.

(d) This section provides an alternative method and does not limit a county, municipality, special district, or other political subdivision of the state in the procurement or operation of a qualifying project pursuant to other statutory or constitutional authority.

(e) Except as otherwise provided in this section, this section does not amend existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.

(f) This section does not waive any requirement of s. 287.055.

History.—s. 2, ch. 2013-223; s. 1, ch. 2016-153; s. 1, ch. 2016-154; s. 7, ch. 2022-5; s. 1, ch. 2024-96.

Note.—Former s. 287.05712.

BILL #: CS/HB 781 Unsolicited Proposals for Public-private Partnerships
SPONSOR(S): Constitutional Rights, Rule of Law & Government Operations Subcommittee, Clemons and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 870

FINAL HOUSE FLOOR ACTION: 114 **Y's** 0 **N's** **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 781 passed the House on March 4, 2024, and subsequently passed the Senate on March 4, 2024.

Public-private partnerships (P3s) are contractual arrangements between public entities and private sector entities that facilitate increased private sector involvement in the funding and execution of public building and infrastructure projects. Current law authorizes a local government, which is referred to as a responsible public entity (RPE), to receive unsolicited proposals or to solicit proposals for a qualifying P3 project and thereafter enter into a comprehensive agreement for the building, upgrading, operating, ownership, or financing of facilities.

If the RPE intends to execute a comprehensive agreement for a project arising from an unsolicited proposal, the RPE must publish certain notices stating that the RPE has received an unsolicited proposal and will accept other proposals for the same project. After the public notification period has expired, the RPE ranks the proposals received in order of preference and begins negotiations. However, before approving a comprehensive agreement, the RPE must determine that the proposed project is in the public's best interest, is for a facility that is owned by the RPE or one for which ownership will be conveyed to the RPE, and the facility will be owned by the RPE upon completion, expiration, or termination of the comprehensive agreement and upon payment of the financed amounts.

The bill authorizes an RPE to proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process. To do so, an RPE must hold an initial duly noticed public meeting at which the proposal is presented and affected public entities and members of the public are able to provide comment. The RPE then must hold a second duly noticed public meeting at which the RPE determines that the proposal is in the public's interest based on specified factors.

The bill provides that an RPE is authorized, but no longer required, to publish notice in the Florida Administrative Register (FAR) and a newspaper of general circulation and mail a copy to each affected local government in the affected area if the RPE intends to execute a comprehensive agreement for a project arising from an unsolicited proposal. If the RPE decides to proceed with an unsolicited proposal without engaging in the public bidding process, the RPE must publish a report that provides the public interest determination, and specifically detailed information, in the FAR for at least seven days.

The bill no longer requires the RPE to determine that an unsolicited proposed project will be owned by the RPE. The RPE will only be required to determine the proposed project is in the public's best interest or will be conveyed to the RPE upon completion and payment if the proposal was solicited.

The bill may have an indeterminate fiscal impact on local governments.

The bill was approved by the Governor on April 15, 2024, ch. 2024-96, L.O.F., and will become effective on July 1, 2024.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Present Situation

Public-private Partnerships

Public-private partnerships (P3s) are contractual arrangements between public entities and private sector entities[1] that facilitate increased private sector involvement in the funding and execution of public building and infrastructure projects. These agreements enable the collaboration of skills and assets from both sectors to provide services or facilities for the benefit of the general public. In addition to resource sharing, both parties assume shared risks and potential rewards throughout the delivery of the service or facility.[2] Several statutes promote and offer direction for P3 projects, including those for services and facilities related to transportation,[3] housing,[4] and education.[5]

Current law allows responsible public entities (RPEs)[6] to engage in P3 projects aimed at developing an extensive array of public-use facilities or projects that fulfill a public purpose. Examples of qualifying projects include those for mass transit, vehicle parking, airports or seaports, educational facilities, and public sector buildings or complexes such as courthouses or city halls.[7] Current law outlines specific requirements to which RPEs must adhere, including protocols for reviewing and approving proposals.[8]

Procurement Procedures

Current law allows an RPE to receive unsolicited proposals or may solicit proposals for a qualifying P3 project and thereafter enter into a comprehensive agreement for the building, upgrading, operating, ownership, or financing of facilities. To cover the costs associated with evaluating unsolicited proposals, a reasonable application fee may be established. If the RPE opts not to assess the unsolicited proposal, it must refund the application fee.[9]

An unsolicited proposal from a private entity for approval of a qualifying project must be accompanied by the following materials and information, unless waived by the RPE:

- A comprehensive description of the qualifying project.
- A detailed account of the method proposed by the private entity to secure the necessary property interests required for the qualifying project.
- A description of the private entity's general plans for financing the qualifying project.

