

N.J.A.C. 17:49

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 52 No. 8, April 20, 2020

NJ - New Jersey Administrative Code > TITLE 17. TREASURY -- GENERAL > CHAPTER 49. PUBLIC-PRIVATE PARTNERSHIPS RULES

Title 17, Chapter 49 -- Chapter Notes

Statutory Authority

CHAPTER AUTHORITY:

P.L. 2018, c. 90.

History

CHAPTER SOURCE AND EFFECTIVE DATE:

R.2020 d.037, effective April 20, 2020.

See:

51 N.J.R. 956(a) ,

52 N.J.R. 898(a) .

CHAPTER HISTORICAL NOTE:

Chapter 49, Public-Private Partnerships Rules, was adopted as new rules by R.2020 d.037, effective April 20, 2020. See: Source and Effective Date.

Annotations

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Research References & Practice Aids

CHAPTER EXPIRATION DATE:

Chapter 49, Public-Private Partnerships Rules, expires on April 20, 2027.

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N.J.A.C. 17:49-1.1

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NJ - New Jersey Administrative Code > TITLE 17. TREASURY -- GENERAL > CHAPTER 49. PUBLIC-PRIVATE PARTNERSHIPS RULES > SUBCHAPTER 1. GENERAL PROVISIONS

§ 17:49-1.1 Purpose and scope

(a)The rules in this subchapter are promulgated by the Department of the Treasury to implement P.L. 2018, c. 90.

(b)The rules in this subchapter apply to the identification, screening, selection, development, and delivery of projects through the public-private partnership procurement model authorized by P.L. 2018, c. 90. The rules outline the process by which project criteria are developed and how project reviews will be conducted. The rules provide guidelines for authorized public entities who are working through the process of deciding whether to seek or respond to a partnership opportunity, to reject a partnership or negotiate the terms of one, and whether to enter and how to monitor over time the partnership arrangement. They include particular rules as to interacting with the private entities who seek to partner with them, as well as the rules for engagement of the public and other key stakeholders critical to the advancement of a project.

(c)These guidelines include a process for both solicited and unsolicited project proposals for each type of project authorized under the law, provide the structure for the selection of a private sector partner, and finally, outline the structure of the public-private partnership agreement in accordance with P.L. 2018, c. 90. The organization of the rules follows the anticipated chronological steps that will be undertaken through the life cycle of a project. The rules ensure the requisite analysis is conducted by public entities seeking to enter into a public-private partnership so as to ensure resources are properly committed and that the public's interest is protected.

(d)Submissions and questions regarding public-private partnerships should be addressed to:

Department of the Treasury

Attn: P3 Review

50 W. State Street, 5th Floor

PO Box 005

Trenton, New Jersey 08625-0005

(e)Questions of a private entity or the public concerning the award of contracts under this chapter should be directed to the local or State contracting agency issuing the public-private partnership agreement.

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N.J.A.C. 17:49-2.1

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§ 17:49-2.1 Definitions

The following words and terms, as used in this chapter, shall have the following meanings, unless the context indicates otherwise.

"Approval letter" means the letter sent by the State Treasurer authorizing a public entity who has submitted a project for approval to proceed forward with final agreement with a private entity.

"Authority" means the New Jersey Economic Development Authority established pursuant to section 4 of P.L. 1974, c. 80 (N.J.S.A. 34:1B-4).

"Availability payment" means fixed payments to a private entity by a public entity in return for the design, construction, long-term operation and maintenance, and financing of the project. Availability payments shall only be permitted where a State or county college or university or State governmental entity is an applicant.

"Building project" means the construction, reconstruction, repair, alteration, improvement, or extension of any public building, structure, or facility constructed or acquired by a State government entity to house State government functions, including any infrastructure or facility used or to be used by the public or in support of a public purpose or activity.

"Bundling" means the use of a solicitation for multiple projects in one single contract, through a public-private partnership project delivery method, the result of which restricts competition. A project shall include only one project focus, operations, financing plan, and financial structure in order to seek project approval. Bundling is not permitted across multiple applicants.

"Charter school" means an entity established pursuant to N.J.S.A. 18A:36A-1 et seq.

"Design-build contractor" means the entity that is contractually responsible for the performance of construction of a project as a member of a design-build team.

