

Public-Private Partnership ("P3 Program") Guidelines

Hemisfair Park Area Redevelopment
Corporation

Approved by HPARC Board on June 13, 2014



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ARTICLE I. INTRODUCTION

Hemisfair Park Area Redevelopment Corporation (“**HPARC**”) is a local government corporation and a not-for-profit 501(c)(3) created by the City of San Antonio (“**City**”) in accordance with Chapter 431 of the Texas Transportation Code.

The mission of HPARC is to accomplish certain governmental purposes of the City, to wit: assist with acquiring property, planning, developing, constructing, managing, maintaining and financing projects within and adjacent to Hemisfair. HPARC has adopted these “P3 Program Guidelines” to accommodate greater use of public-private partnerships in fulfilling this mission. These Guidelines are intended to be reasonable, encourage competition, and guide the selection of projects under the purview of HPARC. These Guidelines are designed to be compatible and consistent with the *Public and Private Facilities and Infrastructure Act*, S.B. 1048, 82nd Legislature, Chapter 2267, Texas Government Code (the “**P3 Act**”) and the City’s Public Private Partnership Guidelines; provided, however, that HPARC intends to retain the maximum amount of flexibility permitted under Texas law with regard to the process of soliciting and selecting proposals for public-private partnerships.

A general outline of HPARC’s process for soliciting, reviewing and selecting public-private partnerships is set forth on the attached Exhibit A, which is incorporated herein by reference for all purposes.

ARTICLE II. PROJECT SOLICITATION AND RESPONSES

Section 2.01 PROJECT IDENTIFICATION

In consultation with the City and in consideration of the Hemisfair Master Plan, HPARC may identify projects for potential public-private partnership within and around Hemisfair. These public-private partnerships may include real estate development within and around Hemisfair and other activities that will further HPARC’s mission of improving Hemisfair in accordance with HPARC’s mission, the Hemisfair Master Plan and other City policies.

Section 2.02 SOLICITATIONS

HPARC shall prepare and issue the RFP and RFQ solicitations in accordance with these Guidelines and HPARC procurement policy and procedures. All RFP’s or RFQ’s issued by HPARC shall be by issuance of a written solicitation. HPARC will not accept any unsolicited proposals. HPARC staff may elect to proceed directly to the RFP Process (thereby skipping the RFQ Process) when such action is deemed appropriate and desirable.

Section 2.03 RESPONSES TO SOLICITATIONS

Responses to solicitations for RFQs and/or RFPs shall include the information requested in such solicitations and the procedures and requirements applicable to any particular solicited proposal shall be specified in the written solicitation.

Responses to RFQ should provide detailed information on the respondent's qualifications and experience. Respondent should detail demonstrable experience in the development and operation of projects similar to the proposed project. The submission should describe relevant experience with respect to the development and operation of other commercial or public-private partnership projects, distinguishing the experience of the private entity (including joint venture partners) from that of consultants and other team members.

Responses to the RFP should detail information regarding the proposed project in accordance with the instructions set forth in the RFP. In general, this information should include the following:

- *Project Overview:* An overview of the proposed project, including the conceptual design of any facility or a conceptual plan for the provision of services. The conceptual design for facilities, at a minimum, should include concept renderings, a concept site plan, and elevations that collectively illustrate the location, size, and context of the qualifying project.
- *Project Feasibility Analysis:* Analysis of the following: (1) project location and site, and (2) marketing and competitive position of proposed project
- *Project Impact Analysis:* (1) community impacts of project, and (2) construction schedule and impacts of proposed project.
- *Financial Analysis:* Project budget, proforma financial statements, sensitivity analysis and bond requirements.
- *Project Risk:* An assessment of the risks inherent in the proposed project.

Section 2.04 RESPONDENT'S QUALIFICATIONS: RESPONDENT SHALL SUBMIT INFORMATION REQUIRED IN SECTION 3.05. CLARIFICATION OF PROPOSALS

HPARC may, at any time, request in writing for the respondent to clarify its submission or proposal.

Section 2.05 OPEN RECORDS ACT

Any information provided to HPARC by a respondent may be subject to disclosure pursuant to the Texas Public Information Act, Chapter 552, Texas Government Code (the "**Open Records Act**"). Any records provided to HPARC in relation to a proposal that

contain trade secrets, financial records not generally available to the public through regulatory disclosure filings, or information that if made public would adversely affect the financial interest or bargaining position of the proposer or respondent should be identified and labeled as “confidential” by a respondent. Respondents are advised that notwithstanding such labeling, such information may be deemed open and subject to disclosure. In the event of a request for information related to a solicited proposal, the Office of the Texas Attorney General will determine whether the requested information may be protected from public disclosure.

