

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

Meeting Packet

January 9, 2014

Contents

1. Meeting Notice
2. Draft Meeting Minutes from Dec. 6, 2013 meeting
3. Member Point Person Designations
4. 8 Items Matrix
5. Feedback on Item 3(Process Timelines) and Item 4 (Priority Exceptions)
6. Feedback on Item 5 (Financial Review)
7. Feedback on Item 7 (Public Record and Public Meeting Exemptions)
 - a. Public records exemption language for s. 287.05712
 - b. Public records exemption language for universities
8. Feedback on Item 8 (Third Party Review)

Meeting Notice

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force Meeting

Jan. 9, 2014

8:00 a.m. – 12:00 noon

Betty Easley Conference Center
4075 Esplanade Way, Room 148
Tallahassee, FL 32399

Meeting Agenda

- I. Introductions and Adoption of Minutes
- II. Presentation and discussion of preliminary concepts for task force recommendations relating to the eight items required for task force consideration
- 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: Dec. 6, 2013

Building 4050, Conference Room 101

4050 Esplanade Way

Tallahassee, FL 32399-0950

Agenda

- I. Introduction and Adoption of Minutes
- II. Review and assignment of eight items the Task Force must consider in reviewing public-private partnerships and developing recommendations
- III. Other Business
- IV. Adjourn

Call to Order

Meeting called to order and welcome at 3:05 p.m.

Roll Call

Roll was called at 3:06 p.m. by task force staff

Members present:

Craig Nichols, Chair

Frank Attkisson, Vice Chair

George Burgess

Sonya Little

Michael Oelnick

John (Jay) Smith

Andy Tuck

Members absent:

None

Business

- I. Introduction and Adoption of Minutes

Motion for Approval of Meeting Minutes from 8-28-13 task force meeting at 3:07 p.m.

Vote: All in favor, 0 opposed, 0 abstained

Resolved: Motion carried

- II. Review and assignment of eight items the Task Force must consider in reviewing public-private partnerships and developing recommendations

Review of eight items the Task Force must consider in reviewing public-private partnerships and developing recommendations at 3:08 p.m.

- The Chair explained that each task force member would serve as “point person” for one or more of the eight items the task force is required to consider in developing its recommendations.

- The eight items are as follows:
 1. Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal. **(Solicited and Unsolicited Proposals)**
 2. Reasonable criteria for choosing among competing proposals. **(Selection Criteria)**
 3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement. **(Process Timelines)**
 4. If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority. **(Priority Exceptions)**
 5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project. **(Financials)**
 6. The adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition. **(Specifications for Proposals)**
 7. Current exemptions from public records and public meetings requirements, if any changes to those exemptions are necessary, or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal. **(Public Record and Public Meeting Exemptions)**
 8. Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity. **(Third Party Review)**
- The Chair introduced Mr. Lee Weintraub and Mr. Rick Watson, both of whom were instrumental in passing HB 85 (Chapter 2013-223, Laws of Florida) to provide background and insight on each of the eight items during the task force discussion.
- The Chair referenced the “8 Items Matrix” included in the meeting packet and provided to meeting attendees. This document provides specific questions and items for task force consideration relating to each of the eight items.
- The Chair then introduced each of the eight items, allowed Mr. Weintraub and Mr. Watson to provide information relative to the item introduced, and then opened the floor to task force members for discussion.

Discussion on Item 1 (Solicited and Unsolicited Proposals) at 3:14 p.m.

Discussion on Item 2 (Selection Criteria) at 3:30 p.m.

Discussion on Item 3 (Process Timelines) and Item 4 (Priority Exceptions) at 3:41 p.m.

Discussion on Item 5 (Financial Review) at 3:49 p.m.

Discussion on Item 6 (Specifications for Proposals) at 4:02 p.m.

Discussion on Item 7 (Public Record and Public Meeting Exemptions) at 4:05 p.m.

Discussion on Item 8 (Third Party Review) at 4:15 p.m.

