

New Florida Law Provides More Public-Private Partnership Opportunities

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In this article, the authors discuss an amendment to Florida law that provides public entities with a new, alternative process for accepting unsolicited public-private partnership proposals.

The Florida Legislature recently amended Section 255.065, Florida Statutes (P3 Law) pursuant to House Bill (HB) 781. HB 781 provides responsible public entities (e.g., counties, cities, special districts and certain regional entities) with a new, alternative process for accepting unsolicited public-private partnership (P3) proposals.

P3s are contractual arrangements between public and private-sector entities that facilitate increased private-sector involvement in the funding and execution of public building and infrastructure projects.

FLORIDA'S P3 LAW

The P3 Law provides a statutory framework for responsible public entities to undertake P3s. Under the current P3 Law, if a public entity desires to execute a comprehensive agreement for a project arising from an unsolicited proposal, it must first publish notice in the Florida Administrative Register (FAR) and a newspaper of general circulation, as well as mail a copy of the notice to each local govern-

ment in the affected area that states it 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 time frame is approved in accordance with the P3 Law. After the public notification period has expired for an unsolicited proposal, the public entity ranks the proposals received in order of preference and may then begin negotiations for a comprehensive agreement with the highest-ranked proposer.

Among other matters, the P3 Law currently provides that the public entity must own the unsolicited proposal project upon completion, expiration or termination of the related P3 agreement and upon payment of the amounts financed.

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WHAT DO THE AMENDMENTS TO THE P3 LAW ACCOMPLISH?

Public entities will now be able to accept unsolicited P3 proposals without undertaking a public bidding or solicitation process.

The related P3 agreement no longer must require that the public entity ultimately own the unsolicited proposal project.

WHEN CAN A PUBLIC ENTITY ACCEPT AN UNSOLICITED P3 PROPOSAL WITHOUT A BIDDING PROCESS?

Under the revised P3 Law, public entities must follow certain steps when accepting an unsolicited P3 proposal without undertaking the bidding process required in the current P3 Law, including the following:

- Holding an initial duly noticed public meeting at which the proposal is presented and affected public entities and members of the public are able to comment;
- Holding a second duly noticed public meeting at which public comments can be submitted and at which the public entity must determine the proposal is in the public interest; and
- Publishing a report in the FAR for at least seven days that includes the public entity's public interest determination and addresses the factors considered in making

the determination with findings based on each considered factor.

Among the factors to be considered in determining whether an unsolicited proposal is in the public interest include the:

- (1) Benefits to the public;
- (2) Financial structure of and economic efficiencies achieved by the proposal;
- (3) Proposer's qualifications, experience and ability to perform; and
- (4) Compatibility of the proposal project with regional infrastructure plans.

If the public entity will not own the unsolicited proposal project within 10 years after the initial public operation of the project, the public benefits apart from ownership must be stated in the public interest determination.

CONCLUSION

The recent amendments to the P3 Law, which are expected to become effective on July 1, 2024, provide a cost-effective and streamlined process to deliver P3 projects and incentivizes the private sector to present P3 opportunities.

These amendments do not replace the current process in the P3 Law for accepting unsolicited proposals but offer an alternative so that a public entity can select the process it determines is best for a particular project.