Section 2.06 REVIEW FEE

HPARC may assess a preliminary review fee in an amount to be determined by HPARC. If applicable, the fee shall be paid to HPARC at the time a response is submitted and shall be used to cover the costs of processing, reviewing and evaluating the response.

Section 2.07 DESIGNATED CONTACT

HPARC designates the following representative to meet with private entities who are considering submitting a proposal:

Omar Gonzalez
434 South Alamo Street
San Antonio, TX 78205

omar.gonzalez@hemisfair.org

HPARC’s designee is available *by appointment only*, Monday – Friday between 9:00 a.m. – 5:00p.m., Central Time, excluding holidays.

ARTICLE III. EVALUATION AND SELECTION OF PROPOSALS

Section 3.01 SELECTION CRITERIA

Evaluation and selection criteria shall be described in the RFQs and RFPs and responses shall be reviewed in accordance with the process set forth on Exhibit A and the provisions set forth in these Guidelines.

Section 3.02 PROFESSIONAL ANALYSIS.

Prior to recommending approval of a project, HPARC shall have either its staff, City’s staff, or qualified professionals or consultant provide independent analyses regarding the specifics, advantages, disadvantages, and long-term and short-term costs of the proposal similar to the analysis required under Section 2267.052(c)(2) of the P3 Statute. HPARC

shall determine on a case-by-case basis whether such analysis should be performed by HPARC staff, City staff, or outside professionals.

Section 3.03 NOTIFICATION OF AFFECTED JURISDICTIONS

HPARC shall consult with City staff throughout the process of soliciting, reviewing and selecting proposals.

Section 3.04 SCHEDULE FOR REVIEW OF PROPOSALS

Within 30 days of receipt of the proposals and any supplemental information or clarifications requested by HPARC, the Oversight Committee shall evaluate the proposals and determine if any of the proposals should be presented to the HPARC Planning and Development Committee (in accordance with Exhibit A). If the Oversight Committee makes a recommendation for one or more of the proposals to be presented to the HPARC Planning and Development Committee, then the HPARC Planning and Development Committee shall review those proposals (generally within thirty (30) days), and will make its recommendation to the HPARC Board. Following negotiation of a Contract, the HPARC Planning and Development Committee and Board shall meet again to review such proposed contract for consideration by the City Council.

At any time, HPARC may request additional information or a meeting with any respondent to seek clarification regarding any aspect of a proposal and extend the timeframe for its review.

Section 3.05 SELECTION CRITERIA AND EVALUATION FACTORS

Factors to be considered in evaluating proposals shall include but not be limited to the following:

(a) Qualifications and Experience:

- (1) Experience working with the public sector on public-private real estate development projects;
- (2) Experience, training and preparation with projects of similar size, scope and complexity;
- (3) The extent of personnel, logistical resources, bonding capacity, and the ability to complete the qualifying project in a timely and professional manner;
- (4) Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;

- (5) Demonstrated compliance with applicable laws, codes, standards, regulations, and agreements on past projects;
- (6) Leadership structure;
- (7) Project manager's experience;
- (8) Management and operational plans;
- (9) Financial condition and capacity; and
- (10) Project ownership.

(b) Project Characteristics:

- (1) Project scope and scale, land use and product mix;
- (2) The extent that the timing of the qualifying project is consistent with the City's SA2020 Plan and the Hemisfair Master Plan;
- (3) Operation of the qualifying project;
- (4) Technology; technical feasibility;
- (5) Environmental impacts;
- (6) Federal, state and local permits; and
- (7) Maintenance of the qualifying project.

(c) Project Cost and Financing:

- (1) Cost and cost benefit to HPARC and the City;
- (2) Financing and the impact on the debt or debt burden of HPARC and/or the City;
- (3) Financial plan, including overall feasibility and reliability of plan; operator's past performance with similar plans and similar projects; the degree to which the private entity has conducted due diligence investigation and analysis of proposed financial plan and the results of any such inquiries or studies;
- (4) Estimated project cost and life-cycle cost analysis; and
- (5) The identity, credit history, past performance of any third party that will provide financing for the qualifying project and the nature, amount, and timing of their commitment, as applicable.

