

## PORT AUTHORITY OF ALLEGHENY COUNTY

### PROCEDURES FOR COMPETITIVE NEGOTIATIONS FOR JOINT DEVELOPMENT

#### INTRODUCTION

Port Authority of Allegheny County's (Port Authority) Transit-Oriented Development Program enhances the value and effectiveness of transit through planning, facility improvements, and real estate projects that are designed to increase ridership and generate new operating revenue.

Along with Port Authority's Board-adopted Transit-Oriented Development Guidelines, the following procedures are designed to provide a fair, orderly, and transparent competitive process for identifying and pursuing Joint Development projects. In addition, this document outlines how local and federal laws, regulations and policies guide Port Authority's joint development, where applicable.

This document sets forth the procedures for securing appropriate developments for Port Authority-owned real property and selecting the highest ranked developers for such developments. This document shall supersede any previously adopted policies or procedures concerning, or for, competitive negotiations for Joint Development projects.

#### DEFINITIONS

Joint Development: A project that utilizes a Port Authority asset (i.e., land, transit station, air rights over property) to co-locate commercial, residential, mixed-use, or other non-transit related development, around a transit station.

Transit-Oriented Development (TOD): Deliberately planned higher-density, commercial, residential, mixed-used or other real property development within walking distance of a Port Authority transit station.

#### ROLES AND RESPONSIBILITIES

Joint Development at Port Authority is implemented through the combined efforts of the Board, the Chief Executive Officer and other agency staff, local jurisdictions, developers, and the community. Port Authority will conduct Joint Development activities in a fair and transparent manner that considers the input of stakeholders, with a particular focus on soliciting input and engaging the local jurisdiction and community where a site under consideration for a Joint Development solicitation and/or project is located.

## JOINT DEVELOPMENT PROCEDURES

### 1.0 Pre-Solicitation

1.1 Selection of Properties for Development. As the property owner, Port Authority will determine if and when a given site is appropriate for development, as set forth below:

(a) Station Area Planning

- (i) Port Authority's TOD Program conducts station area planning to test the feasibility of TOD on Port Authority's property, among other goals. Port Authority selects stations for this planning work through a data-driven evaluation of all stations that includes factors such as market conditions.
- (ii) Station area planning with a TOD focus, including Transit Revitalization Investment District studies, may also be conducted by external partners such as municipalities or community groups.
- (iii) Stations at which station area planning has been completed will be prioritized for consideration as appropriate sites for development.

(b) Port Authority staff will evaluate potential real estate development opportunities throughout its inventory of properties. The criteria for this real property assessment may include, but are not limited to:

- (i) Port Authority operational needs and resources,
- (ii) Feasibility of the physical site,
- (iii) Market conditions,
- (iv) Community support, and
- (v) TOD-supportive regulations.

(c) When a property is determined to be appropriate for Joint Development, Port Authority will:

- (i) Consult with the applicable municipality to confirm the consistency of potential TOD with local zoning and adopted plans, including the potential for zoning code amendments and/or variances if deemed critical to a proposed Joint Development project, and will make reasonable efforts to obtain the municipality's support; and
- (ii) Determine the funding sources that were involved in the acquisition and/or improvement of the selected site to determine if the project is subject to review by, or regulations of, the Federal Transit Administration (FTA), the Pennsylvania Department of Transportation (PennDOT) or other agencies with funding oversight and jurisdiction over Port Authority.

### 2.0 Solicitation and Selection

2.1 Solicitation Method. Port Authority will solicit proposals for Joint Development through an open and competitive two-step Request for Qualifications (RFQ)/Request for Proposals (RFP) solicitation process.

2.2 Notification to Board Committee. The appropriate Committee of Port Authority's Board shall be notified of the commencement of the RFQ/RFP solicitation process.

