COMMUNITY DEVELOPMENT AUTHORITY OF THE CITY OF MADISON, WISCONSIN

Resolution No. 4074

Authorizing the negotiation of a contract by and between the Truax Park Development, Phase 2, LLC and Dimension Development LLC for development services

Presented April 10, 2014
Referred
Reported Back
Adopted April 10, 2014
Placed on File
Moved By Daniel Guerra, Jr.
Seconded By Sariah Daine
Yeas 5 Nays 0 Absent 0
Rules Suspended

PREAMBLE

The Community Development Authority of the City of Madison (the "CDA") is undertaking the redevelopment of Truax Park Apartments.

The CDA issued a Request for Qualifications and Proposals for joint venture development services that was advertised on November 18, 2011 and November 25, 2011 (the "RFP"). Dimension Development, LLC, Stone House Development, Inc., Knothe & Bruce Architects, and McGann Construction, Inc. (the "Development Team") responded to the RFP on December 5, 2011. All groups that submitted a proposal where interviewed on December 15, 2011 by a panel comprised of CDA staff, CDA Commissioners and experienced members of the community. The interview panel agreed on the selection of the Development Team subject to refinements in the Development Team's proposal.

On January 12, 2012 the CDA approved Resolution No. 3065 authorizing the execution of a non-binding letter of intent by the CDA and Dimension Development LLC, Stone House Development, Inc., Knothe & Bruce Architects, and McGann Construction, Inc. for services relating to the development, financing, design, construction, and management of Truax Park Development Phase 2 ("Phase 2"). See Exhibit A

On January 26, 2012, the CDA approved Resolution No. 3066 authorizing the submission of an application to the Wisconsin Housing and Economic Development Authority ("WHEDA") for Low-Income Housing Tax Credits and the execution of other documentation as necessary for Truax Park Development Phase 2. The resolution authorized the formation of a limited liability company under the name of Truax Park Development, Phase 2, LLC (the "LLC") to proceed with land control, construction, financing, renting, and/or managing Phase 2 and further authorizing the CDA to become a managing member of the LLC. A Low Income Housing Tax Credit application for Phase 2 was submitted to WHEDA on or before February 3, 2011. Phase 2 did not receive an award of tax credits in 2011.

On January 23, 2013, the CDA adopted Resolution No. 4017 authorizing the CDA either on its own behalf or as the managing member of the LLC to undertake such actions and enter into such documents and agreements as the Chair and the Secretary deem necessary or appropriate to apply for and receive tax credits for Phase 2.

The LLC was awarded tax credits for Phase 2 in April of 2013.

Exhibit B sets forth the scope of development services to be provided by Dimension Development LLC for Phase 2 ("Phase 2 Development Services").

NOW THEREFORE BE IT RESOLVED that the CDA does hereby authorizes the Secretary to negotiate a contract by and between the LLC and Dimension Development LLC for Phase 2 Development Services with the final form of the development services contract subject to approval of the CDA.

EXHIBIT A

December 27, 2011

Mr. Tom Landgraf
Principal
Dimension Development, LLC
2984 Triverton Pike Drive
Suite 102
Fitchburg, WI 53711

Stone House Development, Inc.
Rich Arnesen
625 N. Segoe Rd. suite 107
Madison, WI 53705

RE: Truax Redevelopment Joint Venture Development Partner Request for Proposal
RFP# 8195-0-2011/CPS

Dear Tom and Rich:

The purpose of this Letter of Intent ("LOI") is to outline the terms and conditions for agreements to be executed between the Community Development Authority of the City of Madison (the "CDA") and Dimension Development, LLC, Stone House Development, Inc. Knothe & Bruce Architects, and McGann Construction, Inc. (the "Development Team").

The CDA issued a Request for Qualifications and Proposals that was advertised on November 18, 2011 and November 25, 2011 (the "RFP"). The Development Team responded to the RFP on December 5, 2011. Since that time the CDA and the Development Team have discussed and refined the Development Team's proposal and have decided to move forward with a joint effort to develop Truax Park Phase II. A critical component of the Truax Park Phase II development is the submission of an application for Low Income Housing Tax Credits to the Wisconsin Housing and Economic Development Authority ("WHEDA") on or before February 3, 2011.

The parties have indicated their desire to work together on Truax Park Phase II. This letter of intent is meant to set forth the parties' understanding of some of the terms that will be documented in more formal agreements.

This is letter of intent which does not constitute a definitive statement of all the terms and conditions of the proposed transaction and is not intended to constitute an agreement to execute any contract in the future. If the parties enter into negotiations, either party may terminate such negotiations at any time. Neither party will be legally bound in any manner unless and until (1) contracts have been prepared, (2) the CDA Board approves the terms of the contracts and (3) the contracts are executed and delivered between them.

The CDA is contemplating a total of 40-60 units of new construction in Truax Park Phase II with a minimum of 25 Public Housing Units. The Development Team intends to provide design, development, financing (including but not limited to Low Income Housing Tax Credits (LIHTCs)), construction, and property management services for Truax Park Phase II. The details of Truax Park Phase II including but not limited to the final number of units, the unit mix, the location of buildings and design, will be a product of the parties' work together.

The CDA in its sole discretion may award development rights for future phases at Truax Park to the Development Team. The terms and conditions of the parties' relationship for future phases shall be negotiated and documented under separate agreement.

The terms and conditions of the parties' relationship for Truax Park Phase II shall include but not be limited to the following.

