

## Unsolicited Proposal Policy

### I. Purpose

It is the purpose of this policy to create a uniform procedure through which private entities may submit proposals for projects the JWSC is not currently pursuing and to provide a mechanism through which the JWSC infrastructure may be improved with minimal concurrent cost to the JWSC.

### II. Definitions:

(1) As used in this Policy, the term:

- (A) "Comprehensive agreement" means the written agreement between the private entity and the JWSC required by this Policy and approved by the JWSC in an open meeting following a bid award for a qualifying project.
- (B) "Develop" or "development" means to plan, design, develop, finance, lease, acquire, install, construct, operate, maintain, or expand.
- (C) "JWSC" means the Brunswick-Glynn County Joint Water & Sewer Commission.
- (D) "Local authority" means any local authority created pursuant to a local or general Act of the General Assembly, including a joint public instrumentality.
- (E) "Local government" means any county, municipality, consolidated government, or board of education.
- (F) "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 business entity, including a development authority, that agrees in writing to be bound by the provisions of this Policy.
- (G) "Qualifying project" means any project selected in response to a proposal submitted by a private entity as an unsolicited proposal in accordance with this Policy, and subsequently reviewed and approved by the JWSC, within its sole discretion, as meeting a public purpose or public need.
- (H) "Revenue" means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection

with supporting the development or operation of a qualifying project.

- (I) "Unsolicited proposal" means a written proposal for a potential qualifying project that is (1) related to water and sewer infrastructure (2) received by the JWSC within the appropriate timeframe for receipt of unsolicited proposals, and (3) submitted by a Private Entity that agrees in writing to be bound by the provisions of this Policy.

### III. Unsolicited Proposals

- (1) A private entity may submit an unsolicited proposal for a project to the JWSC for review and determination as a qualifying project in accordance with this policy. Any such unsolicited proposal shall be accompanied by the following material and information:
  - (A) A project description, including the location of the project, the conceptual design of such facility or facilities, and a conceptual plan for the provision of services or technology infrastructure;
  - (B) A feasibility statement that includes:
    - 1. The method by which the private entity proposes to secure any necessary property interests required for the project;
    - 2. A list of all permits and approvals required for the project from local, state, or federal agencies; and
    - 3. A list of public utility facilities, if any, that will be crossed by the project and a statement of the plans of the private entity to accommodate such crossings;
  - (C) A schedule for the initiation and completion of the project to include the proposed major responsibilities and timeline for activities to be performed by both the JWSC and private entity as well as a proposed schedule for obtaining the permits and approvals required in this Policy;
  - (D) A financial plan setting forth the private entity's general plans for financing the project, including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity; a description of user fees, lease payments, and other service payments over the term of the comprehensive agreement; and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time;

- (E) A business case statement that shall include a basic description of any direct and indirect benefits to the JWSC or its water and sewer system that the private entity can provide in delivering the project, including relevant cost, quality, methodology, and process for identifying the project and time frame data;
  - (F) The names and addresses of the persons who may be contacted for further information concerning the unsolicited proposal;
  - (G) As statement identifying portions of the proposal that contain trade secrets or privileged information that the private entity requests not be released in subsequent requests for proposals for competing bids; and
  - (H) Such additional material and information as the JWSC may request initially or in subsequent requests for supplementation.
- (2) For any unsolicited proposal of the development of a project received by the JWSC, the JWSC may charge and retain a fee to cover the costs of processing, reviewing, and evaluating the unsolicited proposal, including, without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisers or consultants.
  - (3) The JWSC may perform a financial review and analysis of any unsolicited proposal it deems prudent to evaluate.
  - (4) The JWSC shall vote, in a duly advertised open meeting, on whether to accept or reject the unsolicited proposal within 30 days of receipt, unless the JWSC notifies the private entity of a need for additional time.
  - (5) The JWSC may reject any unsolicited proposal at any time, including following initial acceptance of the unsolicited proposal, and shall not be required to provide a reason for its rejection. If the JWSC rejects an unsolicited proposal submitted by a private entity, it shall have no obligation to return the unsolicited proposal or any related materials.
  - (6) A private entity assumes all risk in submission of a proposal or unsolicited proposal in accordance with Sections III (1) and III (2) of this Policy, and the JWSC shall not incur any obligation to reimburse a private entity for any costs, damages, or loss of intellectual property incurred by a private entity in the creation, development, or submission of a proposal or unsolicited proposal for a qualifying project.
  - (7) The JWSC may, at the Executive Director's discretion, identify and appoint an independent adviser to the JWSC with expertise in architecture, engineering, or construction management to assist in the evaluation of an unsolicited proposal and

to serve as owner adviser to the JWSC if the JWSC chooses to pursue any qualifying project. The JWSC shall not be obligated to engage such services.

