

Public-Private Partnership Florida Statute § 255.065



LEGISLATIVE FINDINGS

The Legislature finds that there is a **public need** for the **construction or upgrade of facilities** that are used predominantly for **public purposes** and that it is in the public's interest to provide for the construction or upgrade of such facilities.



SPECIFIC FINDINGS

- Public need for timely and cost-effective...
- Inadequate resources to develop public infrastructure and government facilities
- public-private partnership has demonstrated that it can:
 - improve the schedule for delivery,
 - lower the cost, and
 - provide other benefits to the public.
- state and federal tax incentives
- Timely development or operation of a qualifying project



LEGISLATIVE INTENT

- **Encourage investment** in the state by private entities;
- **Facilitate** various bond financing mechanisms, private capital, and other **funding** sources for the development and operation of qualifying projects,
- **Provide** the greatest possible **flexibility** to public and private entities contracting for the provision of public services.



Private entity

“Private entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other private business entity.



Responsible public entity

“Responsible public entity” means a county, municipality, school district, special district, or any other political subdivision of the state; a public body corporate and politic; or a regional entity that serves a public purpose and is authorized to develop or operate a qualifying project.



Qualifying project

1. A **facility or project that serves a public purpose**, ...or other building or facility that is used or will be **used by a public educational institution**, or any other public facility or infrastructure that is used or will be **used by the public at large** or in **support of an accepted public purpose or activity**;
2. An improvement, including equipment, of a building that will be **principally used by a public entity** or the **public at large** or that supports a service delivery system in the public sector;
3. A water, wastewater, or surface water management facility or other related infrastructure; or
4. Notwithstanding any provision of this section, for projects that involve a facility owned or operated by the governing board of a county, district, or municipal hospital or health care system, or projects that involve a facility owned or operated by a municipal electric utility, only those projects that the governing board designates as qualifying projects pursuant to this section.



Proposal

“Proposal” means a plan for a qualifying project with detail beyond a conceptual level for which terms such as fixing costs, payment schedules, financing, deliverables, and project schedule are defined.



PROCUREMENT PROCEDURE

UNSOLICITED PROPOSAL	SOLICITED PROPOSAL
Responsible public entity receives a proposal	Responsible public entity solicits a proposal
Application Fee	
Evaluated by state licensed professionals	
	Design Criteria Package by licensed an architect, a landscape architect, or an engineer
Optional interim agreement	
Comprehensive Agreement	



SOLICITED PROPOSAL

- design work, the solicitation must include a design criteria package prepared by an architect, a landscape architect, or an engineer licensed in this state which is sufficient to allow private entities to prepare a bid or a response.
- design criteria package
- must specify reasonably specific criteria for the qualifying project such as the legal description of the site, with survey information; interior space requirements; material quality standards; schematic layouts and conceptual design criteria for the qualifying project; cost or budget estimates; design and construction schedules; and site development and utility requirements. The licensed design professional who prepares the design criteria package shall be retained to serve the responsible public entity through completion



UNSOLICITED PROPOSAL



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Submission

- private entity that submits an unsolicited proposal with:
 - initial application fee: cash, cashier's check, or other noncancelable instrument (personal check not acceptance)
- Application fee determined by the responsible public entity.
- Payment must be made in cash, cashier's check, or other noncancelable instrument. Personal checks may not be accepted.
- Additional cost may be assessed if the fee does not cover the costs to evaluate the proposal.