Discussion on Item 9 (Parking Lot) at 4:25 p.m.

Assignment of eight items the Task Force must consider in reviewing public-private partnerships and developing recommendations at 4:30 p.m.

- For ease of assignment, the eight items were grouped into six total items, as follows:
 1. Items 1 and 6
 2. Item 2
 3. Items 3 and 4
 4. Item 5
 5. Item 7
 6. Item 8
- Task force members selected and volunteered for the following assignments:
 - o Frank C. Attkisson – Item 2
 - o George M. Burgess – Item 5
 - o Sonya C. Little – Items 3 and 4
 - o Michael H. Olenick – Item 7
 - o John “Jay” Smith – Item 8
 - o Richard “Andy” Tuck – Items 1 and 6

III. Other Business

Review of Suggested Meeting Timeline at 4:36 p.m.

- A suggested timeline for future task force meetings was included in the meeting packet. Members provided feedback related to the dates provided.
- The task force determined it would meet twice in January and selected the following dates:
 - o Thursday, January 9
 - o Friday, January 31

Public Comment at 4:40 p.m.

- No public comment was provided

IV. Adjourn

Adjournment at 4:45 p.m.

Partnership for Public Facilities and Infrastructure Act Guidelines Task Force

Member Point Person Designations

Member	Item
Frank C. Attkisson	Item 2
George M. Burgess	Item 5
Sonya C. Little	Items 3 and 4
Michael H. Olenick	Item 7
John "Jay" Smith	Item 8
Andy Tuck	Items 1 and 6

In reviewing public-private partnerships and developing recommendations, the task force must consider:

1. Opportunities for competition through public notice and the availability of representatives of the responsible public entity to meet with private entities considering a proposal. (Solicited and Unsolicited Proposals)
2. Reasonable criteria for choosing among competing proposals. (Selection Criteria)
3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement. (Process Timelines)
4. If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority. (Priority Exceptions)
5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project. (Financial Review)
6. The adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition. (Specifications for Proposals)
7. Current exemptions from public records and public meetings requirements, if any changes to those exemptions are necessary, or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal. (Public Record and Public Meeting Exemptions)
8. Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of the public entity determines that such analysis should be performed by employees of the public entity. (Third Party Review)

Topic	Questions and Comments to Consider
<p>1. Opportunities for competition through public notice and the availability of representatives of the responsible public entity (RPE) to meet with private entities considering a proposal. (Solicited and Unsolicited Proposals)</p>	<ul style="list-style-type: none"> • Should proposals be required to be part of the RPE’s Five Year Work Plan? Should the proposal be subject to a fee if project is not identified in the Five Year Work Plan? • Should a RPE be required to respond to an unsolicited proposal? • Should the entire unsolicited proposal be used in soliciting additional proposals? Should this be shaded (temporarily exempt) from public record? Should this be exempt from public record? If so, which portions? • What is appropriate regarding vendor meetings? Can voting members (board or elected) meet with vendors? Can staff? At what points during procurement/selection/approval? • Unsolicited proposals may need to be considered under the same confidentiality rules that are used for economic development projects. • Need to define/ provide model for “independent analysis” in section 6d; don’t want to be cost or project prohibitive and RPEs will need a model to use their first time out
<p>2. Reasonable criteria for choosing among competing proposals. (Selection criteria)</p>	<ul style="list-style-type: none"> • The responsible public entity may consider factors that include, but are not limited to: <ul style="list-style-type: none"> ○ professional qualifications ○ general business terms ○ innovative design techniques or cost-reduction terms ○ Finance plans. • What, if any, additional criteria should be met? • The P3 law states that this section of law does not amend existing laws (i.e., preferences in chapter 255, F.S.) Should there be a local preference as is currently present in Chapter 255? Florida preference? Can a RPE determine whether a locally-adopted preference still applies?
<p>3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement. (Process timelines)</p>	<ul style="list-style-type: none"> • Are the timelines established in the law for selection and negotiation of interim and comprehensive agreements appropriate? • The responsible public entity can decide, on a project-by-project