"Design-build team" means a contractually created combination of entities formed to undertake a construction project to be advanced using a design-build methodology, including design professionals responsible for the design and construction companies responsible for the construction, of such a project.

"Full financial and administrative responsibility" means control of all financial and operational requirements.

"Highway or transportation project" means the construction, reconstruction, repair, alteration, improvement, or extension of public expressways, freeways, and parkways, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, and park and ride facilities, including any infrastructure or facility used, or to be used, by the public, or in support of a public purpose or activity, provided that the project shall include an expenditure of at least \$ 100 million in public funds or any expenditure in solely private funds. At no time shall more than eight State highway projects be in process.

"Local government unit" means a county, a municipality, or any board, commission, committee, authority, or agency thereof that is subject to the provisions of the Local Public Contracts Law, P.L. 1971, c. 198 (N.J.S.A. 40A:11-1 et seq.), including a housing authority or redevelopment agency created or continued under the Local Redevelopment and Housing Law, P.L. 1992, c. 79 (N.J.S.A. 40A:12A-1 et seq.). A local government unit shall not include a public entity that has entered into a contract with a private firm or a public authority pursuant to the New Jersey Wastewater Treatment Public-Private Contracting Act, P.L. 1995, c. 216 (N.J.S.A. 58:27-19 et seq.), for the provision of wastewater treatment services.

"No-Build" means the decision to not proceed with a project or procurement.

"Office of Public Finance" means the Office of Public Finance within the Department of the Treasury.

"Private entity" means a natural person, corporation, limited liability company, partnership, joint venture, or other private business entity that assumes full financial and administrative responsibility for the construction, reconstruction, repair,

alteration, improvement, extension, operation, and/or maintenance of a building, structure, facility, or other structure, including a highway, for the benefit of the local government unit, school district, State governmental entity, or State or county college or university. A private entity, or its majority shareholder or parent company, shall meet at least the minimum qualification standards in existing statutes and rules issued by the relevant public entity involved in a project, and shall have participated in a lead role in at least two public-private projects or complex lease or lease back arrangements or other complex transactions, of at least \$ 10 million in size, or \$ 100 million in the case of highway or transportation projects, unless otherwise expressly stated in a public entity's solicitation, to be considered qualified to participate in a public-private partnership agreement.

1.Where the public entity is a school district, the private entity shall have a clearly articulated commitment to public education demonstrated by either a record of collaboration with elementary or secondary public or private schools in this State, or any other state, over the last two years or, alternatively, the private entity may demonstrate a clear commitment to public education through its charter, mission statement, or application for approval as a non-profit corporation, foundation, bylaws, or other organizing document.

2.Where a highway or transportation element is considered, regardless of the type of public entity involved, a private entity shall also be pre-qualified by the Department of Transportation.

"Project" means:

1.For a local government unit, the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance, or any combination thereof, of any building, local or county road, vertical structure, or facility constructed or acquired by a local government unit to operate local government functions, including any infrastructure or facility used, or to be used, by the public, or in support of a public purpose or activity, including fixtures, furnishings, and equipment, as well as any site acquisition, provided that, with respect to a project, a qualifying project shall include an expenditure of at least \$ 10 million in public funds, or any expenditure in solely private funds, and provided that the project is financed in whole by the private entity and the local unit retains full ownership of the land upon which the project is located.

2.For a school district, the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, and/or capital maintenance of all or any part of a school facility, infrastructure, or any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings, and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs, and administrative costs, and expenses incurred in connection with the project, where used by the public or in support of a public purpose or activity, provided the private

entity assumes full financial and administrative responsibility for a project of, or for the benefit of, the school district, and provided that the project is financed in whole by the private entity. An investment of real estate by a school district, provided that ownership is retained by a school district, shall not violate the provisions of this chapter.

3.For a State government entity, the construction, reconstruction, repair, alteration, improvement, extension, and/or operation and maintenance of any public building, structure, or facility constructed or acquired by a State government entity to house State government functions, including any infrastructure or facility used, or to be used, by the public or in support of a public purpose or activity, and including any fixtures, furnishings, and equipment, provided that the private entity may assume full financial and administrative responsibility for the construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a building or highway of, or for the benefit of, the State government entity, and provided that the building or highway project is financed in whole or in part by the private entity and the State government entity retains full ownership of the land upon which the project is located.