- Dimension Development, LLC and Stone House Development, Inc. will provide the services outlined in the proposal section of the December 5, 2011 response to the RFP.

- It is the intent of the parties to negotiate a contract for design services with Knothe & Bruce Architects for Truax Park Phase II.

- It is the intent of the parties to negotiate a construction contract with McGann Construction, Inc. for Truax Park Phase II.

- It is the intent of the parties to hire Stone House Development, Inc. for property management services for Truax Park Phase II.

- The Development Team and the CDA will file a joint application to WHEDA for Low Income Housing Tax Credits for the development of Truax Park Phase II. There will be no cost to the CDA for the Development Team's time related to the preparation and filing of Low Income Housing Tax Credit application.

- The CDA shall be responsible for all reasonable, third party, out of pocket costs relating to the Low Income Housing Tax Credit application including but not limited to the costs of a market study and the application fee.

- To the extent the CDA chooses to proceed with design work for Truax Park Phase II, prior to the receipt of 9% low income housing tax credits, it will negotiate a contract acceptable to the parties with Knothe & Bruce Architects and will be responsible for compensation due Knothe & Bruce Architects.

If the Development Team and the CDA receive 9% low income housing tax credits, agreements will be negotiated that include but are not limited to the following terms.

The CDA will act in role of the Managing Member of a limited liability company (the "Development LLC") with a tax credit investor as the investor member.

Knothe & Bruce will be hired by the Development LLC to provide design services with an architectural fee that does not exceed the WHEDA maximum allowable fee.

McGann Construction, Inc. will provide the Development LLC with a Guarantied Maximum Price Contract (the "Construction Contract") with a contractor profit of 2% and overhead and general conditions per industry standards and within WHEDA guidelines. The Construction Contract will include liquidated damages for failure to complete construction on time. McGann Construction, Inc. will provide a full Payment and Performance Bond. McGann Construction, Inc. agrees to provide the services outlined in the RFP without charge up until such time as the Construction Contract is executed with the Development LLC.

Stone House Development, Inc. will provide a guaranty of lease up for all non-public housing units. The guaranty will include leasing to income qualified residents in time to deliver credits per the agreed upon proforma.

Stone House Development, Inc. will provide a guaranty of break even operations during the operational phase; however, failure of the CDA to deliver public housing subsidy or public housing rents at the level set forth in the agreed upon proforma will offset the Stone House Development, Inc. break even operations guaranty. The parties will negotiate a time frame for the "burn off" of the break even operations guaranty.

Development fees shall be split 65% to Dimension Development, LLC and Stone House Development, Inc. and 35% to the CDA. The Development Fee shall be paid based upon the percentages set forth above when it is received from the Development LLC.

By signing in the space provided below, the parties indicate their desire to work together on the development of Truax Park Phase II. No binding agreement will exist between the CDA and the Development Team unless and until agreements are approved and executed by the CDA and the Development Team Members.

Sincerely,

Natalie Erdman

Executive Director

Gregg Shimanski, Chair

Community Development Authority of the City of Madison

The terms set forth in this letter of intent are acceptable to Dimension Development, LLC, Stone House Development, Inc., Knothe & Bruce Architects, and McGann Construction, Inc.

Tom Landgraf, Principal

Dimension Development, LLC

Rich Arnesen

Vice President

Stone House Development, Inc.

Randy Bruce

Knothe & Bruce Architects

Aaron Kostichka

Vice President

McGann Construction, Inc.

EXHIBIT B

Dimension Development Scope of Services

- Application and Preparation of Affordable Housing Tax Credit Application
- Preparation and submittal of all other documentation relating to the reservation, carryover and allocation of Low Income Housing Tax Credits including but not limited to Part 2 and Part 3 applications.
- Preparation of and assistance with HUD Demolition Disposition Application,
- Preparation and filing of HUD Mixed Finance Application,
- Preparation and filing of application for Federal Home Loan Bank Affordable Housing Program Financing,
- Assistance, as requested with identifying and applying for other subordinate financing,
- Draft and issue a request for proposals for Low Income Housing Tax Credit Investment and Construction Loan. Assist with assessment of responses to subject proposals and oversee and coordinate the documentation for closing both the equity and construction loan transactions.
- Provide primary oversight of due diligence and documentation for closing the Low Income Housing Tax Credit Investment, Construction Loan and all other project financing.
- Provide primary oversight of other development work including but not limited to title insurance, property insurance, environmental reports, and ALTA survey and subdivision plats.
- Coordinate efforts of architect, contractor, accountant, attorney, tax credit investor and construction lender.
- Monitor construction and prepare and process pay applications and draw requests until such time as final funding of permanent loans and equity has been obtained by the LLC.

Compensation
Dimension Development shall be entitled to receive a consulting fee equal to 35% of the development fee allowed by WHEDA ("Consulting Fee"). The payment of the Consulting Fee is contingent on the LLC's ability to obtain debt and equity sufficient to pay all costs of the transaction including the full amount of the Development Fee WHEDA tax credit application.

The Consulting Fee will be paid in two installments. Eight-five percent (85%) will be due at the closing of the equity transaction and fifteen percent (15%) to be paid upon receipt of the third equity installment.

Responsibilities of the CDA

- Act as Managing Member of LLC with industry standard rights and responsibilities
- Provide primary oversight of land use approval process
- Provide primary oversight of design activities
- Prepare and file application for Home Funds
- Provide financing for construction as indicated in the tax credit application.
- CDA acknowledges that it provide industry guaranties to the Investor Member