Topic	Questions and Comments to Consider
	<p>basis, the timeframe within which they accept other proposals. Is this appropriate?</p> <ul style="list-style-type: none"> • What factors should a responsible public entity consider in deciding a timeframe? • Is the minimum of 21 days for review enough time to fully assess a proposal? Is the maximum of 120 days enough time?
<p>4. If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority. (Priority exceptions)</p>	<ul style="list-style-type: none"> • What criteria must a qualifying project meet to be deemed a priority? • Would accelerated selection and review and documentation timelines limit competition? • What would be an appropriate accelerated timeline? • May a qualifying project from an unsolicited proposal be deemed a priority? • What factors should be considered in deciding to accelerate a timeline?
<p>5. Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project. (Financial review)</p>	<ul style="list-style-type: none"> • With project funding coming from many sources, these financing agreements are often more complicated than the project financing arrangements cities, counties and school boards typically deal. What guidelines can ensure the public's interests can be adequately protected in these transactions? • Are there any financing techniques that should be avoided? • Independent review by the RPE is required – are RPEs staffed for this workload? • What other types of resources should be available to assist/support responsible public entities? • For unsolicited proposals, law allows for the RPE to charge a reasonable fee to cover costs of evaluating a proposal, which includes attorney fees and fees for financial and technical advisors or consultants. What should the standards be for solicited proposals?
<p>6. The adequacy of the information released when seeking</p>	<ul style="list-style-type: none"> • How to provide sufficient detail about the RPE's needs and

Topic	Questions and Comments to Consider
<p>competing proposals and providing for the enhancement of that information, if deemed necessary, to encourage competition. (Specifications for Proposals)</p>	<p>objectives when seeking competition from an unsolicited proposal?</p> <ul style="list-style-type: none"> • What parts of an unsolicited proposal must be in the notice to competing bidders? What parts can the responsible public entity shade from disclosure? • Proposals must already meet minimum standards of regular project plan submission. Can all of this information be released when seeking competitive proposals? • Can and should a RPE augment information about an unsolicited proposal when seeking competing proposals? • Differentiating between a general solicitation and a conceptual solicitation. Procurement best practices indicate that providing specific versus general requirements maintains the best price competition in procurement. If a conceptual proposal has less detail, and some of that detail is proprietary, how do you encourage competition? • May want to also include term “joint venture” when listing financing options
<p>7. Current exemptions from public records and public meetings requirements, if any changes to those exemptions are necessary, or if any new exemptions should be created in order to maintain the confidentiality of financial and proprietary information received as part of an unsolicited proposal. (Public Record and Public Meeting Exemptions)</p>	<ul style="list-style-type: none"> • Chapter 287.05712, F.S., provides limited exemptions to the sunshine law for solicited proposals but not unsolicited. Should additional exemptions be provided for unsolicited proposals? • Is a new public records exemption necessary to protect proprietary information from entities that submit unsolicited proposals? • Should existing public records exemptions be amended?
<p>8. Recommendations regarding the authority of the responsible public entity to engage the services of qualified professionals, which may include a Florida-registered professional or a certified public accountant, not otherwise employed by the responsible public entity, to provide an independent analysis regarding the specifics, advantages, disadvantages, and long-term and short-term costs of a request by a private entity for approval of a qualifying project, unless the governing body of</p>	<ul style="list-style-type: none"> • For unsolicited proposals, law allows for the RPE to charge a reasonable fee to cover costs of evaluating a proposal, which includes attorney fees and fees for financial and technical advisors or consultants. What should the standards be for solicited proposals? • Is language required to ensure these professionals are competitively solicited to ensure appropriate qualifications and a good price (ensuring an unsolicited fee is not too high)?