2.3 Solicitation Process.

- (a) In the developer selection phase, Port Authority will use a process comprised of the following steps:
- (i) Prepare and issue an RFQ;
  - (ii) Publicly advertise the RFQ and proposal submission date. Public notice will be advertised in a local newspaper(s) and on Port Authority's website; ;
  - (iii) Evaluate qualifications of proposers and short-list qualified prospective proposers;
  - (iv) Prepare and issue an RFP to those proposers that have been deemed qualified and short listed through the RFQ process;
  - (v) Evaluate proposals; and
  - (vi) Select and recommend the highest ranked responsive proposer and development project, if any, to Port Authority's Board to authorize an exclusive negotiation period.
- (b) The purpose of an RFQ is to understand and evaluate the viability of the proposer's general development concept, its consistency with established site and TOD guidelines, and the proposer, including its expertise, ability and capability to complete the project.
- (i) Upon receipt and review of the response to the RFQ from the proposers, Port Authority's staff will determine whether any proposers have sufficiently met the RFQ evaluation criteria.
  - (ii) Proposers determined to have sufficiently met the RFQ criteria will receive the RFP.
- (c) The purpose of an RFP is to understand and evaluate the quality of the proposer's specific development and design concepts, their consistency with established site and TOD guidelines, and the proposer's ability to obtain project financing and complete the proposed project in a timely manner.
- (i) Upon receipt and review of Joint Development proposals from proposers, Port Authority's evaluation committee (see Section 2.7) will determine which proposer is the highest ranked based upon the RFP evaluation criteria; this highest ranked proposer will be the recommended developer.
  - (ii) Port Authority will then request that the Board authorize Port Authority to enter into exclusive negotiations with this developer (see Section 3.0).
- (d) Port Authority may conduct pre-proposal submission activities, such as information meetings and site visits, as it deems appropriate.
- (e) Proposers submitting proposals in response to an RFP shall be required to submit a non-refundable proposal fee in the minimum amount of \$5,000, which amount can be increased as determined by Port Authority in its sole discretion (Proposal Fee).

- (f) Before proceeding to issue an RFQ or RFP, Port Authority may elect to issue a Letter of Interest (LOI). Issuance of an LOI will allow Port Authority to test market interest in a project prior to engaging in a full project solicitation process. Developers that submit a responsive LOI will receive any subsequent RFQ issued for a project, but will not receive preference in any RFQ short-listing process.

#### 2.4 Content of Solicitation.

- (a) The RFQ and RFP will each contain, at minimum, the following information:
  - (i) Site development guidelines, including parameters such as desired uses, density, public realm concepts, parking standards, etc., that will reflect identified priorities;
  - (ii) Specific parameters for the conveyance of the Joint Development rights, including the method of disposition (sale, ground lease or other method) and any minimum purchase price or rental rate;
  - (iii) Parameters with respect to roles, responsibilities, and allocation of risk between the developer and Port Authority;
  - (iv) Any goals which Port Authority may choose to include with respect to the participation of Disadvantaged Business Enterprises (DBEs) or use of Diverse Businesses (DB) in the development team;
  - (v) A statement of the minimum information that the proposal shall contain; and
  - (vi) Evaluation criteria (see Section 2.5(b) and Section 2.5(c), respectively).
- (b) If the subject site was purchased or improved with FTA assistance, the solicitation will utilize FTA Circular 7050.1 (or any update thereof), which governs Joint Development and any other applicable FTA or federal transit grantee requirements.

#### 2.5 Evaluation Factors.

- (a) Port Authority may specify multi-dimensional criteria, in which the economic terms will represent one factor in the evaluation, rather than a one-dimensional approach that only considers the economic terms in a proposal.
- (b) During the RFQ phase, Joint Development qualifications of the proposer will be evaluated based on various factors which may include, but not necessarily be limited to, the following:
  - (i) The preliminary development concept (description), and its adherence to the site development guidelines set forth in the RFQ as well as the TOD Guidelines;
  - (ii) The qualification and abilities of the proposer and its identified key personnel to execute the project, including a record of past performance of similar Joint Development or other real estate projects;
  - (iii) The proposer's financial capabilities to undertake and complete the development concept; and
  - (iv) Other criteria selected by Port Authority in its sole discretion.
- (c) During the RFP phase, Joint Development proposals submitted by proposers deemed initially qualified during the RFQ phase will be evaluated based on various factors which may include, but not necessarily be limited to the following:

- (i) The preliminary development concept (full proposal), and its adherence to the site development guidelines set forth in the RFP as well as the TOD Guidelines;
- (ii) The benefits of the development concept to Port Authority, the local jurisdiction and community where the proposed Joint Development site is located, including financial, transit service and overall community and regional benefits of the development concept;
- (iii) A preliminary development schedule; and
- (iv) Other criteria selected by Port Authority in its sole discretion.

2.6 Modification or Withdraw of Proposals. During both the RFQ and RFP phases of any Joint Development solicitation issued by Port Authority, a proposer may modify or withdraw its RFQ and/or RFP submission up until the publicly stated due date and time for RFQ or RFP submissions. Proposers will forfeit their Proposal Fee for withdrawn proposals.

