



THE SUNRISE CITY
FORT PIERCE
CITY ATTORNEY'S OFFICE *Florida*

TO : Nicholas C. Mimms, P.E., City Manager
FROM : James M. Messer, City Attorney
RE : Little Jim's Bait & Tackle
DATE : February 23, 2018

The attached draft of a request for proposal for the "Assumption of Option on and Extension to Lease" of Little Jim's Bait & Tackle located at N Causeway Dr seeks to provide for the successful bidder to assume the current lease of the current tenant which expires on March 1, 2025, provides for an extension of the lease for an additional thirteen (13) years, and requires certain construction to be completed during that time period.

This office's review is limited to the legality of such an RFP and not to the substance of the specific conditions in the proposal. Although there is no legal objection to such a structured proposal, it appears to be less complicated to simply go out for bid for a new 20 year lease with construction requirements. It should also be noted that any lease greater than one (1) year should comply with the attached City policy.

Despite this office's lack of legal objection to structuring an RFP in such a manner, it defers to the Purchasing Department for review, comment and formatting to comply with the City's governing procurement laws.

Additionally, this office defers to the City's and Purchasing's decision regarding the proposal for current tenant's involvement in the selection and negotiation process, but such a provision would appear to be unusual.

Finally, because the proposal includes construction, it is recommended that it be routed to the Planning, Building, Engineering and Public Works Department for input once it is determined that the City Commission desires to seek such bid.

Attachment

cc: Linda Cox, City Clerk
Johnna Morris, Finance Director
Gelencia Carter, Purchasing Manager

"ACKNOWLEDGED"
x
2/23/18

RECEIVED
TIME
FEB 23 2018
CITY OF FT. PIERCE
CITY MANAGER'S OFFICE

**POLICY FOR THE DISPOSITION OF CITY-OWNED REALPROPERTY OR LEASES
GREATER THAN ONE YEAR.**

(See also City Charter, Sections 13(a) and (b))*

1. The City Manager or appointed designee will identify any real property to be declared surplus for disposal.
2. Prior to being declared surplus property and offered for sale, the Procurement Department will receive a signoff from City departments within 10 days of receipt indicating that there is no existing or future use for said property.
3. All real property to be sold or leased must be declared surplus by the City Commission via Resolution at a public meeting.
4. All real property must have an appraisal prior to sale. The appraisal of the property should not be older than 360 days unless approved by the City Manager.
5. In accordance with the Charter, Section 13(a), notice of any proposed sale or lease of surplus property shall be published once a week for two (2) consecutive weeks in some newspaper of general circulation published in the said city, calling for bids for the lease or purchase of the real estate so advertised to be leased or sold.
6. Such notice, and any additional notices used to solicit bids including an RFP, advertising/marketing tools, and real estate listings, shall clearly state all terms and conditions or factors that will be considered when evaluating bids, including but not limited to:
 - Any price or terms and conditions the City Commission shall deem proper;
 - Detailed statement regarding proposed use for the property;
 - Economic impact;
 - Job creation;
 - Timeline for any and all development, renovations, repairs and/or demolition;
 - Statement that any proposed use conforms to all land development regulations and building codes, or any variances required;
 - Any proposed deed restrictions, reversionary clauses, and/or covenants; and
 - Any deposit or surety bond to be given with each bid submitted in such form and in such amount as required by the City Commission.
7. Upon receipt of any bids, and in accordance with City Code, Chapter 2, Section 2-223(4), the bids shall be submitted to the Planning Board for its recommendation, provided, however, the City Commission shall have authority to overrule the disapproval of the board on any such proposal.
8. Any bid, along with the Planning Board recommendation, shall be presented to the City Commission for final approval. Per the Charter, Section 13(a), the bid of the highest bidder complying with the terms and conditions set forth in such notice shall be accepted unless the City Commission shall reject any and all bids.

9. After approval by City Commission all information is forwarded to the Title Company for preparation of the deed and the closing. Originals returned to City Clerk. Copies of all the documents are forwarded to Purchasing and Finance.

