

Meeting Notice

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force Meeting

May 23, 2014

2:00 p.m. – 4:00 p.m.

DMS Offices

4050 Esplanade Way, Room 280K

Tallahassee, FL 32399

Meeting Agenda

- I. Introductions and Adoption of Minutes
- II. Discussion and vote on final concepts for inclusion in the final report
- III. Other Business and Public Testimony
- IV. Adjourn

For information regarding this meeting, please contact Marlene Williams with the Department of Management Services at (850) 488-6285.

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force Meeting

Meeting Date: April 17, 2014
Betty Easley Conference Center
4075 Esplanade Way, Room 148
Tallahassee, FL 32399

Agenda

- I. Introductions and Adoption of Minutes
- II. Discussion of preliminary concepts for task force recommendations relating to the eight items required for task force consideration and vote on final preliminary concepts
- III. Other Business and Public Testimony
- IV. Adjourn

Meeting Packet

The meeting packet with all meeting materials can be accessed [here](#). The Task Force webpage with all meeting materials and meeting video footage can be accessed [here](#).

Call to Order

Meeting called to order and welcome at 9:10 a.m.
Roll call conducted at 9:11 a.m.

Members present:

Craig Nichols, Chair - via teleconference
Frank Attkisson, Vice Chair
George Burgess
Sonya Little - via teleconference
Michael Olenick
John (Jay) Smith
Andy Tuck - via teleconference

Members absent:

None

Business

I. Introduction and Adoption of Minutes

Motion for Approval of Meeting Minutes from 01-31-14 task force meeting at 9:13 a.m.

Motion by Michael Olenick, Second by George Burgess

Vote: All in favor; 0 opposed; 0 abstained

Resolved: Motion carried

George Burgess' introduction of and a short presentation by Mr. John Parkinson, Executive Director of the Association for the Improvement of American Infrastructure(AIAI), to discuss P3 best practices and AIAI's draft guidelines, and to answer questions from task force members at 9:14 a.m.

II. Discussion of preliminary concepts for task force recommendations relating to the eight items required for task force consideration and vote on final preliminary concepts

Michael Olenick's introduction of and a short presentation by Ms. Melanie Vander Valk and the UK Trade & Investment Group to discuss feedback from the organization on the eight items for review by task force consideration and best practices at 9:46 a.m.

Introduction of additional items for consideration (Item 4 of the Meeting Materials) at 10:06 a.m.

- The following subject-matter experts participated in this portion of the discussion:
 - o Mr. Fred Springer, Bryant Miller Olive
 - o Mr. Randall Clement, Bryant Miller Olive
 - o Mr. Rick Watson, Associated Builders and Contractors
 - o Mr. David Cruz, Florida League of Cities, Inc.
 - o Mr. John Parkinson, Association for the Improvement of American Infrastructure

Motion for meeting extension by thirty minutes at 11:37 a.m.

Motion by Michael Olenick, Second by Jay Smith

Vote: All in favor

Resolved: Motion carried

Break to adjust teleconference equipment at 11:49 a.m.

Reconvene at 11:59 a.m.

Presentation of determinations made on the remaining discussion points and floor opened for any additional refinements or comments at 12:10 p.m.

- E. Concurred – at 12:11 p.m.
- L. Concurred – at 12:12 p.m.
- M. Concurred at 12:13 p.m.
- N. Concurred at 12:14 p.m.

Motion for approval of four determinations at 12:24 p.m.

Motion by George Burgess, Second by Michael Olenick

Vote: All in favor

Resolved: Motion carried, four items are adopted

III. Other Business and Public Testimony

Legislative update at 12:25 p.m.

Public Comment at 12:32 p.m.

IV. Adjourn

Adjournment at 12:34 p.m.

