

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

DRAFT as of June 9, 2015

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I. PURPOSE OF GUIDELINES

Section 1013.171(1), Florida Statutes, authorizes each university board of trustees to negotiate and enter into agreements to lease real property under its jurisdiction to non-profit and for-profit corporations registered by the Secretary of State to do business in this state, for the purposes of erecting thereon facilities and accommodations necessary and desirable to serve the needs and purposes of the university, as determined by the system-wide strategic plan adopted by the Board of Governors. Section 1004.28(6), Florida Statutes, specifies that agreements to finance, design and construct, lease, lease-purchase, purchase, or operate facilities are likewise subject to the provisions of sections 1013.171 and 1010.62, Florida Statutes. With regard to property that is owned by a direct support organization (DSO), section 1013.171(3) requires that the university board of trustees obtain a long-term lease from the DSO prior to construction of educational facilities. A long-term lease is defined as the greater of 40 years or the useful life of the facility.

The purpose of these guidelines is to provide: (i) a structure for the universities and university DSO to use in evaluating certain transactions with private third 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. Monetization of existing university facilities is not permitted under these guidelines absent specific legislative authorization.

II. DEFINITIONS

As used in these Guidelines, the term:

(a) "Facility" means a new building or other facility and related improvements (but not landscaping or appurtenances alone) that: (i) is for purposes related to the housing, transportation (including parking), health care, research or research-related activities, food service, retail sales or student activities of the university; (ii) is being constructed primarily for use by the university and/or its students, faculty, or staff; and (iii) is located on land under the jurisdiction of a state university, including property leased from the Board of Trustees of the Internal Improvement Trust Fund. Facility does not include hotels, conventions centers, and stadiums or like buildings absent specific legislative authorization.

(b) "Public-Private Partnership" or "P3" means an agreement or agreements between a university board of trustees, or a DSO, and a Private Party whereby the Private Party will, at least, be responsible for the construction and capital financing of a Facility.

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

(d) "Project" means a Private Party's construction and capital financing of a Facility on the campus of a state university or on other real property directly owned by, or under the jurisdiction of, the university or by the state and leased to the university, 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 or other university or DSO revenues allowable for such purpose pursuant to section 1010.62, Florida Statutes. Project costs shall include construction and financing and may also include design and/or operational costs of the Facility. A Project under these guidelines may only include a Facility for housing, transportation (including parking), health care, research or research-related activities, food service, retail sales, or student activities of the university, unless there is specific legislative authorization of a Facility for another purpose.

(e) "University Board" means a university's Board of Trustees when acting as a board to review or approve a matter.

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' and relevant university's 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 Private Party's construction and financing of a new Facility or Facility renovations costing more than 50% of the Facility's replacement value.

(c) Any transaction for a facility located off-campus on real property owned by a Private Party and for which there is no intent to transfer the ownership of the real property to the university through a purchase or lease-purchase.

(d) Any transaction between a limited liability company (LLC), in which the university and/or DSO is a controlling member or the manager, and a Private Party for the capital financing and construction of a Facility on real property that is not directly owned by the university or by the state and leased to the university, and which is located off campus and not immediately adjacent to, or across a public way from, the university's campus. However, the university shall notify the Board Office of any transaction contemplated by the LLC under this exception at least thirty (30) days prior to entering into binding agreements with the Private Party.

(e) Any operating lease where the university or the DSO is the lessee for a building or portion thereof not on the university's campus.

(f) Any transaction involving construction of a Facility being funded solely with state fixed capital outlay appropriations or other legislative appropriation, or by those non-state source and other funds authorized pursuant to section 1013.74(2)(a), Florida Statutes, or by other non-state source funds that are appropriate for use for the Project, or by both such appropriated state funds and non-state source funds.

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

(h) Any Energy Performance-Based Contracts, in accordance with the provisions of section 1013.28, Florida Statutes.