*This policy applies to the sale or lease of certain city owned real property to a private individual or entity, and does not apply to: (1) the exchange of property by the City for other real or personal property owned by another (*see* Charter, § 13(c)); (2) the conveyance or lease of property to the United States of America, or any department or agency thereof, the State of Florida or any political subdivision or agency thereof, or any Florida municipality (*see* Charter, § 13(d)); or (3) to the types of dispositions outlined in the Charter, Sections 13(e) through (g).



CITY ATTORNEY USE ONLY

Date Received:	02/16/2018
Assigned To:	CV
File:	
Due Date:	02/20/2018
Hours:	

REQUEST FOR LEGAL SERVICES

To: CITY ATTORNEY

SUBMITTED BY: KAITLYN BALLARD, ADMINISTRATIVE ASSISTANT *KMB*

CITY MANAGER AUTHORIZATION: NICHOLAS C. MIMMS, P.E., CITY MANAGER *ncm*

RE: Little Jim's Bait & Tackle

DATE: FEBRUARY 16, 2018

Service Required: (please circle or underline)

<u>Review Documents</u>	Draft Document	Written Opinion Requested
Attend Meetings	Advise	Other:

Upon review and/or "Approval as to Form and Correctness," the Department submitting the RLS is responsible for placement of any related item on a Commission or Board Agenda.

- Brief statement of the nature of the request or problem:** Please review the attached document sent by Robert J. Gorman & Associates P.A. regarding Little Jim's Bait & Tackle.
- Discussion of the implications and the possible impact if not apparent from preceding information:** This request originates from documentation sent to the City Manager's Office from Little Jim's Bait & Tackle's Attorney.
- Time considerations and their significance:** Please review documents at your earliest convenience.
- Are City funds required? If so, list approvals obtained for expenditure of funds:** (e.g., purchasing approval, Commission Approval at [date] Regular Meeting, finance approval.)
- Factual background:** (Outline the facts related to the underlying matter to provide context for the request.)
 - Location
 - Phase of Construction
 - Parties Involved

6. List and/or attach all related documents and known authorities (e.g., statute, ordinance, resolution, administrative code, legal case, RFP, bidder's response, contract, lease, letter, memorandum, prior legal opinion, deed, etc.):

- Letter from Robert J. Gorman & Associates P.A. regarding Little Jim's Bait & Tackle.

7. Identify prior legal assistance on this or a related matter and the attorney who handled it:

8. If this is a request for review of a contract, provide the following:

- a. **List of individuals who have read and approved the business terms and conditions of the contract and confirmed the ability to carry out the terms of the contract as they apply to the City:** (This office is not responsible for reviewing either the accuracy or value of the business terms and conditions or product specifications of the contract as agreed upon between the department and contractor. However, this office is available to negotiate the terms as desired by the City upon request.)
- b. **Insurance requirements that differ from the City's template insurance terms:** (The department should consult with the Risk Manager for each contract to determine whether there are any special insurance requirements.)

CITY ATTORNEY USE ONLY			
Routed for Review	Date	Response Deadline	Response

ROBERT J. GORMAN & ASSOCIATES, P.A.

A Professional Association

1209 Delaware Avenue

Fort Pierce, Florida 34950-4049

(772)465-5311 / (772)465-5722 Fax

COURT FILINGS ONLY - courtdocs@rjgpa.com and support@rjgpa.com

Robert J. Gorman, Esquire • bob@rjgpa.com

<input type="checkbox"/> U.S. Mail	<input type="checkbox"/> Fax Transmission @ _____ : _____ # _____	<input type="checkbox"/> Certified Mail	<input type="checkbox"/> Overnight Delivery	<input type="checkbox"/> Hand Delivery
()	Pages _____	<input type="checkbox"/> E-mail		<input type="checkbox"/> Pick Up

February 12, 2018

Nick Mimms
City Manager
100 N. U.S. Highway 1
Fort Pierce, FL 34950

RECEIVED
TIME _____

FEB 12 2018

CITY OF FT. PIERCE
CITY MANAGER'S OFFICE

RE: Little Jim's Bait & Tackle

Dear Mr. Mimms:

This office represents Little Jim's Bait & Tackle in connection with the ongoing efforts to obtain city approval of its assignment of its remaining lease term to a successful bidder of that and extended lease on the premises currently leased by Little Jim's Bait & Tackle from the City of Fort Pierce. I know that you are familiar with Richard and Rita King who had meetings with you, Commissioners and others in the city pertaining to this matter before my involvement.