Topic	Questions and Comments to Consider
<p>the public entity determines that such analysis should be performed by employees of the public entity. (Third-party Review)</p>	<ul style="list-style-type: none"> • Independent review by the RPE is required – are RPEs staffed for this workload? Should a support entity be named to assist smaller RPEs in identifying specific professionals skilled in this type of review?
<p>9. Other items as determined by task force (Parking Lot)</p>	<ul style="list-style-type: none"> • Is clarification necessary for inclusion of State University System in definition of “responsible public entity?” Is clarification necessary for inclusion of State College System in definition of “responsible public entity?” • How will P3s interface with CCNA? Requirements of s. 287.055, F.S., are not waived for architecture, professional engineering, landscape architecture, or registered surveying and mapping. The selection process outlined in 287.05712(6)(c), F.S., involves a similar negotiation process to CCNA. How will these provisions interact? • S. 287.05712(15)(b), F.S., states that the P3 law does not amend existing laws relating to construction and construction services procurements. Should there be additional language to state that s. 287.05712, F.S., is fully supplemental to current authority? • Should the state have an advisory board for all responsible public entities? Canada and other states are using this model. Would such an entity be self-funded?

**Partnership for Public Facilities Act Guidelines Task Force
 Feedback on Item 3 (Process Timelines) and Item 4 (Priority Exceptions)
 January 9, 2014**

**CHAPTER 2013-233 (HB 85)
 Section (4)(b) Procurement Procedures**

The responsible public entity may request a proposal from private entities for a public-private project or, if the public entity receives an unsolicited proposal for a public-private project and the public entity intends to enter into a comprehensive agreement for the project described in such unsolicited proposal, the public entity shall publish notice in the Florida Administrative Register and a newspaper of general circulation at least once a week for 2 weeks stating that the public entity has received a proposal and will accept other proposals for the same project. 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 public benefit to be gained by allowing a longer or shorter period of time within which other proposals may be received; however, the timeframe for allowing other proposals must be at least 21 days, but no more than 120 days, after the initial date of publication. A copy of the notice must be mailed to each local government in the affected area.

Topic	Questions and Comments to Consider
<p>3. Suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement. (Process timelines)</p>	<ul style="list-style-type: none"> • Are the timelines established in the law for selection and negotiation of interim and comprehensive agreements appropriate? Established timelines for selection and negotiation are not currently included in the law. Projects details will vary widely. Responsible public entities (RPE) should act in good faith. Timelines should be established by the RPE on a project-by-project basis based on the factors provided below. • The responsible public entity can decide, on a project-by-project basis, the timeframe within which they accept other proposals. Is this appropriate? Projects details and available RPE resources for evaluation of proposals will vary widely. Therefore, the RPE should decide, on a project-by-project basis, the timeframe within which they accept other proposals based on the factors provided below. • What factors should a responsible public entity consider in deciding a timeframe? <ul style="list-style-type: none"> ○ Project purpose ○ Project size ○ Project complexity ○ Financing plan ○ RPE’s availability of qualified resources to evaluate unsolicited proposals, develop RFP for solicitation of proposals, and evaluate solicited proposals ○ Impact on other projects and/or existing capital plan

Topic	Questions and Comments to Consider
	<ul style="list-style-type: none"> ○ Alternative methods of meeting the RPE’s priorities ○ Authorization process ● Is the minimum of 21 days for review enough time to fully assess a proposal? Is the maximum of 120 days enough time? The maximum of 120 days may not be a sufficient <u>timeframe for allowing other proposals.</u> <ul style="list-style-type: none"> ○ For large and/or complex projects, RPEs may wish to solicit proposals in two phases (Phase 1 – Issue an RFQ to determine firms meeting the minimum qualifications and Phase 2 – Issue RFP only to those firms meeting the minimum qualifications). ○ Large and/or complex projects require significant time and resources for private entities. Private entities may need to develop construction and finance teams, develop financing plans, conduct construction cost analysis, conduct various studies (feasibility, environmental, marketing...) in order to prepare an efficient and competitive proposal.
<p>4. If an accelerated selection and review and documentation timelines should be considered for proposals involving a qualifying project that the responsible public entity deems a priority. (Priority exceptions)</p>	<ul style="list-style-type: none"> ● What criteria must a qualifying project meet to be deemed a priority? A qualifying project may be deemed a priority if the project addresses urgent public safety and/or delivery of service concerns. ● Would accelerated selection and review and documentation timelines limit competition? Accelerated selection and review and documentations timelines may limit competition. For large and/or complex projects, private entities may not respond to published notices because sufficient time is not allowed to develop a competitively feasible proposal. Consideration for an accelerated timeline should be determined by the RPE based on the nature of the project. ● What would be an appropriate accelerated timeline? An appropriate accelerated timeline should be determined by the RPE based on the nature of the project. ● May a qualifying project from an unsolicited proposal be deemed a priority? A qualifying project may be deemed a priority if it addresses urgent public safety and/or delivery of service concerns. ● What factors should be considered in deciding to accelerate a timeline? <ul style="list-style-type: none"> ○ Level of impact on public safety and/or delivery of services ○ Cost benefit