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force – Tracking Document

DRAFT

	Discussion Point	Corresponding Item Number	Discussion/Determination
A	Does the public-private partnership process, in particular when unsolicited proposals are involved, provide for an adequate level of competition?	Item 1, Item 6	<p>The public-private partnerships law (section 287.05712, F.S.) provides for notice process and timelines for public and potential competing proposers. The best prospect for success in generating competing proposals is the amount of time and the extent that it is publicly advertised.</p> <p>What information should be provided during the solicitation of competing proposers? Should more flexibility be included in the timeline to ensure competing proposers have time to develop a quality competing proposal?</p> <p>Determination: The responsible public entity (RPE), when seeking proposals in response to an unsolicited proposal, shall have the flexibility to develop solicitation documents similar to those developed for other solicited projects. Alternatively, the RPE may request the private entity provide a redacted copy of the proposal without confidential information that may be released should the project be accepted and the RPE need to solicit competing proposals.</p>
B	Information released when seeking competing proposals and requests for additional or enhanced information	Item 6	<p>If an unsolicited proposal <u>is</u> exempt from public record, the RPE will be required to develop its own solicitation documents to solicit competing proposals. What project information should be released when soliciting competing proposals?</p> <p>Determination: Responsible public entities (RPEs) should be given the flexibility to develop their own documentation to solicit competing proposals. An RPE should consider using the same project information for soliciting public-private partnerships as it does for standard construction projects procured under Chapter 255, F.S. Alternatively, the RPE may request the private entity provide a redacted copy of the proposal without confidential information that may be released should the project be accepted and the RPE need to</p>

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			solicit competing proposals. No further action is required.
C	Exemption from public records requirements for unsolicited proposals	Item 7	<p>An unsolicited proposal may identify proprietary business information and is not currently exempt from public records requirements. Because unsolicited proposals may contain proprietary information and trade secrets, such as patent-pending designs and financing terms, if such information is made publicly available before the responsible public entity (RPE) makes a decision, competitors could determine the creative financing used to fund these projects. The harm that may result from the release of such information may outweigh any public benefit that may be derived from the disclosure of the information.</p> <p>Does the Task Force support such exemption for unsolicited proposals? Alternatively, should the exemption be only for information deemed proprietary and confidential or trade secret? Can a private entity deem its entire proposal proprietary and confidential or trade secret?</p> <p>Determination: The Task Force recommends the Legislature consider establishing an exemption from public records requirements for proprietary and confidential and trade secret information provided in proposals for public-private partnerships. The Task Force voted to support legislation (HB 1051 and SB 1318) filed in the 2014 Regular Legislative Session that would accomplish such an exemption and encourages such an exemption be reviewed by the First Amendment Foundation.</p>
D	Availability of representatives of the responsible public entity to meet with private entities considering a proposal	Item 1	<p>Current laws in place governing open meetings and procurements are sufficient to cover public-private partnerships.</p> <p>Determination: Current law in place governing open meetings and procurements are sufficient to cover public-private partnerships. No further action is required.</p>
E	Criteria for choosing among competing proposals	Item 2	<p>The responsible public entity may consider factors that include, but are not limited to:</p> <ul style="list-style-type: none"> professional qualifications

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			<ul style="list-style-type: none"> • general business terms • innovative design techniques or cost-reduction terms • Finance plans. <p>Local governments should have the flexibility to rank and select proposals as determined at the local level, including application of a local preference or other adopted preference. Is current statute adequate for this item?</p> <p>Determination: Current law in place governing the selection of proposals for public-private partnerships is adequate. Local governments should retain the flexibility to rank and select proposals as determined at the local level. No further action is required.</p>
F	Should there be a time limit on how long a responsible public entity (RPE) can review a proposal?	Item 3	<p>Responsible public entity representatives should have the flexibility to perform adequate review. If a time limit is set, would it result in the rejection of most proposals? From a private entity perspective, it was noted that the review period should have a time limit for any pricing included in the proposal. Is current statute adequate for this item?</p> <p>Determination: Current law allows for flexibility in the timing of responsible public entity (RPE) review. This flexibility in current statute allows an RPE to fully review and vet both simple and complex proposals in the time needed for deliberate decision making. Any pricing submitted in a proposal should include the timeframe for which such pricing is valid.</p>
G	Acceptance of Unsolicited Proposals Timeframe	Item 3	<p>Paragraph 287.05712(4)(b), F.S., specifies that a responsible public entity, when soliciting competing proposals following the receipt of an unsolicited proposal it intends to pursue, must notice and accept other proposals for the same project. Such notice shall be published in the Florida Administrative register and a newspaper of general circulation at least once a week for 2 weeks. The law states that the timeframe within which the public entity may accept other proposals shall be determined by the public entity on a project-by-project basis, based upon the complexity of the project and the</p>