III. USE OF QUALIFIED PROFESSIONALS

The use of qualified professionals, whether in-house or external to the university or DSO, or both, is essential to the success of any Project. A university or DSO should determine that current university or DSO staff have the requisite experience to negotiate the type of Project under consideration by the university and that, if necessary, 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 solicit proposals from Private Parties for the Project. The solicitation should be in the form of an Invitation to Negotiate (ITN) or other 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. Removal of the Facility and restoration of the property at the option of the university or DSO by, or at the cost of, the Private Party upon the expiration or termination of the agreement may be provided to the extent permitted by law.
3. Includes a plan with adequate safeguards in place to reasonably mitigate and manage foreseeable risk of future costs or service disruptions for the university or the DSO in the event of material default or cancellation of the Public-Private Partnership. For example, restrictive covenants, recognition and subordination agreements, and/or recordation obligations, or other protections may reasonably protect the interests of the university or DSO in the Project and, if applicable, the real property owned or controlled by the university or the DSO on which the Project is located.
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 procurement process should require the following information from respondents:

1. A description of the Facility, a schedule for the initiation and completion of the Facility, and the total Project cost based on the initially identified Project scope and conditions.
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 sufficient to determine the adequacy and expected type of revenues or assets to service the debt and related covenants 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 availability of the assets to be used for the Project (e.g., financial statements, etc.). 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 describing the proposed fees for the first five years of operation of the Facility, and the methodology, limits, and approvals for, and circumstances that would allow, increases to such fees over the term.
4. A description of the qualifications of the Private Party, the qualifications of any other entities that will provide services on the Project, and key persons who will be responsible for the Project.

5. A description of how any excess Project cash flow will be distributed to the Private Party, university or DSO.

V. PROJECT FEASIBILITY AND REQUIREMENTS

Prior to entering into a binding agreement for 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, taking into account the total value of the Project to meet university goals and the availability or unavailability of any lower-cost means to achieve the same total value, and for student facilities, such as housing, that costs to the student have been considered. To the extent the Project contemplates the payment of funds by the university or DSO in connection with required Project costs, such as debt service, utilities, or maintenance, then such revenues are subject to the revenue restrictions of section 1010.62, Florida Statutes. This limitation is not intended to restrict the university or DSO's occupancy and use of space included in the Project for university or DSO purposes, and the cost to the university or DSO associated with such occupancy and use is not considered in determining compliance with the limitation.

(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 or DSO's debt rating. If any debt is being used to finance the Project, provide an explanation as to why the debt is not being issued on a parity basis with any debt previously issued for a similar purpose, if applicable.

(e) The percentage equity in the Project by the Private Party in relation to total Project costs, and the credit quality of all debt associated with the Project, including any public or indicative ratings provided by any rating agency.

(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. For revenue-generating Projects utilizing debt, the projected revenues should provide a coverage ratio of 1.2x projected debt service during the first full year of Project operations and each subsequent year. If a coverage ratio of 1.2x is not projected to be achieved, a justification should be provided as to why the proposed debt is in the best interests of the university or DSO. If the Project only meets the required 1.2x debt service coverage ratio due to the deferral of debt repayment beyond the construction term of the Facility or using ascending debt service to reduce initial debt service payments, a justification should be provided as to why the structuring of the debt in that manner is in the best interests of the university.

(g) Any material 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 for the Project.

(j) The term of any lease agreement associated with a Facility shall generally not exceed forty (40) years, or the life expectancy of the Facility, and shall include consideration for eventual ownership of the Facility by the university or DSO. As a practical consideration, the university shall provide a summary of its ownership interests in the property, including if applicable, the remaining term on the lease from the state. In making the determination of the life expectancy of the facilities, the standard fifty (50) year assumption found in section 1013.64 (1)(a), Florida Statutes, must be used, if the Facility is being constructed in conformity with university construction standards and codes. Any lease term in excess of forty (40) years requires an incremental assessment analysis to demonstrate, on a present value basis, the benefit to the university of the longer term period.

(k) The term of the debt shall not exceed thirty (30) years, exclusive of the time required for construction of the Facility.

VI. APPROVAL PROCESS AND REQUIRED INFORMATION

All Projects that are subject to these guidelines must be approved by the university board of trustees and the Board of Governors. The Board of Governors and the State Division of Bond Finance should be notified when a Project is contemplated by the university to come before the trustees for consideration.

In advance of entering into binding agreements for a Project that is subject to these guidelines, a university or DSO shall obtain approval by the Board of Governors. Approval can be requested either prior to soliciting competitive bids or proposals for a Project if the university or DSO provides sufficient information to enable the Board of Governors to reach a determination, or at the conclusion of the negotiation process with the Private Party.