DRAFT

**Partnership for Public Facilities Act Guidelines Task Force
Suggested Financial Review Guidelines
January 9, 2014**

Task Force purpose: To recommend guidelines for the Legislature to consider for purposes of creating a uniform process for establishing public-private partnerships, including the types of factors responsible public entities should review and consider when processing requests for public-private partnership projects pursuant to state law.

Topical Area #5 – “Procedures for financial review and analysis which, at a minimum, include a cost-benefit analysis, an assessment of opportunity cost, and consideration of the results of all studies and analyses related to the proposed qualifying project” (Financial Review)

Comments:

- These are recommended guidelines for responsible public entities (RPE) to follow. They are not mandates.
- These guidelines should be viewed as model best practice guidelines for governments considering the pursuit of projects through the P3 delivery model.
- We should not impose new requirements on or limit a RPE’s current levels of authority and power
- These guidelines are intended to help a RPE provide required public infrastructure and services through an alternative approach – they are helpful not harmful.
- All currently available and legally permissible financing techniques and strategies remain available to RPEs, as are all currently available revenue sources and funding alternatives.
- Consideration should be given for the establishment of a state level P3 clearinghouse and assistance/advisory agency that can assist RPEs on an as requested basis. This group could develop a model ordinance for RPEs incorporating guidelines recommended by the Task Force.
- RPEs should be able to impose reasonable fees to cover costs of reviewing both unsolicited and solicited P3 proposals. In the event a proposal is not evaluated the RPE should be able to refund all or a portion of the fee paid by the proposer.

Suggested Guidelines/Practices:

- RPEs should retain highly qualified experts through contract to supplement in-house staff to assist with the analysis of P3 proposals, the development of Value for Money analyses, the construct of both Public Sector Comparators and shadow bids, the analysis, valuation and allocation of risk between the public and private sectors, and all required financial, budgetary and economic analyses and studies. Expertise on the public sector side of the table is essential to the successful negotiation and award of a P3 infrastructure contract(s).
- A cost-benefit type analysis, considering both tangible and intangible costs and benefits for a project, should be conducted by a RPE to determine the relative merits of a project for the RPE and its constituency. This analysis should not be a purely numeric analysis. Generally, this type of

analysis, whether sophisticated or rudimentary, should be conducted for infrastructure projects regardless of the delivery method involved to ensure the project is affordable, cost effective, and beneficial when tangible and intangible benefits and costs are analyzed.