- (8) Before submitting an unsolicited proposal, the private entity shall agree in writing, in a form provided by the JWSC, to be bound by this Policy and to release the JWSC from any and all claims, demands, causes of action, damages, or suits of any kind or nature whatsoever related to the submission of the unsolicited proposal or the project that is the subject thereof, and shall agree to hold harmless and indemnify JWSC for any and all claims, demands, causes of action, damages, or suits of any kind or nature whatsoever related to the submission of the unsolicited proposal. This provision, and the representations made in the form identified herein, shall be in addition to any similar provisions contained in the Comprehensive Agreement or elsewhere and shall survive the rejection of any unsolicited proposal and survive the termination of the Comprehensive Agreement.

#### IV. Subsequent RFP and Competing Proposals

- (1) Upon a decision by the JWSC in a duly advertised open meeting to accept an unsolicited proposal as a qualifying project, the JWSC may issue a request for proposals (RFP) for the qualifying project in compliance with its normal bidding policies.
- (2) The procedures for posting and publishing notice of the opportunity to offer competing proposals shall be in compliance with its normal bidding policies.
- (3) The procedures for the processing, review, and consideration of competing proposals, and the period for the processing, review, and consideration of competing proposals shall be in compliance with its normal bidding policies.
- (4) The JWSC may determine whether information included in an unsolicited proposal is privileged or contains any trade secrets and thus should not be released as part of any RFP.

#### V. Comprehensive Agreement

- (1) As applicable, and in compliance with its normal bidding policies, the JWSC may award the qualifying project to a qualifying bidder subject to the negotiation of a comprehensive agreement. The JWSC may also decide to conduct the project without the assistance of outside contractors and subject to the negotiation of a comprehensive agreement.
- (2) If no bid proposals are acceptable to the JWSC, or if a comprehensive agreement cannot be successfully negotiated, the qualifying project may be abandoned.

- (3) The comprehensive agreement entered into between the JWSC and the private entity submitting the proposal in accordance with this Policy shall include:
- (A) A thorough description of the duties of each party in the completion and operation of the qualifying project;
  - (B) Dates and schedules for the completion of the qualifying project;
  - (C) Any user fees, lease payments, or service payments as may be established by agreement of the parties, as well as any process for changing such fees or payments throughout the term of the agreement, and a copy of any service contract;
  - (D) Any reimbursements to be paid to the JWSC for services provided by the JWSC;
  - (E) A process for the review of plans and specifications for the qualifying project by the JWSC and approval by the JWSC if the plans and specifications conform to standards acceptable to the JWSC;
  - (F) A process for the periodic and final inspection of the qualifying project by the JWSC to ensure that the private entity's activities are in accordance with the provisions of the comprehensive agreement;
  - (G) Delivery of performance and payment bonds in the amounts required by law and in a form acceptable to the JWSC for those components of the qualifying project that involve construction, and surety bonds, letters of credit, or other forms of security acceptable to the JWSC for other phases and components of the development of the qualifying project;
  - (H) Submission of a policy or policies of public liability insurance, copies of which shall be filed with the JWSC accompanied by proofs of coverage, or self-insurance, each in form and amount satisfactory to the JWSC and reasonably sufficient to ensure coverage of tort liability to the public and JWSC employees or agents and to enable the continued operation of the qualifying project;
  - (I) A process for monitoring the practices of the private entity by the JWSC to ensure that the qualifying project is properly maintained;
  - (J) The filing of appropriate financial statements to the JWSC on a periodic basis; and
  - (K) Provisions governing the rights and responsibilities of the JWSC and the private entity in the event that the comprehensive agreement is

terminated or there is a material default by the private entity, including conditions governing assumption of the duties and responsibilities of the private entity by the JWSC and the transfer or purchase of property or other interests of the private entity by the JWSC, including provisions compliant with state constitutional limitations on public debt by the JWSC.