4.For a State or county college or university, the on-campus or off-campus design, build, maintenance, financing, construction, reconstruction, repair, alteration, improvement, extension, management, and/or operation of a building, structure, or facility of, or for the benefit of, the State or county college or university, including any fixtures, furnishings, and equipment, provided that the private entity may assume full financial and administrative responsibility for the construction, reconstruction, repair, alteration, improvement, extension, management, or operation of a building, structure, or facility, of, or for, the benefit of the State or county college or university and, provided that the project is financed in whole or in part by the private entity and that the State or a State or county college or university, as applicable, retains full ownership of the land upon which the project is completed.

"Public building, road, structure, infrastructure, or facility" means any site building, road, structure, infrastructure, or facility used or to be used by a local government unit, including a housing authority or redevelopment agency created or continued under the Local Redevelopment and Housing Law, P.L. 1992, c. 79 (N.J.S.A. 40A:12A-1 et seq.), to house a local government function or functions, including any infrastructure or facility used or to be used by the public, or in support of a public purpose or activity.

"Public-private partnership advisor" means an expert retained by the Office of Public Finance for purposes of assisting the State Treasurer's review of a project by completing a financial and technical review of a proposed public-private partnership project.

"Public-private partnership agreement" means an agreement entered into by a local government unit, a school district, State governmental entity, or a State or county college or university and a private entity for the purpose of permitting a private entity to assume full financial and administrative responsibility for the development, construction,

reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project of, or for the benefit of, the local government unit, school district, or State governmental entity or a State or county college or university.

"Public-private partnership program" means the public-private partnership procurement model as authorized by P.L. 2018, c. 90.

"School district" means, consistent with the definition in N.J.S.A. 18A:7G-3, a local or regional school district established pursuant to Chapter 8 or Chapter 13 of Title 18A of the New Jersey Statutes, a county special services school district established pursuant to article 8 of Chapter 46 of Title 18A of the New Jersey Statutes, a county vocational school district established pursuant to article 3 of Chapter 54 of Title 18A of the New Jersey Statutes, a district under full State intervention pursuant to N.J.S.A. 18A:7A-34 et seq., and a charter school established pursuant to N.J.S.A. 18A:36A-1 et seq., that can demonstrate, to the satisfaction of the Commissioner of Education and the Chief Executive Officer of the Schools Development Authority, that a new school facility is necessary due to overcrowding, or the existing school facility is in need of replacement.

"State government entity" means the State or any department, agency, commission, or authority thereof subject to the public contracting provisions of P.L. 1954, c. 48 (N.J.S.A. 52:34-6 et seq.), including the South Jersey Port Corporation created pursuant to "The South Jersey Port Corporation Act," P.L. 1968, c. 60 (N.J.S.A. 12:11A-1 et seq.), and New Jersey Transit. State government entity shall not include any State institution of higher education.

"State or county college or university" means an institution of higher education organized pursuant to Chapter 64 or Chapter 64A of Title 18A of the New Jersey Statutes, and the New Jersey Institute of Technology, established pursuant to Chapter 64E of Title 18A of the New Jersey Statutes, Rowan University, established pursuant to Chapter 64M of Title 18A of the New Jersey Statutes, Montclair State University, established pursuant to Chapter 64N of Title 18A of the New Jersey Statutes, as well as Rutgers, the State University, established pursuant to Chapter 65 of Title 18A of the New Jersey Statutes.

"Stipend" means the payment of a private entity for work product submitted in response to a public-private partnership proposal released by a local government unit or State government entity, where the cost of the development of a proposal is significant and there is a substantial opportunity for innovation on the part of the local government unit or State government entity. All work product in this instance shall then be jointly

owned, including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan, by the local government unit or State governmental entity.

"Tax Exempt Bond" means a bond issued by a municipal, county, State government, or other entity or political subdivision, including an independent authority, whose interest payments are not subject to Federal, State, or local income tax.

"Unsolicited proposal process" means the process required for consideration of an unsolicited proposal by a local government unit, school district, State entity, or State or county college or university, including the procedures for providing notice of receipt of an unsolicited proposal, solicitation of additional competitive proposals from qualified entities, evaluation and ranking of all proposals received, including the unsolicited proposal, public hearing regarding the proposed project, and determination of the selected proposal.