- A preliminary Value for Money (VfM) analysis should be conducted to determine the best approach to deliver the project – whether as a traditional government funded and developed project or a P3 project or a hybrid.
 - As part of the VfM analysis, a public sector comparator (PSC) should be developed. A PSC is the all-in life cycle cost of the project if done through traditional government design, build, operate, maintain, and finance approaches. The project life is determined and all costs and revenues are included as part of the life cycle analysis with all figures discounted for comparison purposes.
 - The PSC is compared to either an unsolicited P3 proposal or a shadow bid, representing what a P3 project should cost. The P3 proposal or shadow bid is similarly analyzed over the project's useful life, with all revenues and costs considered and cash flow streams discounted for comparison purposes.
 - It is essential that the analyses are true apples to apples comparisons; hence all costs and revenues must be included. Costs should include the cost of not proceeding with a project as timely as could be done through a P3 approach.
 - Both the P3/shadow bid and the PSC should include valuations for risk borne by each party and all savings from operations and other areas over a project's life need to be accurately quantified.
 - A risk matrix should be developed which allocates various types of risk to both the public and private sides of the deal. This determines how risk will be shared. The costs of alternative delivery methods are directly impacted by the allocation of risk so this must be done thoughtfully to ensure the most cost effective project.
- During the proposal review phase the above VfM process should be updated and all of the earlier assumptions verified and/or modified so as to ultimately determine whether the P3 delivery method is the most cost effective, fiscally advantageous approach. This is the "final" VfM analysis.
- The RPE should be prepared to share all budgetary and financial data relevant to a project with the P3 team during the negotiating process, at the latest.
- The P3 team should provide all required financial data required to determine the ability of the private sector team to undertake the project in question, such as loan commitment letters, sources of working capital, letters from lenders confirming the liquidity of the P3 group, etc. to ensure the project funding is available commencing with pre-development activities.
- The RPE should be able to determine its own ability to support a project and meet all required financial obligations.
- The RPE should have a clear understanding of all of the revenue options available for a given project, must be able to accurately value public assets and must be able to identify and value all project costs over the project's life.
- The RPE should carefully evaluate the P3 team's financial plan and project delivery strategy, including levels of equity and debt going into a project, the amount of public debt and other public sector support assumed. Discounted cash flows and sensitivity analyses of all financial assumptions should be reviewed and verified. All financial models should similarly be reviewed and verified. The RPE should produce its own independent models and analyses with the assistance of outside experts under contract to the RPE.

- Proposals should include:
 - Project costs by stage, through the entire project life
 - All revenue assumptions, both public and private
 - All financing assumptions, both public and private, include levels of assumed private equity
 - All risk allocation assumptions
 - Sensitivity analyses for all financial models
 - Life cycle analyses
 - Discounted cash flows
 - Etc.

WORKING DRAFT

ORIGINAL

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27 qualifying project, the rejected unsolicited proposal remains
 28 exempt from s. 119.07(1) and s. 24(a), Art.I of the State
 29 Constitution until such time as the responsible public entity
 30 has solicited bids and has provided notice of a decision or
 31 intended decision. An unsolicited proposal is not exempt for
 32 longer than 12 months after the responsible public entity
 33 rejects all proposals submitted as provided in paragraph (6)(c)
 34 of this section.

35 (c) This paragraph is subject to the Open Government
 36 Sunset Review Act in accordance with s. 119.15 and shall stand
 37 repealed on October 2, 2019, unless reviewed and saved from
 38 repeal through reenactment by the Legislature.

39 Section 2. The Legislature finds that it is a public
 40 necessity that an unsolicited proposal held by a responsible
 41 public entity pursuant to s. 287.0512, Florida Statutes be made
 42 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 43 Article I of the State Constitution, until such time as the
 44 responsible public entity has received, opened, and ranked the
 45 proposals as set forth in paragraph (6)(c) of this section or if
 46 the responsibly public entity has rejected all bids, until the
 47 responsible public entity has solicited bids and noticed its
 48 decision or intended decision. In no event can the unsolicited
 49 proposal remain exempt longer than 12 months after all proposals
 50 are rejected. The disclosure of information in an unsolicited
 51 proposal such as the financing mechanisms and terms, the
 52 formulas, and the designs, could give competitors a business

WORKING DRAFT

ORIGINAL

YEAR

53 advantage by knowing the proposal's financial strategy and
 54 innovative plans, thereby injuring the entity who submitted the
 55 unsolicited proposal and placing the entity at a competitive
 56 disadvantage in the marketplace. Without this exemption,
 57 entities might not submit unsolicited proposals that could
 58 provide timely and cost-effective solutions for qualifying
 59 projects that serve a public need. Therefore, the Legislature
 60 finds that it is a public necessity that unsolicited proposals
 61 held by a responsible public entity pursuant to s. 287.05712,
 62 Florida Statutes, be made exempt from public records
 63 requirements until such time as the responsible public entity
 64 provides notice of an intended decision concerning the
 65 unsolicited proposal.