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			<p>public benefit to be gained by allowing a longer or shorter period of time; however, such timeframe must be at least 21 days but no more than 120 days after the initial date of publication.</p> <p>Proposed Determination: Given the intent to allow the responsible public entity flexibility to determine the timeframe within which to accept other proposals, the Task Force recommends the Legislature consider allowing the responsible public entity the flexibility to extend the timeframe beyond 120 days after the initial date of publication should a project have the complexity to warrant such an extension. This extension shall be granted by the elected body of the responsible public entity.</p>
H	Accelerated selection and review and documentation timelines for proposals involving a qualifying project prioritized by the RPE.	Item 4	<p>Should a responsible public entity (RPE) have the option to accelerate proposals they deem a priority? How expedited should timelines be? What scenarios would prompt expedited process and should this be determined by the RPE? How will the RPE ensure public access to project information? How can the RPE ensure expediting timelines does not deter competition?</p> <p>Determination: Accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority. Responsible public entities should be given the flexibility to determine such accelerated timelines and the process by which projects are selected for accelerated review.</p>
I	Guidance regarding application fee for the submission of an unsolicited proposal and RPE use of qualified professionals to conduct an independent analysis of a proposal	Item 5, Item 8	<p>The public-private partnerships law allows an RPE to establish a reasonable application fee for the submission of an unsolicited proposal. The fee must be sufficient to pay the costs of evaluating the proposal. The RPE may engage the services of a private consultant to assist in the evaluation.</p> <p>Should there be guidance for the RPE regarding the financial analysis? Are the requirements in statute adequate for the RPE? Should there be guidance for the RPE in</p>

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			<p>selecting a qualified professional? Should the RPE be required to utilize a Florida-registered professional or CPA? Such fees vary and should be related to actual, reasonable costs of reviewing the proposal. It is fundamental that such fee is for cost recovery, but not revenue generation. Should guidance regarding what is reasonable be a recommendation of the Task Force or should such guidance be included generally in a best practices document?</p> <p>Florida Department of Transportation Process:</p> <p>(1) An initial fee of \$50,000 payable to the responsible public entity (RPE) shall accompany any unsolicited public-private facility proposal. Unsolicited proposals received without the initial fee shall not be accepted.</p> <p>(2) Payment shall be made by cash, cashier's check, or any other non-cancelable instrument. Personal checks will not be accepted.</p> <p>(3) If the initial fee is not sufficient to pay the RPE's costs of evaluating the unsolicited proposal, the RPE shall request in writing additional amounts required. The public-private partnership or private entity submitting the unsolicited proposal shall pay the requested additional fee within 30 days. Failure to pay the additional fee shall result in the proposal being rejected.</p> <p>Determination:</p> <p>The Task Force recommends a flat submission fee of \$50,000 payable to the responsible public entity (RPE) for each unsolicited proposal. This fee shall be used to evaluate the unsolicited proposal. If the initial fee is not sufficient to pay the RPE's costs to evaluate the proposal, the RPE must request in writing additional amounts required. The private entity shall pay such fee or result in the proposal being rejected. This recommendation follows the Florida Department of Transportation's practice and promulgated administrative code for FDOT public-private partnerships.</p>
J	Support entity to provide guidance to RPE and to encourage the use of public-private partnerships at the local level	Best Practice	Should an entity be created to provide guidance to RPE? Will this entity be responsible for supporting RPE analysis/review or will the entity be responsible for providing information to the RPE? Should this entity be tasked with encouraging private