For Projects receiving advance approval from the Board of Governors, the university or DSO shall submit a certification to the Chancellor's Office at the conclusion of the negotiation process with the Private Party, but prior to the university or DSO entering into a binding agreement(s), that either: (i) affirms the final Project agreement(s) is within the parameters previously approved by the Board of Governors, or (ii) provides an explanation of the areas where the Project agreement(s) departs from those parameters. If the certification affirms the final Project agreement(s) is within the parameters previously approved by the Board, no further action of the Board is required unless the Chancellor, within ten (10) business days of receiving the university or DSO's submission, concludes the final Project Agreement(s) is outside the scope of the prior approval. In that event, or if the certification indicates a departure from the prior approval, the final Project agreement(s) will be submitted to the Board of Governors for consideration at a regularly scheduled meeting of the Board.

(a) For Projects that are subject to these Guidelines, the following Project information is required to be submitted to the Board Office and to the State Division of Bond Finance no later than ninety (90) days prior to the meeting at which the issue could be considered by the Board of Governors. Universities may provide the information in advance of the competitive procurement process, or at any stage during the procurement process if seeking prior approval:

1. Evidence of approval of the Project by the university board of trustees for both university and DSO projects, and by the DSO board for DSO projects, or the dates on which all such required approvals have been scheduled and noticed. For advance approval, evidence that the university board of trustees or DSO has approved the parameters of the Project and will be responsible for reviewing and approving the final Project prior to the university or DSO entering into binding agreement(s) for the Project, and the names and qualifications of any external legal and financial experts who will advise the university or DSO.
2. The Facility Program, feasibility studies or consultant reports (if available), and any financial studies or analysis of the financial feasibility of the Project, including the impact of the Project on similar activities of the university.

3. An analysis that provides the quantitative metrics justifying the need for the construction of the Project.
4. A copy of the proposed agreement(s) or a statement of key terms of the proposed agreement(s) with the Private Party, and letter from legal counsel describing, with particularity, the provisions in the agreement(s) that are designed to protect the university or the DSO in the event of a material default by the Private Party. If seeking advance approval, information must be submitted explaining the key terms of the proposed agreement(s) including: (i) the maximum term of the lease and the term of the debt, and provisions designed to protect the university or the DSO in the event of a material default; (ii) a description of financing options and parameters; (iii) what will be required of the Private Party to demonstrate the ability to obtain financing and, if applicable, service the Project; (iv) the type of experience and qualifications the Private Party and its key personnel must possess; (v) the anticipated schedule for solicitation, negotiation, design and construction; (vi) a statement whether the university or DSO will own the Facility upon the end of the term or may require the Private Party to remove the Facility at its own expense; (vii) a statement explaining options for addressing maintenance and repairs of the Facility; (viii) and an explanation of university or DSO involvement, methodology, limits, or controls in approving initial and future fees or rental rates if fees or rental rates are a source of revenue for the Project, including a description of the parameters applicable to such fees or rental rates (e.g., not more than X% above the cost of comparable existing facilities or existing fees).
5. An analysis calculating the expected rate of return for a revenue-generating Project or other appropriate quantitative metrics, and the anticipated uses of any revenues returned to the university or DSO.
6. A cost benefit analysis showing that the P3 methodology is a cost effective method of delivering the Project, taking into account the availability or unavailability of other funding sources, including: (i) the cost of tax-exempt financing; (ii) the costs of constructing, operating and financing the Project; (iii) any quantifiable savings in operational or other costs; (iv) the benefits to be realized by the university or DSO by using the P3 methodology; (v) and, if the Project will be primarily utilized by students, the cost-benefit to the student that considers the cost of existing campus and market options as compared to the Project and the value added to students in amenities or other material aspects of

the Project. A value for money analysis, or other such analysis used by the university in reaching this conclusion may be included.

7. A description of any purchase option, how the purchase option for the Facility was developed, and a calculation supporting such option.
8. An explanation of how 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.
9. A statement that the Project is included in the campus master plan, or is not required to be included in the campus plan, with appropriate references and documentation. The specific location of the Project shall be provided on the current campus map.
10. A description of any amounts to be paid to the Private Party, the purpose of the payment, and the timing and source(s) of revenues for such payment. In addition, an explanation of whether the university or DSO intends to fund any aspect of the Project, and if so, an explanation of the purpose, timing and the source(s) of revenues to be used.
11. A description of any liens or other encumbrances that will be placed on real property owned by the state, university, or DSO.
12. 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; and any other data that the university wishes to be considered by the Board of Governors or Board staff.
13. Identify whether the university or DSO is following the authority provided by section 1013.171 (1), or section 1013.171 (2), or section 1013.171 (3), Florida Statutes.
14. Any other information reasonably requested by the Board of Governors or the State Division of Bond Finance.