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N.J.A.C. 17:49-3.1

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§ 17:49-3.1 Pre-qualification of third-party financial institutions

(a)The Office of Public Finance shall pre-qualify third-party financial institutions that shall act as collateral agents and manage construction accounts for public-private partnership agreements.

(b)The minimum standards to qualify shall include:

1. Current authorization to conduct business in the State of New Jersey;
2. Participation as a trustee in at least three complex public bonding transactions or participation in three public-private partnership projects in this or any other jurisdiction; and
3. Capital stock surplus and aggregate earnings of at least \$ 10 million under a state or national banking charter;

(c)A financial institution seeking to become pre-qualified shall submit a letter to the Office of Public Finance outlining how its institution successfully satisfies the minimum standard required and its commitment to (d) below.

(d)Financial institutions shall agree to provide the appropriate public entity pre-audit access during the term of engagement and for six years thereafter.

(e)The Office of Public Finance shall maintain a list of third-party institutions that have been pre-qualified.

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§ 17:49-3.2 Pre-qualification of construction contractors, counsel, and design professionals

(a) Contractors, including subcontractors, construction managers, and design-build teams (including design-build contractors and design professionals) shall be, at a minimum, registered pursuant to N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction pursuant to N.J.S.A. 52:35-1 et seq., and N.J.A.C. 17:19-2, or be pre-qualified by the Department of Transportation, New Jersey Transit, or New Jersey Turnpike authority, as appropriate. Design professionals, including architectural and engineering professionals shall be pre-qualified by the Division of Property Management and Construction pursuant to N.J.S.A. 52:34-9.1 et seq., and N.J.A.C. 17:19-3, or be pre-qualified by the Department of Transportation, New Jersey Schools Development Authority, New Jersey Transit, or New Jersey Turnpike Authority, as appropriate.

(b) Counsel to an entity, except a State government entity, shall possess the following minimum experience to provide legal representation and support for purposes of a public-private partnership agreement:

1. Experience as counsel or underwriter on at least three complex financial transactions, including public-private partnership agreements, in this State or any other state;
2. Expertise in construction, land use, real estate development, lease, construction, and related financing; and
3. Where relevant, experience in highway or transportation projects, including financing of projects.

(c) All other professionals, including planners, financial advisors, and other consultants shall, at a minimum, have participated or worked on at least three public-private partnership agreements or complex lease or lease back arrangements or other complex transactions and possess relevant credentials for the task assigned.

(d)The qualifications of all professionals shall be provided to the State Treasurer as a part of the application process.

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§ 17:49-3.3 Qualification of public-private partnership advisors

(a)The Office of Public Finance shall pre-qualify and maintain a pool of public-private partnership advisors who shall assist the Department of the Treasury by undertaking a financial and technical review of projects submitted for consideration.

(b)Public-private partnership advisors shall possess the following minimum criteria to qualify for consideration:

- 1.Participation in at least five public-private partnership projects in this or any other jurisdiction in the last five years;
- 2.Understanding of land use, construction, redevelopment, and public financing law;
- 3.Experience with financial modeling, return on investment analysis, risk analysis and allocation, stress testing assessment, conduction of feasibility studies in assessing public-private partnership suitability, market testing, public sector comparability, net present value cost, and comparison development, as well as a review of project life cycle cost and reserve analysis;
- 4.Ability to provide recommendations on appropriate discount rates and investment measures for projects;
- 5.Exposure to public infrastructure construction and financing;
- 6.Experience with construction in New Jersey;
- 7.Ability to review, summarize, and prepare a summary of legal agreements; and
- 8.Any additional criteria as determined to be necessary by the Department of the Treasury.

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N.J.A.C. 17:49-4.1

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§ 17:49-4.1 Fees

(a)An application review fee of \$ 50,000 shall be paid upon submission of an application for approval of a public-private partnership project to the Office of Public Finance by the local government unit, school district, State government entity, or county or State college or university.

(b)To the extent additional funds are necessary to complete review of a project by a public-private partnership advisor as set forth in N.J.A.C. 17:49-3.3 , as based upon a review of the project by the Department of the Treasury, including any post application change, an applicant shall be billed for the additional costs necessary to facilitate project review. Project review shall not commence until such time as funds are received to facilitate project review.

(c)Applicants shall submit an additional fee of \$ 33,000 for any project involving a material transportation element.