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			<p>companies to engage in public-private partnerships with Florida RPE? If so, what is the appropriate entity for such a functional role? Should an established program be developed within a state agency or the legislature? How will staffing for this entity be provided?</p> <p>Determination: A state agency or other established entity should be given the additional responsibility to assist local governments in developing and engaging in public-private partnerships. This entity can engage, identify, or contract with professional vendors to assist in the financial analysis and other services needed to a) develop solicited proposals and b) assess and review solicited and unsolicited proposals to ensure state and local funds are expended in the best interest of taxpayers.</p>
K	Develop model guidelines for use by Responsible Public Entities (RPE)	Best Practice	<p>Should model guidelines be developed for responsible public entity (RPE) use? Who should develop these guidelines? Models can quickly become outdated – how often should the models be updated?</p> <p>Determination: Model guidelines should be developed for responsible public entity (RPE) use and should be updated or reviewed at least bi-annually.</p>
L	Develop best practices guidance for use by RPE comprised of commentary and explanations	Best Practice	<p>Should best practices guidance be developed for RPE use? Should such guidance be included in the model guidelines? Should such guidance include a checklist or other resources?</p> <p>Determination: Best practices guidance should be included in the model guidelines developed for responsible public entity (RPE) use. General guidance may include checklists or other resources to provide further assistance to RPEs.</p>
M	Notice to Affected Local Jurisdictions	Best Practice	<p>In several instances during the public-private partnerships procurement process, a responsible public entity is required to provide notice regarding a project to “affected local jurisdictions.” Affected local jurisdictions are defined as a county, municipality, or special district in which all or a portion of a qualifying project is located.</p>

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			<p>A responsible public entity must provide notice in the following instances:</p> <ol style="list-style-type: none"> 1) When soliciting competing proposals for an unsolicited proposal it intends to pursue, the RPE must provide a copy of the <u>published notice</u> to affected jurisdictions (paragraph 287.05712(4)(b), F.S.) 2) The responsible public entity must notify each affected local jurisdiction by furnishing a copy of the <u>proposal</u> to each affected local jurisdiction when considering a proposal for a qualifying project. The affected local jurisdiction then has 60 days after receiving the notice to submit in writing any comments to the responsible public entity and to indicate whether the facility is incompatible with the local comprehensive plan, the local infrastructure development plan, the capital improvements budget, any development of regional impact processes or timelines, or other governmental spending plan. The responsible public entity must consider the comments of the affected local jurisdiction before entering into a comprehensive agreement with a private entity. (subsection 287.05712(7), F.S.) <p>The benefit of such notice is unclear. This determination has the support of the Florida League of Cities.</p> <p>Proposed Determination: Remove the requirements for a responsible public entity to provide additional notice to affected local jurisdictions when engaging in a public-private partnership.</p>
N	Judicial Validation	Best Practice	<p>It is not uncommon for a dissenting citizen to file a legal challenge with respect to the undertaking of major public projects by units of local government. Any legal uncertainty or challenge to any aspect of the authorization and implementation of a P3 structure seriously undermines the ability to attract private sector participation and impairs the timely implementation of public projects. With respect to bond financed projects, Chapter 75, Florida Statutes provides an optional process for expedited judicial review and resolution of all legal issues, with a direct appeal to the Florida Supreme</p>