(b) The foregoing information shall be submitted to the Board office and the State Division of Bond Finance 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, and specify the type of approval being sought, e.g., regular or advance approval. 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, and the source of financing will be identified, unless seeking advance approval.

(c) The information shall be analyzed by Board of Governors staff and by the State Division of Bond Finance. The Board of Governors staff will consult with the State Division of Bond Finance in reaching a recommendation 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 or DSO. Should the State Division of Bond Finance disagree with any recommendation of the Board of Governors staff or suggest that any additional information be presented to the Board of Governors, such recommendations or information shall be included with the recommendation provided by the Board of Governors staff to the Board of Governors. Any material amendments to the submission by the university or the DSO after university board of trustees' approval may require re-authorization by the respective boards. The ninety (90) day period in this clause and the following clause may be reduced if the university has kept the Board of Governors' staff and State Division of Bond Finance well informed of the Project and associated material terms in advance of the submission, in which event the Board of Governors staff and State Division of Bond Finance will reasonably agree with the university on a shorter review period in support of the commercial feasibility of the Project. 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.

(d) The Board of Governors will consider the following factors in connection with its review and approval of the Project and proposed agreement(s):

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.

4. Any other factors which the Board of Governors determines are appropriate to consider in reaching a decision on any issue relating to the review and approval of the Project and the proposed agreement(s).

(e) Any real property lease or use agreement involving real property 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 to the extent required by law or by the university's master lease agreement with the Board of Trustees of the Internal Improvement Trust Fund.

VII. TERMS OF THE AGREEMENT

Depending on the risks presented to the interests of the university or DSO and the type of Project, taking into account the location (on or off campus), purpose, and effect of disruption to use of the Facility (for example, the severity of effects of disruption to a parking facility, office, or dormitory, may be different), any agreement with a Private Party should provide adequate provisions in relation to the risks posed, and generally should include (or have sound justification to not include) the following:

(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 safeguards for mitigating and managing disruption of use and operations should be proportionate to the risk, including for example, if applicable, restrictive covenants, recognition and subordination agreements, and/or recordation obligations, 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, or other protections to mitigate and manage foreseeable consequences of a material default by the Private Party of the Public-Private Partnership or the Private Party's financing. If required by section 1013.171, Florida Statutes, the agreement 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 and property insurance by the Private Party in the form and amount satisfactory to the university or DSO and sufficient to provide reasonable 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 and remedial rights for 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 and operating information for the Project and/or Private Party, 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 if 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, if required by section 1013.171, Florida Statutes, or a provision that otherwise provides for the removal of the Facility and the restoration of the real property as a university or DSO option.

(m) If the Private Party's financing for the Project is secured by a leasehold mortgage or other instrument affecting title to the Facility and the Facility is ultimately to be transferred to the university or DSO, 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) If the agreement provides for the university or DSO to exercise a purchase option at any time prior to the termination of the agreement or a termination payment, a provision describing the university's or DSO's plan to fund such purchase or payment should be included in the agreement.

(o) 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.

(p) A provision identifying the party responsible for the payment of any property taxes on the Facility, and what entity receives the benefit of any future waiver of property taxes.

(q) A provision that the term of the Project debt will not exceed thirty (30) years after the construction period.

VIII. REPORTING REQUIREMENT

At a minimum, the Private Party should provide an annual report to the university as soon as practical, but not more than ninety (90) days, following the close of the fiscal year. Additionally, the university will comply with any reporting requirements specified in the Project approval resolution of the Board of Governors, which shall, at a minimum, require a comparison of actual results to original projections. To the extent required by generally accepted accounting principles, information regarding any Public Private Partnership arrangement must be included in the university's or DSO's annual financial report, and such financial information as deemed necessary by the State's Chief Financial Officer or Chancellor should be submitted in connection with submissions required by Board Regulation 9.009, Preparation of State University System Financial Statements.

IX. BOARD OF GOVERNORS POWERS

These guidelines provide a framework for review by the Board of Governors of proposals for Public-Private Partnerships involving a university or DSO. The guidelines do not limit the authority of the Board of Governors to review any proposal of a university or DSO. These guidelines do not provide a university or DSO with a legally enforceable right to have a proposal approved by the Board of Governors.

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