In working with them in this, I have visited with most of the Commissioners and others and have quoted a proposal that I understand had earlier been raised by one of the Commissioners.

It is my understanding that you are making time available on February 15th to meet with Mr. and Mrs. King. I hope to attend that as well but due to prior commitments, it will depend upon the time that the meeting is set. In case I do not make it to the meeting, but more importantly to present something to you prior to that meeting and perhaps have the Little Jim's matter and bid process placed on the upcoming agenda for the City Commission at its February 20th, 2018 meeting.

The request for proposal that we are asking the city to advertise and seek would be as to the assignment and assumption of the existing lease hold interest, together with and extension of

lease for an additional 13 years and a list of required works which would greatly expand, improve the facilities and, in my mind, most importantly, upgrade the sanitary facilities by constructing new bathrooms and connecting the facility to city sewer system; all at the cost of the successful bidder.

The advantage to the city in doing this is that it will see a much earlier improvement to that facility and particularly the shutting down of the septic system which the city can realize in a matter of months to a year as opposed to more than seven (7) years under the current lease and operation. It would be gain for all parties and assure the continued success of this locally historic place.

I have taken the liberty of preparing a basic request for proposals, patterned largely after the original for Little Jim's and added to it elements that the city can make as condition. In that manner the cities benefit of the connection to sewer and improved restroom facilities, parking lot improvement and storm water protection.

I look forward to working with you and the commission and staff towards a successful process and improvements that will not only enhance this historic location but provide environmental protections.

Very truly yours,



Robert J. Gorman

RJG/trm

REQUEST FOR PROPOSALS NO. ____
ASSUMPTION OF OPTION ON AND EXTENSION TO
LEASE OF CITY OWNED PROPERTY, BUILDINGS & DOCKS
STATEMENT OF WORK

PURPOSE

The City of Fort Pierce, Florida (herein referred to as the “City”) invites qualified parties to submit a Request for Proposal (RFP) for assumption/acquisition of Option on Existing Lease with extension for a multi-year lease with proposed uses a parcel of City owned property including buildings and docks, located south and east of State Highway A-1-A leading to the North Beach, and commonly known as Little Jim’s.

Proposals are due on or before 3:00 PM, TUESDAY, MARCH _____, 2018. Eleven (11) complete sets of sealed proposals (one original and ten copies) should be mailed or delivered to:

Delivery Address

**City of Fort Pierce
Procurement Dept., 1st Floor
100 North U.S. Highway 1
Fort Pierce, FL 34950**

Mailing Address

**City of Fort Pierce
Procurement Dept., 1st Floor
P.O. Box 1480
Fort Pierce, FL 34954-1480**

CITY BACKGROUND

As one of the oldest communities on the east coast of Florida, Fort Pierce has borne witness to the changing tides of history, as well as the changing tides of the Atlantic Ocean, for over 104 years. The days of one-room log houses and quiet river commerce has given way to diverse possibilities as the City has grown to over 39,000 residents and encompasses 26 square miles (with expansion to 55 square miles in the future) and has three (3) major highways (Interstate 95, Florida Turnpike and U.S. Highway 1) which service our City. The echoes of the rural past can still be felt in the peaceful quality of the lives of our residents lead just a short distance from the hustle and bustle of both West Palm Beach and Orlando. Ours is a diverse yet neighborly community, embracing both the richness of our heritage and the promise of the future in St. Lucie County Downtown, within sight of the timeless waters of the Indian River Lagoon, affords our residents contemporary shopping and dining and a range of entertainment and activities.

Modern educational and research facilities, like top-ranked Indian River Community College, the \$6 million Smithsonian Institute Research Center, Manatee Observation and Education Center, and Harbor Branch Oceanographic Institute, live in harmony with the completely renovated 1925 City Hall and the restoration and successful operation of the historic, 1,200 seat Sunrise Theatre, which serves as a regional performing arts center.

The community’s vision for the future captures our rich, colorful history and blends it – beautifully – into the spirit of modern life.