- (4) The comprehensive agreement may include such other terms and conditions that the JWSC determines will serve the public purpose of this policy and to which the private entity and the JWSC mutually agree, including, without limitation, provisions regarding unavoidable delays and provisions where the authority and duties of the private entity under this Policy shall cease and the qualifying project is dedicated to the JWSC for public use.
- (5) Any changes in the terms of the comprehensive agreement, as may be agreed upon by the parties from time to time, shall be added to the comprehensive agreement by written amendment.
- (6) The comprehensive agreement may provide for the development of phases or segments of the qualifying project.

#### VI. Default and Remedies:

- (1) In the event of a material default by the private entity, the JWSC may terminate, with cause, the comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity, including, but not limited to, claims under the maintenance, performance, or payment bonds; other forms of security; or letters of credit required by this Policy.
- (2) The JWSC may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title, and interest in such qualifying project subject to statutory limitations on the availability of future appropriated or otherwise unobligated funds.
- (3) The power of eminent domain shall not be delegated to any private entity with respect to any project commenced or proposed pursuant to this Policy. Any local government having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has perfected a security interest in the qualifying project may participate in the condemnation proceedings with the standing of a property owner.
- (4) In the event the JWSC elects to take over a qualifying project pursuant to subsection (2) of this Policy section, the JWSC may develop the qualifying project, impose user fees, and impose and collect lease payments for the use thereof.

VII. Sovereign or official immunity

- (1) Nothing in this Policy shall be construed as or deemed to be a waiver of the sovereign or official immunity of the JWSC or any officer or employee thereof with respect to the participation in, or approval of, all or any part of the qualifying project or its operation, including, but not limited to, interconnection of the qualifying project with any other infrastructure or project.

VIII. The JWSC will receive unsolicited proposals on January 15, April 15, July 15, and October 15 of each year unless otherwise approved in a duly advertised open meeting. Unsolicited proposals may be addressed to the JWSC Executive Director.

IX. Procedures for the financial review and analysis of an unsolicited proposal:

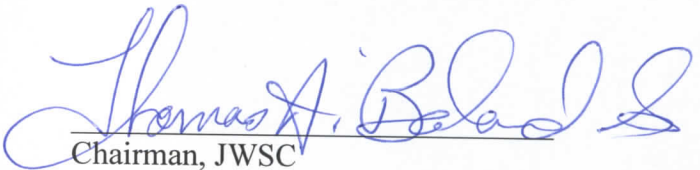
- (1) In conjunction with the financial review and analysis of an unsolicited proposal, the JWSC may:
  - (A) Perform a cost-benefit analysis;
  - (B) Perform an evaluation of the public need for or benefit derived from the qualifying project;
  - (C) Perform an evaluation of the estimated cost of the qualifying project for reasonableness in relation to similar facilities;
  - (D) Perform an evaluation of the source of funding for the project;
  - (E) Consider plans to ensure timely development or operation;
  - (F) Perform an evaluation of risk sharing, including cost or completion guarantees, added value, or debt or equity investments by the private entity; and
  - (G) Consider any increase in funding, dedicated revenue source, or other economic benefit that would not otherwise be available.

X. Fees

- (1) The private entity shall submit a fee to the JWSC with any unsolicited proposal in accordance with the following schedule:
  - (A) For any qualifying project expected to cost up to \$250,000.00 for all engineering, construction, and materials, the fee shall be \$5,000.00;

- (B) For any qualifying project expected to cost in excess of \$250,000.00 and up to \$500,000.00 for all engineering, construction, and materials, the fee shall be \$7,500.00;
  - (C) For any qualifying project expected to cost in excess of \$500,000.00 for all engineering, construction, and materials, the fee shall be determined by the JWSC staff in accordance with this Policy;
- (2) The following are the criteria the JWSC may consider when determining fees charged to the private entity for the processing, review, and evaluation of an unsolicited proposal expected to cost in excess of \$500,000.00:
- (A) Anticipated staff time and effort in review of the unsolicited proposal;
  - (B) Anticipated attorneys' fees attributable to the unsolicited proposal;
  - (C) Opportunity costs attributable to the unsolicited proposal;
  - (D) Equipment requirements or depreciation;
  - (E) Third party fees or costs associated with the review; and
  - (F) Any other cost or fee associated with the review of the proposal.

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Chairman, JWSC