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			<p>Court. Such an optional procedure for expedited judicial review and resolution of legal issues with respect to P3 projects would be very beneficial to the ability of local governmental units to timely implement P3 projects and attract potential private sector participants.</p> <p>Proposed Determination: Amend Section 287.05712, F.S., to add an optional validation process similar to the process provided by Chapter 75, Florida Statutes with respect to bond financings.</p>
O	Ground Lease Allowance	Best Practice	<p>Subparagraph 287.05712(4)(d)5., F.S., requires a responsible public entity determine, prior to project approval, that the project “Will be owned by the responsible public entity upon completion or termination of the agreement and upon payment of the amounts financed.”</p> <p>Ownership may not be in the best interest of the responsible public entity. One common structure is for the governmental unit to ground lease property to a private entity on which a facility will be constructed and leased, in whole or in part, back to the governmental unit. If the ownership request is retained, the provision should be clarified to clearly permit a ground lease for a period of time longer than the lease-back period.</p> <p>Proposed Determination: Amend subparagraph 287.05712(4)(d)5., F.S., to state: “5. Will be owned by the responsible public entity <u>either upon completion or upon expiration or termination of the agreement (including the expiration or termination of any ground lease from the responsible public entity to the private entity with respect to the qualifying project)</u> and upon payment of the amounts financed.”</p>
P	Requirement for “most efficient pricing”	Best Practice	<p>Subparagraph 287.05712(6)(b)2., F.S., requires a responsible public entity, during the project qualification and acceptance process to “Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.” It is unclear how the RPE ensures the most efficient pricing to meet this requirement.</p>

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			<p>Proposed Determination: Recommend the Legislature consider revising the requirement to state that the RPE must “Ensure the most efficient pricing of the security package that provides for the performance and payment of subcontractors.”</p>
Q	Transfer of Obligations	Best Practice	<p>Subparagraph 287.05712(6)(b)3., F.S., requires that provision is made for the transfer of the private entity’s obligations if the comprehensive agreement is terminated or a material default occurs.</p> <p>A transfer of obligations is not universally appropriate in the event of a termination or default. In many instances the appropriate remedy is termination of the agreement and the rights and obligations of the private entity.</p> <p>Proposed Determination: Recommend the Legislature consider revising the requirement to state that the responsible public entity must “3. Ensure that the comprehensive agreement addresses termination or material default.”</p>
R	Sequential Negotiations	Best Practice	<p>Paragraph 287.05712(6)(c), F.S., permits only sequential negotiation with ranked proposers, requiring termination of requiring termination of negotiations with higher ranked proposers before commencing negotiations with lower ranked proposers. Other states permit concurrent negotiations with ranked proposers, which may be beneficial to the public entity.</p> <p>Proposed Determination: Recommend the Legislature consider allowing a responsible public entity the discretion to engage either in sequential or concurrent negotiations with ranked proposers.</p>
S	Revision of Priority Basis Appropriation Language	Best Practice	<p>Paragraph (d) of subsection 287.05712(11), F.S., which relates to Financing, provides that “A responsible public entity shall appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, from</p>

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			<p>the enterprise or other government fund from which the qualifying projects will be funded. This required payment obligation must be appropriated before other non-contractual obligations payable from the same enterprise or other government fund.”</p> <p>It is common for lease agreements by which Florida local governmental entities lease property as lessee to provide that the lease obligation is “subject to annual appropriation.” Under Florida law, such a provision provides the local governmental unit the discretion, on an annual basis, whether or not to continue the lease and causes the obligation to be one year obligation. As an obligation of 12 months or less, an annual appropriation obligation is not subject to referendum approval under Article VII, Section 12 of the Florida Constitution. The first sentence of subsection 11(d), by mandating appropriation, draws into question the ability of a responsible public entity to retain discretion whether or not to appropriate under an annual appropriation obligation. Arguably the phrase “as required by the comprehensive agreement” would permit the parties to agree that the responsible public entity may retain discretion whether or not to appropriate on an annual basis, although it is not free from doubt.</p> <p>Another common financing structure used by Florida local governments is to secure financing obligations with a covenant to budget and appropriate funds sufficient to pay the obligation from legally available non-ad valorem revenues after satisfying funding obligations for essential governmental services of the local government unit. The qualification that the appropriation obligation is from revenues available after satisfying funding obligations for essential governmental services is viewed as necessary to comply with Florida case law precedent in order not to have an indirect pledge of ad valorem taxing powers and to avoid the potential that a court exercising its equitable powers would require a governmental unit to appropriate funds for the payment of debt leaving it with insufficient funds to provide essential governmental services of the governmental unit. The second sentence would prevent a local governmental unit from using this common financing technique as it would obligate an appropriation prior to appropriations for “non-contractual obligations” which would encompass many funding</p>