(d) Community Impact:

- (1) Community benefits, including the economic impact the qualifying project will have on the City and affected jurisdictions in terms of tax revenue, the number of jobs generated and level of pay and fringe benefits of such jobs;
- (2) Community support or opposition;
- (3) Compatibility with existing and planned facilities; and
- (4) Compatibility with local, regional, and state economic development efforts.

(e) Other Factors

- (1) The extent the offered consideration generates value and returns to HPARC and/or the City and benefits to the public, including in-kind consideration greater than the fair market value of the asset;
- (2) The proposed cost of the qualifying project;
- (3) The general reputation, industry experience, and financial capacity of the private entity;
- (4) The proposed design of the qualifying project;
- (5) Opportunity cost of taking an alternative action;
- (6) The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
- (7) The private entity's plans to employ local contractors and residents; and
- (8) Other criteria that HPARC deems appropriate.

ARTICLE IV. DEVELOPMENT AGREEMENTS

Any development agreement shall define the rights and obligations of HPARC and the contracting party with regard to the qualifying project. Any comprehensive development agreement entered into pursuant to these Guidelines is subject to approval by City Council. The City or HPARC shall accept no liability for development or operation of a qualifying project prior to entering into a development agreement. Each comprehensive development agreement shall define the rights and obligations of HPARC and the contracting person with regard to the qualifying project. The terms of the agreement shall be tailored to address the specifics of the qualifying project and may include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in

connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;

2. The review of plans and specifications for the qualifying project by HPARC;
3. The rights of HPARC to inspect the qualifying project to ensure compliance with the development agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the qualifying project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the contracting person by HPARC to ensure proper maintenance;
6. The terms under which the contracting person will reimburse HPARC for services provided;
7. The policy and procedures that will govern the rights and responsibilities of HPARC and the contracting person in the event that the development agreement is terminated or there is a material default by the contracting person including the conditions governing assumption of the duties and responsibilities of the contracting person by HPARC and the transfer or purchase of property or other interests of the contracting person by HPARC;
8. The terms under which the contracting person will file financial statements prepared in accordance with generally accepted accounting principles on a periodic basis but not less than annually;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;
10. A copy of any service contract;
11. A schedule of the current user fees or lease payments;
12. Classifications according to reasonable categories for assessment of user fees;
13. The terms and conditions under which HPARC may contribute financial resources, if any, for the qualifying project;
14. The terms and conditions under which existing site conditions will be assessed and

addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;

15. The terms and conditions under which HPARC will be required to pay money to the private entity and the amount of any such payments for the qualifying project;
16. Liquidated damages for breach of contract;
17. Appropriate protections against potential bankruptcy;
18. A periodic reporting procedure that incorporates a description of the impact of the qualifying project on HPARC and the City; and
19. Other requirements of the P3 program or applicable law or that HPARC deems appropriate.

ARTICLE V. CITY COUNCIL AUTHORIZATION AND APPROVAL

Upon completion of the requirements of these Guidelines and the prescribed notice and hearing requirements, the HPARC may present a qualifying project in the form of an interim or comprehensive development agreement to the City Council for consideration. No agreements shall be valid prior to the approval of the City Council through a duly passed City Ordinance.

ARTICLE VI. DEFINITIONS

Section 6.01 ABBREVIATIONS

Unless otherwise specified, whenever the following abbreviations are used in these Guidelines, they have the meanings set forth below:

Section 6.02 DEFINITIONS

The following terms shall have the meanings set forth below:

HPARC	Hemisfair Park Area Redevelopment Corporation
P3	Public-Private Partnership
RFP	Request for Proposals
RFQ	Request for Qualifications

“Oversight Committee” means an HPARC designated committee consisting of qualified professionals of the City and HPARC in accordance with §2267.052(c)(2) of the Act., but not limited to representatives from the TCI Department (Licensed Architect or Professional Engineer), the City’s Executive Leadership Team, Finance Department or Office of

Management and Budget (Certified Public Accountant) and the City Attorney's Office.

"Respondent" means a private entity that submits a proposal in response to a solicitation by the Governmental Entity.

"Solicitation" means a written request for services issued by HPARC, in which HPARC elects to solicit proposals for a Qualifying Project as a public-private partnership subject to these guidelines, which may include business plans, relevant information, expressions of interest, ideas, offers, proposals, qualifications, or any combination thereof.

Exhibit A – Hemisfair Development Selection Process (revised)