2.7 Single Proposer. In the event that only a single proposal is received in response to an RFP, Port Authority's staff will initiate the following actions concurrent with the evaluation of the proposal by the Evaluation Committee (as defined herein):

- (a) all interested parties that had previously received the RFP or attended any information meetings held for the RFP shall be contacted to ascertain their reasons for not submitting a proposal;
- (b) the RFP will be reviewed by Port Authority staff, in consultation with legal counsel, to determine whether any elements, clauses or general requirements in the RFP could be construed as overly restrictive;
- (c) based upon this review, a report shall be prepared and submitted to the CEO, including findings and recommendations; and
- (d) the CEO or his/her designee shall either direct that the single proposal be rejected or to proceed with completion of the evaluation of the single proposal.

2.8 Evaluation Committee. Port Authority's Chief Executive Officer (CEO) shall appoint an evaluation committee (Committee) to evaluate all proposals submitted in response to an RFP for a Joint Development solicitation issued by Port Authority. The Committee shall be comprised of the following members, at a minimum:

- (a) The project manager for the Joint Development shall preside over the Committee;
- (b) The Chief Development Officer, or equivalent position, or a department manager or other designee from the Planning Division;
- (c) The Chief Legal Officer, or equivalent position, or other designee from the Legal Division;

- (d) An additional Port Authority staff member that has technical and/or managerial expertise relevant to the proposal(s) being evaluated; and
- (e) The manager, planning director, or other appropriate municipal or local representative.

As deemed appropriate, the CEO may also include on the Committee various other members (voting or non-voting) including, but not limited to:

- (i) Other Port Authority staff members to ensure that the Committee has the necessary technical and/or managerial expertise to fully and effectively evaluate the proposals;
- (ii) Other representatives from County, municipal or other local jurisdiction(s) where the proposed Joint Development site is located that have additional technical or other relevant expertise to assist in the effective evaluation of the proposals; and/or
- (iii) Representative(s) of the community in which the affected parcel(s) is located.

2.9 Duties of Evaluation Committee for RFP Process. The duties of the Committee in reviewing and evaluating proposals submitted for the RFP, subject at all times to ensuring the confidentiality of the proposal evaluations process, and ensuring no conflicts of interests exist for any Committee member to serve on the Committee, shall be to:

- (a) Become familiar with the solicitation evaluation procedures;
- (b) Evaluate all proposals in accordance with the criteria and methods contained in the solicitation document;
- (c) Rank all proposals in order of merit based upon the solicitation criteria;
- (d) Schedule, participate in, hear and evaluate development presentations as deemed necessary by the Committee during the solicitation evaluation process; and
- (e) Recommend to Port Authority's CEO the proposer whose proposal receives the highest ranking from the Committee.

2.10 CEO Review and Board Approval.

- (a) The CEO may accept or reject the Committee's recommendation. If the Committee's recommendation is accepted, the CEO will then recommend the highest ranked proposer and its proposal for the proposed Joint Development project to the Board for authorization for Port Authority to proceed to negotiations with the proposer. If the Committee's recommendation is rejected by the CEO, the reason shall be documented in writing and the Committee may, at the discretion of the CEO, be reconvened to re-evaluate the proposals or the underlying solicitation may be cancelled with all proposals rejected. If the solicitation is cancelled, the CEO may decide to issue a new solicitation.
- (b) Upon the recommendation of the highest ranked proposer by the Evaluation Committee and approval of the CEO, Port Authority staff will present a resolution to the Board

seeking authorization to enter into an Exclusive Negotiation Agreement (ENA) with the recommended proposer. In the event the Board does not agree with the recommendation, the Board may reject all proposals or require reevaluation of the proposals.

