

**STATE UNIVERSITY SYSTEM OF FLORIDA
BOARD OF GOVERNORS
Facilities Committee
October 3, 2017**

SUBJECT: Public Private Partnership Guidelines

PROPOSED COMMITTEE ACTION

Discussion of potential amendments to the Public Private Partnership Guidelines.

AUTHORITY FOR BOARD OF GOVERNORS ACTION

Article IX, Section 7, Florida Constitution; Sections 1013.171, Florida Statutes

BACKGROUND INFORMATION

The initial Public-Private Partnerships Guidelines (P3 Guidelines) were approved by the Board on September 3, 2015. The Guidelines provide a conceptual framework intended to inform both the board of trustees as well as the Board of Governors with respect to key aspects useful in evaluating proposals.

The Facilities Committee was given a retrospective presentation at its March meeting on the working effectiveness of the P3 Guidelines, and suggested that Board staff work with the universities as well as Bond Finance to develop proposed amendments to improve the current process. Accordingly, a workshop was held on July 13, 2017, where Board staff, the Division of Bond Finance staff, and university staff met to discuss the Guidelines and proposed changes. The draft amendments reflect possible changes in language to address certain concerns that have surfaced in the course of implementing the P3 Guidelines.

The proposed amendments for discussion are:

Increase restrictions on use of the LLC exception

Current state: Section II, (c), "Projects not subject to the Guidelines" contains an exemption for certain transactions between a limited liability company (LLC) in which the university and/or DSO is a controlling member or manager and a private party. The provision permits an LLC to enter into a transaction with a private party for financing and construction of a facility without Board approval where the real property involved is not owned by the university or by

the state and leased to the university, and the property is not on-campus or next to campus.

Proposed Amendment: Modify the LLC exemption to require Board approval if the university intends to be a tenant in the off-campus project occupying more than 10% of the gross square footage of the facility to be constructed. The proposed amendment will also require the university to provide the Board staff and the Division of Bond Finance staff with a copy of the Invitation to Negotiate or other solicitation document used by the university to seek a private partner.

Rationale: The LLC exception was intended to allow certain development to occur within narrowly tailored parameters where the university was not financially at risk. It was not intended to allow indirectly for the creation of new space for university academic or research purposes. The proposed amendment will make any transaction where the university or DSO seeks to lease more than 10% of the gross square footage of the facility subject to Board approval. The proposed amendment will also require the university or DSO to submit additional information for staff review of all LLC transactions.

Clarifies that market demand testing is permissible

Current state: Universities have authority to conduct pre-solicitation conferences or Request for Information solicitation activities. However, the P3 Guidelines are silent regarding these activities.

Proposed Amendment: Spells out the pre-solicitation activities and makes clear that, though not required, these tools may be used to explore the market and receive input from the vendor community. The proposed amendment will also require information used as part of the pre-solicitation procedure to be provided with any eventual request for P3 approval.

Rationale: Clarifies that pre-solicitation fact-finding is a permitted activity which may assist universities with determining the feasibility of moving forward with a proposed P3 transaction. This is developing as a national best practice for P3s.

Clarifies lease term

Current state: Section V, (k), provides that the term of any lease agreement may not exceed forty (40) years or the life expectancy of the facility.

Proposed Amendment: Establishes that 40 years is not a bright line test, but an analytical threshold. Clarifies that for student life projects, the lease term may not exceed the life expectancy of a facility which is fifty (50) years as established in section 1013.64, Florida Statutes. However, all leases in excess of forty (40) years will still require a demonstration of benefits for any term exceeding 40. For other projects (non-student life), the proposed amendment will require the lease term to be supported by information establishing the expected useful life of the facility based on industry practice for the proposed type of facility.

Rationale: Experience over the past two years indicates that a 50 year term for student life facilities, which is the current P3 life expectancy for such projects, is the industry expectation. Terms shorter than 50 years do not reduce the private partner return on investment; rather, the shorter term increases student rates over the life of the project, and reduces yield of the university share of the project revenues. For non-student life facilities, a requirement to demonstrate industry practice for the proposed facility type is proposed.

Eliminates the advance approval process

Current state: In section VI, the P3 Guidelines provide for an advance approval process for P3 projects and sets out the procedures to follow.

Proposed Amendment: Eliminate the advance approval process.

Rationale: Since the effective date of the P3 Guidelines, only one project has been submitted for advance approval. Board staff found the process impractical since enough information was not available to properly evaluate the project and the project ultimately was required to go through the full approval process.

Increases university disclosure requirements

Current state: The P3 Guidelines currently require a “summary of key terms” of the lease as a required document. The P3 Guidelines don’t specify when a university P3 solicitation, such as an Invitation to Negotiate (ITN), must be provided to Board and Division of Bond Finance staff.

Proposed Amendment: Requires that a full draft lease be required in place of the “Summary of key terms” and that a copy of the ITN be provided at the time it is publicly posted.

Rationale: Contract review cannot take place without the contract in hand and it has been our experience that a summary of key terms is insufficient. In practice, ITN notification has varied widely; this will standardize university submission expectations.

Supporting Documentation Included: Draft Revised Guidelines

Facilitators/Presenters: Mr. Kinsley