SCOPE OF WORK

1. To enter into, assume and exercise an existing option on the current lease (7 years +/- remaining) and an extension of a multi-year lease with proposed uses of City owned land as described in the attached map with legal description. The current Lessee has constructed, reconstructed buildings, docks and premises and installed equipment and improvements that will remain on premises per lease effective dated March 1, 2010. Certain improvements and Works are to be incorporated and completed by the proposer.

Required Works Include:

1. Construct new bathrooms building.
2. Connect all facilities to municipal sewer facility (may require pumping to lift station off site).
3. Upgrade electrical and plumbing; install grease trap.
4. Construct commercial kitchen with commercial hood and appropriate accessories, and walk-in freezer.
5. Construct additional tiki(s)/deck to add approximately 200 additional seats.
6. Repair and extend existing docks.
7. Re-configure, improve parking to accommodate required for expanded seating.

Additional Optional Works:

- (1) Landscaping improvements.
- (2) Mosquito control facilities.
- (3) Security systems.
- (4) Negotiate with existing Lessee to obtain name, telephone number, website and Similar.
- (5) Additional facilities, amenities and operations.

All works must maintain historical integrity of Little Jim's as a 'locals' place, laid-back old Florida; yet tourist friendly and a must-see destination.

The successful bidder will, on acceptance by City and current Lessee, purchase existing option on and assignment of current lease at higher of existing option price or bidder's option price offer.

The successful bidder will have an opportunity to negotiate with Little Jim's Bait & Tackle, Inc, for additional consideration, the acquisition of trade name, good will, telephone number, website, email address, current inventory, mementos of history of site and nearby areas.

Additional information related to existing lease, Lessee information, including opportunity to review premises and site facilities and conditions will be made available at pre-bid meeting.

A. The successful bidder will need to continue operation of "Little Jim's" as a bait & tackle shop, small marina, small grill/café, marine fuel dispenser subject to operating parameters relating to dates and hours of operation.

Any questions pertaining to this proposal must be submitted in writing seven (7) days prior to proposal opening to the attention of the Director of Procurement at the following address:

**Director of Procurement
City of Fort Pierce
P.O. Box 1480
Fort Pierce, FL 34954-1480
Fax (772) 595-9948
Email: _____@ci.fort-pierce.fl.us**

INSTRUCTIONS FOR PREPARING PROPOSALS

RULES FOR PROPOSALS

The proposal must name all persons or entities interested in the proposal as principals. The proposal must declare that it is made without collusion with any other person or entity submitting a proposal pursuant to this RFP.

PROPOSAL FORMAT

Proposers shall prepare their proposals using the following format:

- A. Letter of Transmittal – This letter will summarize in a brief and concise manner, the proposer's understanding the Scope of Work and make a positive commitment to timely perform the work. The letter must name all of the persons authorized to make representations for the proposer, including the titles, addresses and telephone numbers of such persons. An official authorized to negotiate for the proposer must sign the Letter of Transmittal. The letters should not exceed two pages in length.

- B. Organization Profile and Qualifications – The section of the proposal must describe the proposer, including the size, range of activities, etc. The proposer must emphasize its expertise in, and experience with, similar programs. The proposal must identify the primary individuals responsible for supervising the work. The proposer shall provide the City of Fort Pierce with the resumes of the primary individuals. The proposal must also include recent and pertinent references, including contact name, telephone number and address.
- C. General Information – The RFP shall include general information regarding the firm’s experience relative to operation of proposed uses.
- D. Scope of Work – This section of the proposal should explain the Scope of Work as understood by the proposer and detail the approach, activities and work products. A timeline for performance/completion of Work should be included.
- E. Financial - The amount proposer offers to current Lessee for assignment and assumption of current lease with just under seven (7) years remaining, additional amounts proposer is offering City during remainder of term, additional term proposed, rental and other payments during extended multi-year lease extension.

(The proposer may use the included BID FORM)
- F. Additional Data – Any additional information that the proposer considers pertinent for consideration should be included in a separate section of the proposal.

EVALUATION OF PROPOSALS

EVALUATION METHOD AND CRITERIA

- A. General – Proposals will be evaluated by the City of Fort Pierce who shall be the sole judge of its own best interests, the proposal itself, the qualifications of the applicant, and the resulting final negotiated agreement. The City’s decision in these matters shall be final and binding.