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			<p>obligations for essential governmental services. Subsection 11(d) at best calls into question the ability of local governmental units to use two very common financing techniques and is not necessary to provide a binding payment obligation on behalf of responsible public entities.</p> <p>Proposed Determination: Revise paragraph 287.05712(11)(d), F.S., to read as follows: “(d) A responsible public entity shall <u>comply with its financial and payment obligations in accordance with the terms of the comprehensive agreement and shall appropriate sufficient funds to satisfy such obligations from the sources and in the manner provided in the comprehensive agreement, subject to the express terms and conditions of the comprehensive agreement, including, without limitation, any prioritization of security or payment, conditional or discretionary appropriation undertakings and existing and reserved contractual obligations and rights appropriate on a priority basis as required by the comprehensive agreement a contractual payment obligation, annual or otherwise, from the enterprise or other government fund from which the qualifying projects will be funded. This required payment obligation must be appropriated before other non-contractual obligations payable from the same enterprise or other government fund.”</u></p>
T	Authorization of State University System Use of Public-Private Partnerships	Best Practice	<p>Authorization of the State University System to engage in public-private partnerships was not included in Chapter 2013-223, Laws of Florida, now incorporated into law as Section 287.05712, F.S. These public entities could benefit from the construction or upgrade of facilities that are used predominantly for public purposes and it is in the public’s interest to provide for the construction or upgrade of such facilities.</p> <p>Determination: The Task Force recommends the Legislature consider specifically authorizing the State University System to engage in public-private partnerships.</p>
U	Develop model comprehensive agreements and interim agreements	Best Practice	<p>Should model agreements be developed for RPE use? Would these agreements be used as a template to start from rather than a model document? Should multiple templates</p>

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			<p>be considered to cover different types of projects? Who should develop? Models can quickly become outdated – how often should templates be updated?</p> <p>Determination: No. Should a public-private partnerships support entity be developed to provide guidance to local governments, they should act as a repository of previously used agreements but not a creator of model agreements. No further action is required.</p>
V	Revenue Return Requirement	Clean Up/ Best Practice	<p>Subsection 287.05712(10), F.S., provides that a public-private partnership agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The law provides several provisions that apply to the agreement, including paragraph (e), which states: “A negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.”</p> <p>The requirement that the responsible public entity receive a portion of revenues over the life of the contract may not be universally appropriate or desirable. In many instances, fees are sufficient to pay only a portion of the costs of operation and maintenance, financing costs and return on investment to the private entity.</p> <p>Proposed Determination A: The Task Force recommends the Legislature allow responsible public entities the discretion to determine if a negotiated portion of revenues from fee-generating uses should be returned to the public entity over the life of the agreement by removing the requirement from law that a negotiated portion of revenues from fee-generating uses must be returned to the public entity over the life of the agreement.</p> <p>Proposed Determination B: The Task Force recommends the Legislature amend paragraph 287.05712(10)(e), F.S., to state: “A negotiated portion of revenues from fee-generating uses <u>may</u> must be returned to the public entity over the life of the agreement.”</p>