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[1] "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 private business entity. S. 255.065(1)(g), F.S.
[2] *See* Florida Department of Transportation, *Public-Private Partnerships*, https://www.fdot.gov/comptroller/pfo/p3.shtm (last visited January 7, 2024).
[3] *See* s. 334.30, F.S., relating to public-private transportation facilities.
[4] *See* s. 420.0003(2)(b), F.S., relating to state housing strategy.
[5] *See* s. 1013.35, F.S., relating to school district educational facilities plans.
[6] "Responsible public entity" means a county, municipality, school district, special district, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project. S. 255.065(1)(j), F.S. "Develop" means to plan, design, finance, lease, acquire, install, construct, or expand. S. 255.065(1)(b), F.S. "Operate" means to finance, maintain, improve, equip, modify, or repair. S. 255.065(1)(f), F.S.
[7] "Qualifying project" means a facility or project that serves a public purpose, including, but not limited to, any ferry or mass transit facility, vehicle parking facility, airport or seaport facility, rail facility or project, fuel supply facility, oil or gas pipeline, medical or nursing care facility, recreational facility, sporting or cultural facility, or educational facility or other building or facility that is used or will be used by a public educational institution, or any other public facility or infrastructure that is used or will be used by the public at large or in support of an accepted public purpose or activity; an improvement, including equipment, of a building that will be principally used by a public entity or the public at large or that supports a service delivery system in the public sector; a water, wastewater, or surface water management facility or other related infrastructure; or notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section. S. 255.065(1)(i), F.S.
[8] "Proposal" means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined. S. 255.065(1)(h), F.S.
[9] S. 255.065(3)(a), F.S.

- The name and address of a designated contact person who can provide additional information about the proposal.
- The proposed user fees,[10] lease payments,[11] or other service payments throughout the term of the comprehensive agreement, along with the methodology for and circumstances allowing adjustments to these payments over time.
- Any additional material or information reasonably requested by the RPE.[12]

If the RPE intends to execute a comprehensive agreement for a project arising from an unsolicited proposal, the RPE must publish notice in the Florida Administrative Register (FAR) and a newspaper of general circulation and mail a copy of the notice to each local government in the affected area.[13] The notice must be published at least once a week for two weeks stating the RPE has received a proposal and will accept other proposals for the same project. The duration for accepting additional proposals must range from a minimum of 21 days to a maximum of 120 days, unless an alternative timeframe that more adequately suits the needs of the qualifying project is approved by a majority vote of the RPE's governing body.[14]

Project Qualification and Approval
After the public notification period has expired for an unsolicited proposal, the RPE ranks the proposals received in order of preference. The RPE may then begin negotiations for a comprehensive agreement with the highest-ranked firm. If the negotiation outcome is unsatisfactory, the RPE may terminate negotiations and engage with each subsequent-ranked firm in order of preference. The RPE may reject all proposals at any point in the process until an agreement is reached.[15]

Before approving a comprehensive agreement, the RPE must determine that the proposed project:
- Is in the public's best interest.
- Is for a facility owned by the RPE or for which ownership will be conveyed to the RPE.
- Has adequate safeguards to prevent additional costs or service disruptions for the public in case of material default[16] or cancellation of the comprehensive agreement by the RPE.
- Includes measures to allow the RPE or the private entity to add capacity to the proposed project or other facilities serving similar predominantly public purposes.
- Will be owned by the RPE upon completion, expiration, or termination of the comprehensive agreement and upon payment of the financed amounts.[17]

Comprehensive Agreement
The RPE and the private entity must enter into a comprehensive agreement before developing or operating a qualifying project. The comprehensive agreement must provide for:
- Delivery of performance and payment bonds, letters of credit, or other security related to the qualifying project's development or operation.
- Review of the qualifying project design by the RPE. This does not require the private entity to complete the project's design before executing the comprehensive agreement.
- Inspection of the qualifying project by the RPE.
- Maintenance of a public liability insurance policy, a copy of which together with proofs of coverage are filed with the RPE, or satisfactory proof of self-insurance.

