

**STATE OF FLORIDA
FLORIDA BOARD OF GOVERNORS
Public-Private Partnership Guidelines**

DRAFT as of December 15, 2014

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I. PURPOSE OF GUIDELINES

The purpose of these guidelines is to provide (i) a structure for the universities and direct support organizations (DSO) to use in evaluating transactions with private parties that will result in the construction of facilities for the use and/or benefit of a university, its students, faculty or staff, and (ii) the process for approval of such transactions.

II. DEFINITIONS

As used in these Guidelines, the term:

(a) "Facility" means a building or other facility and related improvements that (i) will serve an educational, research, housing, parking, infrastructure, recreational, health, cultural or other university purpose and (ii) is being constructed primarily for use by the university and/or its students, faculty, staff, visitor, or university-affiliated individuals.

(b) "Public-Private Partnership" means an agreement or agreements between a university board of trustees or a DSO and a Private Party whereby the Private Party will be responsible for the design, construction, financing, or the design, construction, financing and operation, of a Facility.

(c) "Private Party" means a natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public-benefit corporation, nonprofit entity, or other private business entity.

(d) "Project" means the construction of a Facility, on or off campus, accomplished through a Public-Private Partnership, with the Project costs being paid for, whether up front or over time, with revenues generated by the Project. Project costs may include design, construction, financing and/or operational costs of the Facility.

Projects not subject to the Guidelines

Notwithstanding the foregoing, the following transactions are not Projects and therefore not subject to these guidelines and may be accomplished by the universities or their DSOs in accordance with any requirements under applicable laws, regulations and Board of Governors' policies and guidelines:

(a) Any transaction where the university or the DSO will be directly responsible for repayment of any debt associated with the construction of a Facility pursuant to section 1010.62, Florida Statutes, and the Board of Governors' Debt Management Guidelines.

(b) Any transaction where the university or DSO is hiring a Private Party to provide services, including, but not limited to, management services agreements, and which may involve the construction of tenant improvements in a Facility but does not involve the construction of a new Facility.

(c) Any operating lease where the university or the DSO is the lessee for a building or portion thereof not on the university's campus or other property owned by the university or DSO.

(d) Any transaction involving construction of a Facility being funded solely with state fixed capital outlay appropriations or other legislative authorization, or those funds authorized pursuant to section 1013.74(2)(a), Florida Statutes.

(e) Any Project with a total cost of \$5,000,000 or less.

III. USE OF QUALIFIED PROFESSIONALS

(a) The use of qualified professionals, both in-house and external to the university or DSO is essential to the success of any Project. A university or DSO must determine, prior to commencing the Project, that current university or DSO staff have the requisite experience to negotiate the type of Project under consideration by the university, and, except where granted a waiver by Board of Governors's staff, that external independent financial advisors and outside legal counsel, such as bond counsel have been retained, prior to Project solicitation as described in Section IV.

IV. PROCUREMENT PROCEDURES

(a) A university or DSO shall publicly solicit proposals from Private Parties for the Project. The solicitation shall be in the form of an Invitation to Negotiate (ITN) or other public procurement process to ensure the flexibility necessary to structure the Project in a manner that:

1. Is in the best interests of the university or the DSO.

2. Is for a Facility that is owned by the university or the DSO or for a Facility for which ownership will be conveyed to the university or the DSO.
3. Has adequate safeguards in place to reasonably ensure that future costs or service disruptions are not imposed on the university or the DSO in the event of material default or cancellation of the Public-Private Partnership by the board.
4. Has adequate safeguards in place to reasonably ensure that the university's or DSO's debt rating will not be adversely affected by the Project.

(b) At a minimum, the public procurement process will require (and responses must include to be determined responsive) the following information:

1. A description of the Facility, including a conceptual design, a schedule for the initiation and completion of the Facility, and the total Project cost.
2. If applicable, a description of the method by which the Private Party proposes to secure the necessary property interests that are required for the Project.
3. A financing plan that describes in detail the Private Party's plans for financing the Project, including identification of all sources of revenues and proposed debt or equity investment on behalf of the Private Party. If the Private Party intends to use its own assets for the Project, sufficient information must be provided that substantiates the existence and availability of the assets to be used for the Project. (Financial statements, etc.)
4. For residence halls, parking facilities, and any other facility where students will be charged a fee for use or occupancy of the Facility, an explanation of university involvement in establishing and overseeing the assessment of fees, a schedule detailing the proposed fees over the term of the Public-Private Partnership, and the methodology for, and circumstances that would allow, changes to such fees over the term.
5. A description of the qualifications of the Private Party and the qualifications of any other entities that will provide services, on the Project, and key persons who will be responsible for the Project.