66 Section 3. This act shall take effect July 1, 2014.

Public Records Exemption for s. 1013.501

Section 1. Section 1013.501(14), Florida Statutes, is created to read:

(14) PUBLIC RECORDS. -

- (a) If a board receives an unsolicited proposal under this section, the proposal remains exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such time as the board university provides notice of an intended decision concerning the unsolicited proposal as described in paragraph (3) of this section.
- (b) This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that unsolicited proposals held by a university board of trustees pursuant to s. 1013.501, Florida Statutes, which identify proprietary information of businesses be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, until such time the public entity has made a decision to use said unsolicited proposal. Pursuant to s. 1013.501, Florida Statutes, unsolicited proposals will be submitted to a university board of trustees to serve the public purpose of procuring the timely development or operation of a qualifying public-private project as defined in s. 1013.501(1)(h) that serves a public need for timely and cost-effective acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of projects that will be principally used by a state university in serving the university's core mission, and that such public need may not be wholly satisfied by existing procurement methods. These unsolicited proposals would contain proprietary information and trade secrets, such as patent-pending designs and financing terms. If such unsolicited proposals were publicly available before a public entity makes a decision, competitors could determine the creative financing used to fund these projects. Therefore, the Legislature finds that it is a public necessity that unsolicited proposals submitted pursuant to s.1013.501 be made confidential and exempt from public records requirements until such time as an award under this section is formally submitted for approval to the Board of Governors.

Section 3. This act shall take effect on July 1, 2014.

Partnership for Public Facilities Act Guidelines Task Force

Third-party Review (Item number 8)

January 9, 2014

Current law, s. 287.05712(6)(d), F.S. (Chapter 2013-223 Laws of Florida/HB 85), requires a responsible public entity perform an independent analysis of a proposed P3 project which demonstrates the cost effectiveness and overall public benefit before the procurement process is initiated or a contract is awarded.

Additionally, the law:

- Authorizes the responsible public entity to charge a reasonable application fee to cover the costs of evaluating an unsolicited proposal. It also authorizes the responsible public entity to hire a private/third-party consultant to assist in the evaluation.
- Authorizes the responsible public entity to charge a reasonable fee to cover the costs of processing, reviewing, and evaluating proposals.

QUESTIONS TO CONSIDER:

Do you think the responsible public entity should be able to assess an application fee for all unsolicited and solicited proposals? For unsolicited proposals, should it be a flat-rate fee, a percentage-based fee, or something else? What would be a reasonable amount?

PROPOSED RECOMMENDATION:

Yes, responsible public entities should be able to charge an application/evaluation fee for unsolicited and solicited proposals.

Unsolicited proposals should be submitted with an accompanying flat-rate submission fee to cover evaluation costs. If the identified fee does not cover all of the evaluation costs, the responsible public entity should request additional funding from the private entity. If the entire fee is not used for evaluation, the RPE should be allowed to return the unused portion of the fee.

For solicited proposals, section 287.05712(6)(d), F.S., which applies to both unsolicited and solicited proposals, should be amended to be permissive (using may) rather than requiring an additional level of third-party review for solicited proposals.

NOTE: This Department of Transportation (FDOT) public-private partnership statute and rule were referenced in the development of the proposed recommendations. FDOT requires a \$50,000 submission fee accompany all unsolicited proposals. Unsolicited proposals will not be accepted without the fee. If this fee is not sufficient to cover the Department's costs to evaluate the proposal, FDOT must request, in writing, additional amounts that must be received by the Department within 30 days. Failure to pay the additional fee will result in the proposal being rejected. FDOT does not have a submission fee for solicited proposals.