[10] "Fees" means charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to a comprehensive agreement. S. 255.065(1)(c), F.S.
[11] "Lease payment" means any form of payment, including a land lease, by a public entity to the private entity of a qualifying project for the use of the project. S. 255.065(1)(d), F.S.
[12] S. 255.065(4), F.S. Any pricing or financial terms included in an unsolicited proposal must be specific as to when the pricing or terms expire.
[13] "Affected local jurisdiction" means a county, municipality, or special district in which all or a portion of a qualifying project is located. S. 255.065(1)(a), F.S.
[14] S. 255.065(3)(b), F.S.
[15] S. 255.065(5)(c), F.S.
[16] "Material default" means a nonperformance of its duties by the private entity of a qualifying project which jeopardizes adequate service to the public from the project. S. 255.065(1)(e), F.S.
[17] S. 255.065(3)(d), F.S.

- Monitoring the maintenance practices of the private entity by the RPE to ensure proper upkeep of the qualifying project.
- Periodic filing of financial statements pertaining to the qualified project by the private entity.
- Procedures governing the rights and responsibilities of both parties in the event of a termination of the comprehensive agreement or a material default by the private entity.
- User fees, lease payments, or service payments that do not discourage use of the project, as may be established in the agreement.
- Duties of the private entity, including the terms and conditions that the RPE determines serve the public purpose of the qualifying project.[18]

Effect of the Bill

The bill authorizes an RPE to proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process. Accordingly, the RPE will no longer be required to provide notice of accepting additional bids or to rank received proposals in order of preference. However, an RPE may only abstain from the public bidding process if the RPE holds a duly noticed public meeting at which the proposal is presented, affected public entities and members of the public are able to provide comment. The RPE then must conduct a second duly noticed public hearing at which the RPE determines that the proposal is in the public's interest. In making the public interest determination, the bill requires the RPE to consider all of the following factors:

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

The bill authorizes, but no longer requires, an RPE to publish notice of receiving an unsolicited proposal in the FAR and a newspaper of general circulation, and mail a copy of the notice to each local government in the affected area, if the RPE intends to execute a comprehensive agreement for a project arising from an unsolicited proposal. If the RPE decides to proceed with an unsolicited proposal without engaging in a public bidding process, the RPE must publish in the FAR for at least seven days a report that provides the public interest determination, includes the factors considered in making such public interest determination, and the RPE's findings based on each considered factor.

The bill amends the comprehensive agreement approval process. Such process no longer requires an RPE to determine that an unsolicited proposed project will be owned by the RPE upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed. However, if ownership will not be conveyed to the RPE within 10 years after the initial public operation begins, the public benefits apart from ownership must be identified and stated by the RPE in the public interest determination.

The bill only requires an RPE to determine a proposed project is in the public's best interest, or will be conveyed to the RPE upon completion and payment of amounts financed, if the proposal was solicited.

[18] S. 255.065(7)(a), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   The bill authorizes RPEs to proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process if certain conditions are met. Accordingly, private entities may experience less competition when contracting with RPEs through such means resulting in contracts more economically attractive for the private entities but possibly less advantageous to the taxpayers. Such costs may be offset, at least in part, by reducing the workload expenditures associated with the public bidding process. The fiscal impact to local governments is indeterminate at this time.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill authorizes RPEs to proceed with an unsolicited proposal for a qualifying project without engaging in a public bidding process if certain conditions are met. Accordingly, private entities may experience less competition when contracting with RPEs through such means resulting in more economically attractive contracts for the private entities. The financial impact to the private sector is indeterminate at this time.

D. FISCAL COMMENTS:

None.