(c) The evaluation and negotiation committees used by the university or the DSO must be comprised of persons who collectively have experience in facility construction, facility financing, and if operational services are included, with operations relative to the type of Project being proposed including knowledge of the costs associated with providing the services or operation of the Facility.

(d) The process shall follow the normal procedures in place at each university or DSO for the type of competitive procurement process utilized by the university or DSO.

(e) Any real property lease or use agreement involving state lands owned by the Board of Trustees of the Internal Improvement Trust Fund must receive approval from the Board of Trustees of the Internal Improvement Trust Fund in accordance with section 1013.171, Florida Statutes.

V. PROJECT FEASIBILITY

Prior to entering into a Public-Private Partnership subject to these guidelines, the university or DSO shall consider the feasibility of the Project and have sufficient information to determine:

(a) The need for the Project in relation to other facility needs of the university and whether current or projected demand exists that is adequate in relation to the cost of the Project.

(b) The financial feasibility of the Project, including all sources of revenues necessary to fully fund the construction, operation and maintenance of the Project, together with an assessment of whether the total cost is reasonable in relation to similar facilities, and for student facilities, such as housing, that costs to the student have been considered.

(c) The cost of any services to be provided by the university or the DSO in relation to the Project.

(d) The effect, if any, of the Project on the university's debt rating.

(e) The amount of debt used for the Project in relationship to total Project costs, and the credit quality of all debt associated with the Project.

(f) The projected revenues to be received by the university or DSO over the term of the agreement if the Project is revenue-generating, and the proposed use(s) of those revenues.

(g) Any economic, operational or technological risks associated with the Project.

(h) Whether the Private Party has the available sources of funding or other financial resources that are necessary to carry out the Project.

(i) That the Private Party has sufficient staff with the necessary experience and qualifications to perform the construction activities and any operational, managerial or technical services to be provided to the Project.

VI. APPROVAL PROCESS AND APPROVAL DETERMINATION MATRIX

All Public-Private Partnerships to be entered into pursuant to these guidelines must be approved by the university board of trustees; certain Public-Private Partnerships are contingent upon approval by the Board of Governors. The university should use the Public-Private Partnership Determination Matrix to make its initial determination as to whether a Project requires Board of Governors' approval. (The Public-Private Partnership Approval Determination Matrix is hereby incorporated by reference, see Appendix A). Once this initial determination has been made, the university or DSO shall request confirmation by Board of Governors' staff of the initial determination. Any Project requiring Board of Governors' approval must be first approved by the university board of trustees and, if a DSO project, by the DSO board. All Projects must be submitted to staff of the Board of Governors for review and recommendation.

(a) The following Project information is required to be submitted to the Board Office no later than ninety (90) days prior to the meeting at which the issue could be considered by the Board of Governors, if such approval has been deemed necessary by Board staff:

1. Evidence of approval of the Project by the university board of trustees for both university and DSO projects, or the dates on which all such required approvals have been scheduled and noticed.
2. The Facility program, feasibility studies or consultant reports (if available), and any financial studies or analysis of the financial feasibility of the Project.
3. An analysis that provides the quantitative metrics justifying the need for the construction of the Project.
4. A copy of the proposed agreement or a statement of key terms of the proposed agreement with the Private Party, and a letter from legal counsel describing, with particularity, the provisions in the agreement that are

designed to protect the university or the DSO in the event of a material default by the Private Party.

5. An analysis calculating the expected rate of return for a revenue-generating Project, and the anticipated uses of any revenues returned to the university or DSO.

6. The results of the university's or DSO's determination with regards to the Public-Private Partnership Matrix. A university may request Board of Governors consideration for any project, regardless of the Matrix determination.

7. A statement that the Project is consistent with the strategic priorities and mission of the university, with appropriate references to both the university strategic plan and mission statement.

8. A statement that the Project is included in a campus master plan, or is not required to be included in a campus plan, with appropriate references and documentation. The specific location of the Project shall be provided on a current campus map.

9. All other information provided to, and relied upon, by the university board of trustees in making the decision to approve the project and enter into the agreement as outlined in Section V above.

(b) The foregoing information shall be submitted to the Board office in duplicate, hard copy, and bound in a three-ring binder, together with one electronic copy. The formal letter of transmission must be signed by the official point of contact for the university or DSO. The letter will identify the legal counsel for the university or DSO, the financial advisor for the university or DSO, and other university or DSO officials as appropriate. All private and public partners will be identified, including contact information. The source of financing will be identified. Any other relevant reports should be provided as well.