(d)Applicants shall submit a non-refundable fee of \$ 16,500 for each request for any material change in project scope at any time.

(e)These application fees shall be in addition to any set-aside amount required pursuant to N.J.A.C. 17:49-11 . The Department of the Treasury reserves the right to reduce the amount of required set-aside, for application fee amounts not expended for project review, upon request of a public entity. Such request shall be made upon receipt of project approval.

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§ 17:49-5.1 Public-private partnership project report

(a)The Office of Public Finance shall maintain a list of public-private projects within the State of New Jersey. Projects shall be entered on the list upon submission of an application to the Office of Public Finance for project approval. Project entries shall be updated upon commencement of review, upon approval or rejection by the State Treasurer, upon cancellation of procurement or upon termination of approval, upon commencement of financing, during all stages of construction, and upon completion and/or any post-construction operation and maintenance of a project.

(b)Semi-annually the Office of Public Finance shall publish a report based upon the list of projects maintained. The report shall include projects at all stages of the public-private partnership program process.

(c)Local government units, school districts, State government entities, and/or a State or county college or university shall be required to regularly report to the Office of Public Finance on the status of the project in a format and at a frequency proscribed by the Office of Public Finance. The Office of Public Finance may request additional information of an applicant.

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N.J.A.C. 17:49-6.1

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§ 17:49-6.1 Minimum local government unit standards for entrance into a public-private agreement and operation of a project

(a)A local government unit, with approval by resolution of the governing body, may enter into a public-private partnership agreement with a private entity to develop, construct, reconstruct, repair, alter, improve, extend, operate, or manage a building, road, vertical structure, or facility, if:

- 1.The project, including any site acquisition, includes an expenditure of at least \$ 10 million in public funds, or any expenditure of solely private funds; and
- 2.The project is financed in whole by the private entity, where the local government retains full ownership of the land upon which the project is completed.

(b)In order to pursue a public-private partnership project, a local government unit shall, at a minimum, possess an investment grade bond rating from at least one nationally recognized statistical rating agency.

(c)No project shall be exempt from the provision of the Local Bond Law, N.J.S.A. 40A:2-1 et seq., the Local Authorities Fiscal Control Law, N.J.S.A. 40A:5A-1 et seq., or any other law that may apply to a local government unit borrowing or financing, including, but not limited to, the review by, and approval of, the Local Finance Board or the Division of Local Government Services in the Department of Community Affairs.

(d)A local government unit shall complete the following steps to ensure a project meets the policy, risk allocation/transfer, funding, social equity, market readiness, legal, innovation, life cycle, and accelerated delivery requirements requisite within a public-private partnership agreement:

- 1.Step 1: Complete a self-assessment utilizing the initial screening criteria outlined in Treasury's Initial Screening Tool available at www.treasury.nj.gov/p3screening1. A local government unit shall submit this self-assessment screening with their application to the Office of Public Finance; and
- 2.Step 2: Assuming successful completion of a self-assessment, report to the Office of Public Finance, through an email to p3@treas.nj.gov

, that it is considering pursuing a public-private partnership. The local government unit shall conduct a project analysis, in conjunction with legal, financial, and other experts possessing the requisite minimum criteria set forth at N.J.A.C. 17:49-3.2 , to determine the financial and technical viability of a potential project, prior to submission to the Office of Public Finance. A local government unit shall submit all supporting documents and requisite fees with its application to the Office of Public Finance, including information on the credentials of the experts retained for purposes of conducting the project analysis, as required by N.J.A.C. 17:49-6.5 .

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§ 17:49-6.2 Project analysis

(a)A local government unit, through a finding by the governing body through a resolution, shall determine whether to apply for approval to enter into a public-private partnership and shall document in its application to the Office of Public Finance, its analyses based upon the following threshold criteria:

