AGENDA

COMMITTEE OF THE WHOLE WORKSHOP
BOARD OF COUNTY COMMISSIONERS

Board Chambers
Suite 100
Ernie Lee Magaha Government Building - First Floor
221 Palafox Place

January 16, 2020
9:00 a.m.

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1. Call to Order

   (PLEASE TURN YOUR CELL PHONE TO THE SILENCE OR OFF SETTING.)

2. Was the meeting properly advertised?

3. P3 Proposal and Needs Analysis
   (Alison Rogers/Janice Gilley - 30 min)
   A. Board Discussion
   B. Board Direction

4. Consideration of the 5th Cent Tourist Development Tax
   (Commissioner Robert Bender - 30 min)
   A. Board Discussion
   B. Board Direction

5. Adjourn

Committee of the Whole **3.**

Meeting Date: 01/16/2020

Issue: P3 Proposal and Needs Analysis

From: ALISON ROGERS, County Attorney

Information

Recommendation:

P3 Proposal and Needs Analysis
(Alison Rogers/Janice Gilley - 30 min)
A. Board Discussion
B. Board Direction

Attachments

P3 Meetings Exemptions Statute

P3 Proposal Letter

Select Year: 2019 ▼ Go

The 2019 Florida Statutes

Title XVIII PUBLIC LANDS AND PROPERTY	Chapter 255 PUBLIC PROPERTY AND PUBLICLY OWNED BUILDINGS	View Entire Chapter

255.065 Public-private partnerships; public records and public meetings exemptions.—

(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) 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 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. 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) 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.

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

1. Is in the public's best interest.

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.

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. Will be owned by the responsible public entity upon completion, expiration, or termination of the comprehensive agreement and upon payment of the amounts financed.

(e) 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.

(f) 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, 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.

(15) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

(a) As used in this subsection, the term "competitive solicitation" has the same meaning as provided in s. 119.071(1).

(b)1. An unsolicited proposal received by a responsible public entity is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project.

2. If the responsible public entity rejects all proposals submitted pursuant to a competitive solicitation for a qualifying project and such entity concurrently provides notice of its intent to seek additional proposals for such project, the unsolicited proposal remains exempt until the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation for the qualifying project or until the responsible public entity withdraws the reissued competitive solicitation for such project.

3. An unsolicited proposal is exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(c) If the responsible public entity does not issue a competitive solicitation for a qualifying project, the unsolicited proposal ceases to be exempt 180 days after receipt of the unsolicited proposal by such entity.

(d)1. Any portion of a meeting of a responsible public entity during which an unsolicited proposal that is exempt is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

2.a. A complete recording must be made of any portion of an exempt meeting. No portion of the exempt meeting may be held off the record.

b. The recording of, and any records generated during, the exempt meeting are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision for a qualifying project or 180 days after receipt of the unsolicited proposal by the responsible public entity if such entity does not issue a competitive solicitation for the project.

c. If the responsible public entity rejects all proposals and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records generated at the exempt meeting remain exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the responsible public entity provides notice of an intended decision concerning the reissued competitive solicitation or until the responsible public entity withdraws the reissued competitive solicitation for such project.

d. A recording and any records generated during an exempt meeting are exempt for no longer than 90 days after the initial notice by the responsible public entity rejecting all proposals.

(e) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 2, ch. 2013-223; s. 1, ch. 2016-153; s. 1, ch. 2016-154.

Note.—Former s. 287.05712.

Pensacola Bay Center Consulting Plan 11.10.2019

Introduction

The Pensacola Bay Center ("Center") will be thirty-five (35) years old in January 2020. It is the largest facility in Escambia County for events with 23,000 square feet and seating for 10,000 persons. It provides a significant service to County residents for such events as concerts, graduations, community meetings, ice hockey, and public ice skating. It does not materially host events that attract significant numbers of over-night visitors, who generate Tourism Development Taxes ("TDT"), which are used to support the Center's approximate $1.5 million annual operating loss, including repairs and maintenance.

It is a dated, physically deteriorating asset on which approximately $600,000 in total has been spent on repairs, maintenance and capital expenditures over the past five fiscal years; some $120,000 annually. The $600,000 has been paid from a combination of Local Option Sales Tax ("LOST") and TDT funds. SMG, the Center's management company, has proposed a $20 million capital expenditures budget to update the facility and improve the guest experience.

There have been a number of discussions with the Escambia County Commission ("County Commission") over the years about various ways to meet community's needs, enhance the program offering, enhance guest experience, increase the number of over-night visitor guests, improve the Center's usability and brand image, and continue to reduce the Center's annual operating losses. The suggestions have ranged from tearing down and replacing the Center to updating it. What has been missing from these discussions has been a coherent plan with sufficient hard data that gives the County Commissioners the information they need to make an informed decision about which route to take that can be supported by the various diverse stakeholders.

There is a lot of disparate data available, but it needs to be reviewed, updated and validated as well as the gaps in information determined and secured. That data then needs to be organized into a coherent plan with an operating pro forma and capital expenditure ("CAPEX") budget specifying a return on investment for each prioritized CAPEX line item.

Work Scope and Deliverables

B&E Family Enterprises, Inc. ("B&E") principal Ron Ellington as a consultant to the County will develop and provide the County Commission with a plan that addresses

- community's needs,
- enhancing and diversifying the program offering,
- enhancing guest experience,
- increasing the number of over-night visitor guests, and
- reducing the Center's annual operating losses

with a prioritized capital expenditure ("CAPEX") budget specifying the return on investment for each CAPEX line item and a three (3) year operating pro forma. This project does not compete with any initiative to replace the Center but will provide relevant data to the County Commission that can be used to enhance and diversify program offerings and reduce current losses and shared with any developer/operator of a new Center to supplement the data it generates.