(c) The information shall be analyzed by Board of Governors' staff, and as deemed appropriate, with assistance from the State Division of Bond Finance (DBF) and a determination regarding Board of Governors' approval made in sufficient time for consideration of the Project at the Board of Governors' meeting ninety (90) days following submission by the university. Any significant amendments to the submission by the university or the DSO after university board of trustees' approval shall require re-authorization by the respective boards.

(d) The Board staff shall either (i) submit an agenda item with supporting documentation and analyses to the Board of Governors for consideration at its next meeting for the Board of Governors's meeting ninety (90) days following submission by the university; or (ii) provide a determination letter within sixty (60) days following submission by the university indicating that the Project does not require Board of Governors' approval, and may proceed subject to university board of trustees' approval and the other requirements of the Guidelines; or (iii) provide a letter to the university indicating that the Project as proposed is not in compliance with these Guidelines and specifying the areas of non-compliance.

Supporting documentation shall also include a draft resolution to be adopted by the Board of Governors approving the Project and any associated transactions as necessary.

(e) For those Projects requiring Board of Governors' approval, the Board of Governors will consider the following factors in connection with its review and approval of the Project and proposed agreement:

1. The Project is necessary to fulfill a need of the university, is consistent with the university's mission and master plan, and is in the best interests of the university.
2. The Project information supports the need, demand, and cost of the Project, and demonstrates that the Project is both financially and operationally a prudent undertaking by the university or DSO, in light of the objectives of the university.
3. The proposed agreement(s) contain adequate recourse for the university or the DSO in the event of a material default by the Private Party.

VII. TERMS OF THE AGREEMENT

Any agreement with a Private Party must provide, at minimum, for:

(a) Procedures that govern the rights and responsibilities of the university or DSO and the Private Party in the course of the construction, or construction and operation, of the Project and in the event of the termination of the agreement or a material default by the Private Party. The procedures must include conditions that govern the assumption of the duties and responsibilities of the Private Party by a party that funded, in whole or part, the project or by the board, and must provide for the transfer or purchase of property or other interests of the Private Party by the university.

(b) Review of the design of the Facility by the university or DSO and, if the design conforms to standards acceptable to the university or DSO, the approval of the university. This subparagraph does not require the Private Party to complete the design of the Facility before the execution of the agreement.

(c) Delivery of performance and payment bonds, letters of credit, or other security acceptable to the university or DSO in connection with the construction, or construction and operation of the Project, in the form and amount satisfactory to the university or DSO.

(d) Inspection rights of the Facility to ensure that the Private Party's activities are acceptable to the university or DSO in accordance with the agreement.

(e) Maintenance of general liability insurance by the Private Party in the form and amount satisfactory to the university or DSO and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the Facility.

(f) If the agreement includes operation and maintenance of the Facility by the Private Party, maintenance, repair and replacement requirements for the Facility and monitoring by the university or DSO to ensure that the Facility is properly maintained.

(g) If applicable, periodic filing by the Private Party of the appropriate financial information, which may include financial statements and audit rights for the university or DSO to ensure any requirements in the agreement are met.

(h) A provision that deems the Private Party's failure to fund current operational and maintenance costs as required by the agreement to constitute a material default.

(i) A provision describing all fees to be charged to users for use or occupation of the Facility. Such fees should be within the range of fees customarily charged for the use or occupation of like facilities in the State University System, taking into account the purpose and location of the Facility.

(j) A provision that outlines the responsibilities of the Private Party, including the terms and conditions that the university or DSO determine serve the best interests of the university.

(k) A provision under which each party agrees to provide notice of default and cure rights for the benefit of the other party.

(l) A provision that requires transfer of the Facility to the university or DSO at the expiration of the agreement or in the event of earlier termination of the agreement.

(m) If the Private Party's financing for the Project is secured by a leasehold mortgage or other instrument affecting title to the Facility, a provision requiring the Private Party to satisfy the same at the conclusion of the term of the agreement or upon earlier termination so that Facility is transferred to the university or DSO without any such encumbrances at the conclusion of the term of the agreement or upon earlier termination.

(n) A provision stating that (i) the full faith and credit of the university, Board of Governors or State of Florida has not been pledged to secure the financing of the Private Party and (ii) if the university or DSO chooses to assume the development or operation of the Facility on account of the Private Party's default, the assumption of the development or operation of the Facility does not obligate the university or DSO to pay an obligation of the Private Party from sources other than revenues from the Facility.