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W	Clarify applicability of mandatory procurement requirements relating to public-private partnerships	Clean Up	<p>Paragraph 287.05712(15)(c), F.S., provides that public-private partnership statute does not waive the requirements of section 287.055, F.S., relating to the Consultant’s Competitive Negotiation Act (CCNA), which applies to the acquisition of professional architectural, engineering, landscape architectural, or surveying and mapping services. Should this nuance be resolved through legislative action?</p> <p>Private entities interested in bidding or submitting a proposal for a public-private partnership frequently pair or team with other companies to share strengths and resources. The Task Force has discussed the importance of a strong and cohesive private and public team as a key factor in project success. Under the law, if the team requires a professional service covered by the CCNA, this team member must be selected in accordance with CCNA selection law.</p> <p>Determination: The Task Force recommends the Legislature consider removing the sentence in paragraph 287.05712(15)(c), F.S., that does not waive the requirements of section 287.055, F.S.</p>
X	Clarify the intent of s. 287.05712(4)(c), F.S., relating to an RPE that is a school board	Clean Up	<p>Paragraph 287.05712(4)(c), F.S., states: “A responsible public entity that is a school board may enter into a comprehensive agreement only with the approval of the local governing body.” Since school boards are not subject to governance by a local governing body, should the Task Force recommend this language be removed from statute?</p> <p>Determination: Since school boards are not subject to governance by a local governing body, paragraph 287.05712(4)(c), F.S., should be stricken from law.</p>
Y	Clarify Definition of Responsible Public Entity	Clean Up	<p>Paragraph 287.05712(1)(j), F.S., defines “Responsible public entity” as “a county, municipality, school board, 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.”</p>

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			<p>This definition is not consistent with Florida local law. Local governments consist of counties (which are political subdivisions of the state), municipalities and special districts. Under Florida law “school districts” are the local government units that provide public primary education. The governing bodies of school districts are referred to as “school boards.”</p> <p>Proposed Determination: The Task Force recommends the Legislature consider amending the definition of “responsible public entity” in paragraph 287.05712(1)(j), F.S., to reference school district, rather than school board.</p>
Z	Consistent Use of Responsible Public Entity	Clean Up	<p>Subsection (l) definition of “Service contract” uses the term “public entity” which is not defined.</p> <p>Proposed Determination: Amend the definition to use the defined term “responsible public entity.”</p>
AA	Construction Section Clarification	Clean Up	<p>Section 287.05712(15), F.S., provides:</p> <p>“(15) CONSTRUCTION. – This section shall be liberally construed to effectuate the purposes of this section. This section shall be construed as cumulative and supplemental to any other authority or power vested in or exercised by the governing board of a county, district, or municipal hospital or health care system including those contained in acts of the Legislature establishing such public hospital boards or s. 155.40. This section does not affect any agreement or existing relationship with a supporting organization involving such governing board or system in effect as of January 1, 2013.</p> <p>(a) This section does not limit a political subdivision of the state in the acquisition, design, or construction of a public project pursuant to other statutory authority.</p> <p>(b) Except as otherwise provided in this section, this section does not amend</p>

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			<p>existing laws by granting additional powers to, or further restricting, a local governmental entity from regulating and entering into cooperative arrangements with the private sector for the planning, construction, or operation of a facility.”</p> <p>Under Florida law, “political subdivisions” are defined as counties; therefore, this provision does not apply to municipalities and special districts. It is doubtful that was an intentional exclusion, but rather than inappropriate use of terminology.</p> <p>Because of the diverse nature, needs and circumstances of local governmental units in Florida and the wide variety of projects and structures that could be encompassed by the “P-3 concept,” local governments need flexibility to address their particular needs and circumstances and to structure projects and agreements. Florida municipalities and counties have home rule powers that would enable them to implement P₃ projects and structures. Many special districts also have broad powers to serve their statutory purposes to serve their statutory purposes and functions. To provide needed flexibility to address diverse and dynamic needs and circumstances and myriad of projects and structures that may be proposed or considered, this statute should be clearly stated as supplemental to existing authority and an alternative authorization, not in derogation of existing authorization similar to that provided in Section 159.43, Florida Statutes with respect to industrial development revenue bond financing.</p> <p>Proposed Determination: Amend Section 287.05712(15), F.S., including paragraphs (a) and (b) to read as follows: (15) CONSTRUCTION. – (a) This section shall be liberally construed to effectuate the purposes of this section. (b) This section shall be, and be deemed, authority in addition to, and shall provide alternative methods for, any other authority provided by law for the same or similar purposes; and is supplemental to and not in derogation of any powers of any responsible public entity otherwise</p>