Unsolicited Proposal Requirements

- Must be accompanied by the following material and information, unless waived by the responsible public entity:
 - (a) A description of the qualifying project, including the conceptual design of the facilities or a conceptual plan for the provision of services, and a schedule for the initiation and completion of the qualifying project.
 - (b) A description of the method by which the private entity proposes to secure the necessary property interests that are required for the qualifying project.
 - (c) A description of the private entity's general plans for financing the qualifying project, including the sources of the private entity's funds and the identity of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity.
 - (d) The name and address of a person who may be contacted for additional information concerning the proposal.
 - (e) The proposed user fees, lease payments, or other service payments over the term of a comprehensive agreement, and the methodology for and circumstances that would allow changes to the user fees, lease payments, and other service payments over time.
 - (f) Additional material or information that the responsible public entity reasonably requests.
- Pricing or financial terms must specific when the pricing or terms expires



Decision to evaluate the proposal

- Responsible public entity must decide whether to evaluate
- If the proposal is not evaluated then the application fee must be returned.



Evaluation

- Unsolicited proposal involving architecture, engineering, or landscape architecture must be professionally reviewed by a Florida licensed architect, landscape architect, or engineer to assure material quality standards, interior space utilization, budget estimates, design and construction schedules, and sustainable design and construction standards consistent with public projects



Notice of Submission of Proposal

- publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the responsible public entity has received a proposal and will accept other proposals for the same project.
- A copy of the notice must be mailed to each local government in the affected area.
- timeframe within which the responsible public entity may accept other proposals shall be determined by the responsible public entity on a project-by-project basis based upon the complexity of the qualifying project and the public benefit to be gained
- at least 21 days, but no more than 120 days, after the initial date of publication
- a majority vote of the responsible public entity's governing body may alter the timeframe for accepting proposals



Ranking of Proposals

- After the public notification period has expired in the case of an unsolicited proposal, the responsible public entity shall rank the proposals received in order of preference. In ranking the proposals, the responsible public entity may consider factors that include, but are not limited to, professional qualifications, general business terms, innovative design techniques or cost-reduction terms, and finance plans. The responsible public entity may then begin negotiations for a comprehensive agreement with the highest-ranked firm.



Interim Agreement

- Before or in connection with the negotiation of a comprehensive agreement
- An interim agreement does not obligate the responsible public entity to enter into a comprehensive agreement.
- Interim agreement is discretionary with the parties and is not required on a qualifying project



Provisions of Interim Agreement

- Authorize the private entity to commence activities for which it may be compensated related to the proposed qualifying project, including, but not limited to, project planning and development, design, environmental analysis and mitigation, survey, other activities concerning any part of the proposed qualifying project, and ascertaining the availability of financing for the proposed facility or facilities.
- Establish the process and timing of the negotiation of the comprehensive agreement.
- Contain such other provisions related to an aspect of the development or operation of a qualifying project that the responsible public entity and the private entity deem appropriate.



Comprehensive Agreement

- The comprehensive agreement is:
- Agreement between private entity and responsible public entity
- Is required before developing or operating the qualifying project.



Comprehensive Agreement must include:

- Delivery of performance and payment bonds, letters of credit, or other security acceptable to the responsible public entity in connection with the development or operation of the qualifying project in the form and amount satisfactory to the responsible public entity. For the components of the qualifying project which involve construction, the form and amount of the bonds must comply with s. 255.05.
- Review of the design for the qualifying project by the responsible public entity and, if the design conforms to standards acceptable to the responsible public entity, the approval of the responsible public entity. This subparagraph does not require the private entity to complete the design of the qualifying project before the execution of the comprehensive agreement.
- Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the comprehensive agreement.
- Maintenance of a policy of public liability insurance, a copy of which must be filed with the responsible public entity and accompanied by proofs of coverage, or self-insurance, each in the form and amount satisfactory to the responsible public entity and reasonably sufficient to ensure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.
- Monitoring by the responsible public entity of the maintenance practices to be performed by the private entity to ensure that the qualifying project is properly maintained.