B&E will provide a written report to the County Commission with recommendations that should result in increasing revenue and/or decreasing its annual operating losses, enhancing guest experience, enhancing brand image and usability, and increasing overnight visitor guests.

The work scope will include:

1. Meet with stakeholders, including, but not limited to, SMG, larger event rights holders, colleges and high schools who use the facility for graduations, sales groups who book exhibitions and conferences, hospitality and tourism groups, and the Ice Flyers.
2. Review the Center's annual financial reports for past three years and year-to-date (YTD) as compared to budget.
3. Review any narrative reports to Escambia County for the past three years.
4. Review the Center's FY 2018-19 budget YTD as compared to actual.
5. Review the Center's proposed FY 2019-2020 budget.
6. Determine where the Center makes and loses money; programing, concessions, rental.
7. Determine the seasonality of its programing, rentals and attendant revenue and expenses.
8. Review SMG, Winterfest, Ice Flyers, and similar contracts.
9. Quantify and prioritize SMG's proposed capital expenditure recommendations for upgrades showing return on investment either by reduced expenses or increased revenue.
10. Explore and recommend additional programing alternatives and attendant cost, if any.
11. Determine how best to enhance Center's usability, brand image and guest experience.
12. Develop a financing plan with options for how to fund any County Commission initiatives to move forward with improvements and/or new programing offerings.

Deliverables Timeline

Provide the County Commission and staff with:

1. A draft report within one hundred and twenty (120) days with formal presentation to the County Commission.
2. A final report within one hundred and fifty (150) days with formal presentation to the County Commission.

Cost

A fixed fee of $19,500 to B&E under a consulting agreement, paid in three (3) installments. There is also projected cost of $14,400 for due diligence site visit air travel, which will be contributed by Mr. Julian MacQueen, Chairman of the Board and Founder of Innisfree Hotels, using his airplane for the trips. Total net cost to Escambia County is $19,500. The contract can be canceled by either party with seven (7) days written notice.

Fixed Fee Payment Terms

- $7,500.00 upon the execution of the contract.
- $6,000.00 upon the delivery of the draft report.
- $6.000.00 upon the delivery of the final report.

Committee of the Whole **4.**

Meeting Date: 01/16/2020

Issue: Consideration of the 5th Cent TDT

From: Robert Bender, District 4 Commissioner

Information

Recommendation:

Consideration of the 5th Cent Tourist Development Tax
(Commissioner Robert Bender - 30 min)
A. Board Discussion
B. Board Direction

Attachments

Consideration of the 5th Cent TDT

December TDC Meeting Minutes - TDT Workgroup Report

Consideration of the 5th Cent TDT

Tourist Development Taxes Currently levied:

- **1 or 2 Percent Tax,** Section 125.0104(3)(c), Florida Statutes
- **Additional 1 Percent Tax,** Section 125.0104(3)(d), Florida Statutes
- **Professional Sports Franchise Facility Tax,** Section 125.0104(3)(l), Florida Statutes

Additional Tourist Development Tax for Consideration:

- **Additional Professional Sports Franchise Facility Tax,** Section 125.0104(3)(n), Florida Statutes

Authorized Uses of Proceeds:
The county must use the tax proceeds for the following purposes, and any use of the tax proceeds not expressly authorized in s. 125.0104(3)(n), F.S., is prohibited.

1. To pay the debt service on bonds issued to finance the construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility. In addition, the proceeds are used to pay the planning and design costs incurred prior to the issuance of such bonds for a new professional sports franchise as defined in s. 288.1162, F.S.
2. To pay the debt service on bonds issued to finance the acquisition, construction, reconstruction, or renovation of a facility either publicly owned and operated, or publicly owned and operated by the owner of a professional sports franchise or other lessee with sufficient expertise or financial capability to operate such facility. In addition, the proceeds are used to pay the planning and design costs incurred prior to the issuance of such bonds for a retained spring training franchise.
3. To promote and advertise tourism in Florida, nationally and internationally. However, if the tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists. A county imposing this tax may not expend any ad valorem tax revenues for the acquisition, construction, reconstruction, or renovation of a facility for which tax revenues are used pursuant to purposes listed in #1 and #2 above.

General Use Information:

<u>All 5 pennies can be used for the following</u>:

To promote and advertise tourism in Florida, nationally and internationally. However, if the tax revenues are expended for an activity, service, venue, or event, the activity, service, venue, or event must have as one of its main purposes the attraction of tourists as evidenced by the promotion of the activity, service, venue, or event to tourists.

Good afternoon,

Below please find the excerpt from the December TDC meeting minutes where discussion took place on the TDT Work Group. Please let me know if you need anything further. - Barb

TDT Workgroup Report – Steve Hayes
Steve presented a handout to the Council. The group started 7-8 months ago to look at collection history and the way it's allocated. Jack Brown asked if the TDC would officially appoint people to the group. He suggested appointing a group and adding a female. Administrator Gilley will be added to the group.
Ronnie Rivera made a motion, seconded by Jim Reeves, to officially support the TDT Work Group. Council discussion. The group will put together a strategic plan and bring it to the Council. The vote was unanimous for approval.
Jack Brown will make any appointments to the group. A motion was made by Jim Reeves, seconded by Commissioner Bender for discussion, for the chair to appoint a sub-committee of TDC to investigate ways to use the 5th cent TDT. After Council discussion, the motion was withdrawn by Jim Reeves.
Jim Reeves made a motion to recommend to the Board of County Commissioners enacting 5th cent TDT. David Bear seconded the motion. David stated that the 5th cent collections should not be spent until guidelines are set – it could be held in a dedicated account until that time. The vote was 5 to 2 in favor, with Jim Reeves and P.C. Wu voting against. The motion passed.

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