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			conferred. The criteria and requirements of this section are applicable only to qualifying projects financed under the authority of this section.
BB	Financing and Facility Liens	Clarification	<p>Paragraph (c) of subsection 287.05712(11), F.S., which relates to Financing, provides: “(c) The responsible public entity may use innovative finance techniques associated with a public-private partnership under this section, including, but not limited to, federal loans as provided in Titles 23 and 49 C.F.R., commercial bank loans, and hedges against inflation from commercial banks or other private sources. In addition, the responsible public entity may provide its own capital or operating budget to support a qualifying project. The budget may be from any legally permissible funding sources of the responsible public entity, including the proceeds of debt issuances. A responsible public entity may use the model financing agreement provided in s. 489.145(6) for its financing of a facility owned by a responsible public entity. A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity’s facility to liens in violation of s. 11.066(5), or secure financing by the responsible public entity with a pledge of security interest, and any such provision is void.”</p> <p>The intended application of this provision is unclear, however it appears to be intended to prohibit a responsible public entity from granting a mortgage or security interest on the project and tangible personal property.</p> <p>Proposed Determination: Revise the final sentence of paragraph (c) of subsection 287.05712(11), F.S., to clarify the intent to prohibit a responsible public entity from granting a mortgage or security interest in its real or tangible personal property as follows: “A financing agreement may not require the responsible public entity to indemnify the financing source, subject the responsible public entity’s facility to liens in violation of s. 11.066(5), or secure financing <u>of by</u> the responsible public entity <u>by a mortgage on or security interest in the real or tangible personal property of the responsible public entity in a manner that could result in the loss of the fee ownership of the property by</u></p>

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			the responsible governmental unit, with a pledge of security interest, and any such provision is void."
CC	Revenue Regulation	Clarification	<p>Subsection 287.05712(10), F.S., provides that a public-private partnership agreement entered into pursuant to this section may authorize the private entity to impose fees to members of the public for the use of the facility. The law provides several provisions that apply to the agreement, including paragraph (d), which states: "Any revenues must be regulated by the responsible public entity pursuant to the comprehensive agreement."</p> <p>It is unclear how responsible public entities should interpret their responsibility to regulate such fees. Additionally, fees may already be subject to regulation by other governmental entities (such as the Public Service Commission).</p> <p>If the intent is to require revenues generated by the facility be applied in the manner provided in or permitted by the agreement, this section should be revised as provided in Proposed Determination A below. Alternatively, Proposed Determination B below makes the provision permissive, rather than mandatory, allowing flexibility to the responsible public entity.</p> <p>Proposed Determination A: The Task Force recommends the Legislature clarify the intent of this section to assist responsible public entities in implementing this section. Amend paragraph 287.05712(10)(d), F.S., to state: "(d) Any revenues shall be applied in the manner required or permitted by the comprehensive agreement."</p> <p>Proposed Determination B: The Task Force recommends the Legislature amend paragraph 287.05712(10)(d), F.S., to state: "Any revenues may <u>must</u> be regulated by the responsible public entity pursuant to the</p>

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			comprehensive agreement.”
DD	Teaming to meet minimum standards for qualifying professional services and contracts	Clarification	<p>Paragraph 287.05712(6)(a), F.S., mandates that the private entity must meet the minimum standards contained in the responsible public entity’s guidelines for qualifying professional services and contracts for traditional procurement projects. In many instances, the private entity will be a special purpose entity. It is doubtful that the private entity would meet the public entity’s guidelines, but rather that a member of the private entity’s team, as reflected in its proposal, would meet the criteria.</p> <p>Proposed Determination: Revise paragraph 287.05712(6)(a), F.S., to clarify that the private entity or the applicable party or parties of the private entity’s team proposed to provide the particular professional services must meet the minimum standards contained in the responsible public entity’s guidelines.</p>

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