### 3.0 Negotiation

#### 3.1 Exclusive Negotiation Agreement.

- (a) Upon the Board's approval, Port Authority will commence negotiations of the ENA with the highest ranked proposer.
- (b) The ENA shall contain, at minimum, the following terms and information:
  - (i) A project concept;
  - (ii) General planning and development goals, including developer's responsibilities under the ENA;
  - (iii) A required non-refundable fee, in an amount to be determined by Port Authority, payable by the proposer to Port Authority to reimburse Port Authority for the time and resources its staff will expend during the negotiation and project completion process;
  - (iv) Design review authority and process; and
  - (v) A predevelopment schedule.
- (c) The recommended term of the exclusive negotiation period, set forth in the ENA, will vary based on the complexity of the proposal, but shall not be shorter than 6 months or longer than 24 months, absent additional Board review and approval.
- (d) During the term of the ENA, Port Authority and the proposer will work to reach agreement on a refined project plan and business terms, and will seek to secure all necessary concurrences from the FTA, PennDOT and/or other applicable oversight agencies.
- (e) During the term of the ENA, Port Authority will also commission an appraisal and review appraisal by appraisal firms certified by PennDOT to determine the property's fair market sales and rental value for purposes of negotiating business terms with the proposer.
- (f) During the exclusive negotiation period, as long as the proposer is in good standing under the terms of the ENA, the parties will agree to negotiate exclusively and in good faith with each other on a Joint Development Agreement (JDA) and ground lease **or** other appropriate form of agreement to be entered into between Port Authority and the proposer, and Port Authority will not solicit or entertain offers or proposals from other parties concerning the site.
- (g) If Port Authority and the highest ranked proposer are unable to finalize a JDA in the timeframe set forth in the ENA, Port Authority may discontinue JDA negotiations and,

with Board approval, opt, at its sole discretion, to enter into an ENA and pursue a JDA with the next highest ranked proposer.

- 3.2 Joint Development Agreement. Upon satisfactory and timely fulfillment of the requirements of the ENA and negotiation of acceptable terms, Port Authority staff may recommend to the Board to enter into a JDA for the implementation of the project. The JDA shall be initially drafted by Port Authority or its designated legal counsel and describe the rights and responsibilities of both parties.
- 3.3 Ground Lease or Other Agreement Form. Upon satisfactory and timely fulfillment of the closing conditions required in the JDA, and receipt of the necessary concurrence(s), Port Authority and the developer will typically enter into a ground lease for the lease of the site. The ground lease shall be initially drafted by Port Authority or its designated legal counsel and describe the rights and responsibilities of both parties with respect to the site, including, but not necessarily limited to, a legal description of the leased premises, lease term, including any optional extension periods, any federally or other legally required clauses, rent to be paid to Port Authority, including applicable escalation clauses, and any limitations on use of the premises. In some cases, however, another agreement form besides a ground lease may be utilized if deemed appropriate by Port Authority in its sole discretion based upon the particular scope and needs of a project.
- 3.4 Other Project Agreements or Documents. The CEO or designee may also enter into such other documents and agreements to implement and administer the project as described in the JDA and ground lease, to the extent authorized by the Board.
- 3.5 Environmental Compliance. Developer shall be responsible, at its sole cost and expense, for ensuring the project as designed, constructed and operated complies with all environmental laws and regulations and demonstrating this compliance to Port Authority's satisfaction.

#### 4.0 Unsolicited Proposals.

- 4.1 Definition. Port Authority anticipates that private parties may from time to time submit unsolicited proposals for Joint Development projects. A Joint Development unsolicited proposal is a written proposal that is submitted to Port Authority on the initiative of a private party, and not in response to a request issued by Port Authority, which would seek the right to develop or improve real property owned by Port Authority.
- 4.2 Requirements. A valid unsolicited proposal must:
  - (a) Be innovative and unique, offering a development proposal with unique characteristics and benefits;
  - (b) Be independently originated and developed;
  - (c) Be prepared without Port Authority's supervision, endorsement, direction, or direct involvement;
  - (d) Be sufficiently detailed that its benefits in support of Port Authority's mission and responsibilities are apparent;
  - (e) Not be an offer responding to an LOI, RFQ and/or RFP previously published and/or cancelled by Port Authority; and

- (f) Demonstrate consistency with Port Authority's TOD Guidelines.
- 4.3. Review. Upon receipt of an unsolicited proposal, Port Authority will review it and determine, in its sole discretion, how to proceed which may include:
- (a) Port Authority may, at any time, choose, in its sole discretion, not to proceed further with any unsolicited proposal. Port Authority will return any unsolicited proposals that Port Authority does not deem warranted to pursue to the proposer that submitted same; or
  - (b) Port Authority may undertake a developer selection process for the site in question as set forth in Section 2.0 of this document. The proposer who submitted the unsolicited proposal will have the same standing as any other potential proposer in responding to the RFQ/RFP and must submit a revised proposal in direct response to the RFQ/RFP.
- 4.4 Fee. In order to be considered, Port Authority will require a non-refundable \$5,000 fee with any unsolicited proposal to reimburse Port Authority for its time and effort in evaluating the proposal. This fee will be in addition to any fee required for submission of a proposal in response to an RFP.

***ADOPTED BY BOARD RESOLUTION ON OCTOBER 26, 2018 AND EFFECTIVE AS OF NOVEMBER 1, 2018***