The City’s evaluation will include, but shall not be limited to, consideration of the following:

1. Verification of availability of qualified personnel.
2. Past performance records from city or other cities where same services were provided with accomplished results.
3. Ability to meet set standards.
4. Qualifications of the Proposer/Bidder.

5. Expertise of human resources.
6. Experience.
7. Time frames and delivery dates.
8. Past contracts with the City.
9. Related experience in the City of Fort Pierce.
10. References.

Selection – The City of Fort Pierce shall evaluate the written proposals submitted by the firms regarding the proposed project and shall conduct discussions with, and may require presentations from qualified firms regarding their qualifications, and ability to furnish the required service.

BID FORM

Consideration to current Lessee for remaining Lease Term \$ _____

Other Considerations:

Additional consideration to City; if any, in addition to lease payments for remaining Lease Term \$ _____

Rental Payments to City for extensions of Current lease upon termination of current lease \$ _____

Proposed time line for completion of required Works

Construct new bathrooms/connect to sewer _____

Construct additional kitchen facilities _____

Construct additional Tiki/deck _____

Total additional seating _____

Repair/extend docks _____

Reconfigure/improve parking _____



TO : The Honorable Mayor and Members of the City Commission

FROM : James M. Messer, City Attorney

RE : Little Jim's Bait & Tackle

DATE : March 9, 2018

In order to ensure a complete analysis of the subject issue for the upcoming Conference Agenda, I have conducted a more detailed review of the potential terms of the proposed Request for Proposal (RFP) to supplement my previous memorandum of February 23rd, 2018.

At issue are two proposed terms of the RFP:

- (1) A term that offers the successful bidder an opportunity to negotiate the purchase of the inventory of the current tenants.
- (2) A term that permits the current tenants to participate in the evaluation and selection process by stating "[T]he successful bidder will, on acceptance by City and the current Lessee"

As part of the review, I have consulted extensively with other municipalities, including a procurement expert. Although there does not appear to be a specific legal prohibition against the inclusion of the terms, the terms could be construed to be at odds with basic principles of fairness and arm's length business transactions.

Based on these discussions, I would recommend an extremely cautious approach to the inclusion of terms that would extend an opportunity to the successful bidder to either purchase the current tenant's inventory or to allow the current tenants to participate in the selection process. Those terms are subject to legal and ethical challenges because they serve little or no municipal purpose.

In regard to the purchase of the inventory, Florida Constitution, Article VII, section 10, prohibits a municipality from using its credit or influence to benefit a private entity. The purpose of this section is to protect public funds and resources from being exploited in assisting or promoting private ventures when the public would at most be incidentally benefitted.

A challenger to the bid award could well claim that the City used its authority and resources to benefit a private entity's interests by requiring the bidder to purchase the current tenant's inventory. Caution should be exercised to ensure that opportunity does not translate to requirement in the eyes of a prospective bidder.

As to the second issue regarding participation of the current tenants in the selection process, most municipalities prohibit any individual or entity with a financial interest in the results from participating in the reviewing, ranking and selection of proposals. As a practical example, a person who has placed a bet on the outcome of a sporting event is not permitted to referee the game. It, therefore, becomes less of a matter of law and more of a matter of fundamental fairness and ethics.

Similarly, the City's Code at section 2-72(b) states that "[i]t shall be unethical for any city employee to participate directly or indirectly in a procurement contract when the city employee knows that: (1) [t]he city employee or any member of the city employee's immediate family has a financial interest pertaining to the procurement contract."

The City should extend this principal to any participant in the procurement process with a financial interest in order to ensure that there is no unfair advantage; be it real or perceived.

Any participation by an individual with a financial interest in the procurement process exposes the City to a bid award challenge based on the real or perceived bias, prejudice and/or unfair self-interest of the participating individual because of that very same financial interest.

Alternatively, the City could include a provision in the RFP that would allow the successful bidder, at its option, to contract separately with the current tenant for the purchase of its inventory. The City should not, however, be a party to these negotiations or any resulting contract.

cc Nicholas C. Mimms, P.E., City Manager
Linda Cox, City Clerk
Johnna Morris, Finance Director