Comprehensive Agreement must include continued

- Periodic filing by the private entity of the appropriate financial statements that pertain to the qualifying project.
- Procedures that govern the rights and responsibilities of the responsible public entity and the private entity in the course of the construction and operation of the qualifying project and in the event of the termination of the comprehensive agreement or a material default by the private entity. The procedures must include conditions that govern the assumption of the duties and responsibilities of the private entity by an entity that funded, in whole or part, the qualifying project or by the responsible public entity, and must provide for the transfer or purchase of property or other interests of the private entity by the responsible public entity.
- Fees, lease payments, or service payments. In negotiating user fees, the fees must be the same for persons using the facility under like conditions and must not materially discourage use of the qualifying project. The execution of the comprehensive agreement or a subsequent amendment is conclusive evidence that the fees, lease payments, or service payments provided for in the comprehensive agreement comply with this section. Fees or lease payments established in the comprehensive agreement as a source of revenue may be in addition to, or in lieu of, service payments.
- Duties of the private entity, including the terms and conditions that the responsible public entity determines serve the public purpose of this section.



Comprehensive Agreement may include continued

- An agreement by the responsible public entity to make grants or loans to the private entity from amounts received from the federal, state, or local government or an agency or instrumentality thereof.
- A provision under which each entity agrees to provide notice of default and cure rights for the benefit of the other entity, including, but not limited to, a provision regarding unavoidable delays.
- A provision that terminates the authority and duties of the private entity under this section and dedicates the qualifying project to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to the affected local jurisdiction for public use.



Determination Before Approving the Comprehensive Agreement

- Responsible public entity must determine that the proposed project:
 - Is in the **public's best interest**.
 - Is for a facility that is **owned by the responsible public entity** or for a facility for which ownership **will be conveyed to the responsible public entity**.
 - Has **adequate safeguards** in place to ensure that **additional costs or service disruptions are not imposed on the public in the event of material default or cancellation of the comprehensive agreement by the responsible public entity**.
 - Has **adequate safeguards** in place to ensure that the responsible public entity or private entity **has the opportunity to add capacity** to the proposed project or other facilities serving similar predominantly public purposes.
 - Will be **owned by the responsible public entity upon completion, expiration, or termination of the comprehensive agreement** and upon payment of the amounts financed.



Before signing the comprehensive agreement the responsible public entity must consider:

- a reasonable finance plan;
- the qualifying project cost;
- revenues by source;
- available financing;
- major assumptions;
- internal rate of return on private investments,
- if governmental funds are assumed in order to deliver a cost-feasible project; and
- a total cash-flow analysis beginning with the implementation of the project and extending for the term of the comprehensive agreement.
- may require from the private entity a technical study prepared by a nationally recognized expert with experience in preparing analysis for bond rating agencies. In evaluating the technical study, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of external advisors or consultants who have relevant experience.



Fees

- May authorize the private entity to impose fees to members of the public for the use of the facility
- (a) The responsible public entity may develop new facilities or increase capacity in existing facilities through a comprehensive agreement with a private entity.
- (b) The comprehensive agreement must ensure that the facility is properly operated, maintained, or improved in accordance with standards set forth in the comprehensive agreement.
- (c) The responsible public entity may lease existing fee-for-use facilities through a comprehensive agreement.
- (d) Any revenues must be authorized by and applied in the manner set forth in the comprehensive agreement.
- (e) A negotiated portion of revenues from fee-generating uses may be returned to the responsible public entity over the life of the comprehensive agreement.



Financing. private-source financing agreement between financing sources and the private entity.

- A financing agreement and any liens on the property or facility must be paid in full at the applicable closing that transfers ownership or operation of the facility to the responsible public entity at the conclusion of the term of the comprehensive agreement.
- responsible public entity may lend funds to private entities that construct projects containing facilities that are approved under this section.



Powers and Duties of the Private Entity

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement.
2. Maintain, or provide by contract for the maintenance or improvement of, the qualifying project if required by the comprehensive agreement.
3. Cooperate with the responsible public entity in making best efforts to establish interconnection between the qualifying project and any other facility or infrastructure as requested by the responsible public entity in accordance with the provisions of the comprehensive agreement.



The End



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