- 1.A narrative of the project, including the role and responsibilities of the parties, and an assessment of the project's viability, including the outcome and objectives to be realized by the project;
- 2.An assessment of the benefits or risks to be realized by the project;
- 3.The total risk-adjusted cost of the project, including costs associated with procurement, financing, design, construction, operation, and maintenance (including oversight costs) over the useful life of the asset that will be built, or the length (in years) of the potential public-private partnership agreement; both for delivery as a public-private partnership and delivery under a conventional public sector approach, supported by evidence from comparable projects;
- 4.The maximum public contribution that a local government unit will invest in or contribute to the project under the public-private partnership;
- 5.A comparison of the financial and non-financial benefits of the public-private partnership, including the technical, technological, or socioeconomic merit of the project, as contrasted with other options including a public sector option or not proceeding with a project;
- 6.A list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the local government unit as well as an analysis of the financial capacity of the private entity and local government unit, including an analysis of how the project's execution shall impact the financial status of the local government unit;
- 7.An analysis that delivery as a public-private partnership will optimize schedule, cost (on a risk-adjusted and useful life basis) and quality outcomes for the project, relative to a public sector option; and
- 8.Whether the project has a high, medium, or low level of project delivery risk and how the public is protected from these risks.

(b)A local government unit's governing body shall make the following findings to establish that a project is in the best interest of the public and shall provide supporting documents, including information on the financial strength and bonding capacity of the local government unit, to support the findings that:

1. There is a public need for the project and the project is consistent with existing long-term plans;
2. There are specific significant benefits to the project;
3. The project, including risk-adjusted costs associated with procurement, financing, design, construction, operation, and maintenance, including oversight costs, over the useful life of the asset that will be built, or the length, in years, of the potential public-private partnership agreement, will cost less than the public sector option, or if it costs more, there are demonstrable factors that warrant the additional expense;
4. There exists sufficient public sector financial and technical capability as well as market interest for the project to be delivered efficiently as a public-private partnership;
5. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
6. The private development will result in timely and efficient development and operation; and
7. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

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N.J.A.C. 17:49-6.3

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§ 17:49-6.3 Public notice and hearing requirements

(a)A request for qualification shall include the following:

- 1.A request for qualification, soliciting response from private entities for participation in a public-private partnership project shall be advertised by a local government unit a minimum of 45 days prior to the required date of receipt.
- 2.The advertisement of the request for qualification shall be published on the official Internet website of the local government unit and at least one newspaper with Statewide circulation.
- 3.A request for qualification shall clearly set forth the requirements for a public-private partnership agreement pursuant to N.J.A.C. 17:49-6.5(a)
- 4.The request for qualification shall define the standards for responsiveness, including identification of any required submissions, documents, proof of licensure or qualification, or other material information, and shall define the qualification standards for determining whether a private entity is eligible to participate in the request for proposals process.

(b)A request for proposal shall include the following:

- 1.After a local government unit determines the qualified respondents utilizing the qualification standards, the local government unit shall issue a notice of the list of qualified respondents, and shall issue a request for proposal to each qualified respondent no less than 90 calendar days prior to the date established for submission of the proposals.
- 2.The request for proposals shall define the standards for responsiveness to the request for proposal, including identification and description of any required technical submissions, or other required documents or material, and shall also specify the minimum evaluation criteria to be used in the selection of the designated respondent, and the weight of each criterion.
- 3.A local government unit may authorize the use of stipends on public-private partnership projects when there is a substantial opportunity for innovation and the costs of developing a proposal are significant. The extent of such stipend shall solely

relate to the costs associated with work product of unsuccessful proposers submitted in response to a request for proposals.

i. The aggregate value of stipends provided to all private entities afforded stipends shall not exceed 0.05 percent of the total projected cost of the project.

ii. The extent to which any stipend will be available for work product submitted shall be affirmatively outlined in the request for proposal.

(c) The ranking of proposals shall be as set forth in this subsection:

1. After the proposal or proposals have been received, and any public notification period has expired, the local government unit shall rank the proposals based upon the established evaluation criteria.

2. The local government unit may consider, in addition to cost, factors that include, but are not limited to, professional qualifications and capacity of the entity and its agents, timing of project delivery, general business terms, innovative engineering, architectural services, cost-reduction terms, finance plans, and the need for local government funds to deliver the project and discharge the agreement.

3. The private entity selected shall comply with all laws and regulations, including, but not limited to, section 1 of P.L. 2001, c. 134 (N.J.S.A. 52:32-44), sections 2 through 8 of P.L. 1975, c. 127 (N.J.S.A. 10:5-32 to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 (N.J.S.A. 19:44A-20.13 et seq.), P.L. 2005, c. 271 (N.J.S.A. 40A:11-51 et seq.), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.

4. The local government unit may negotiate with the selected private entity on the final terms and conditions, subject to the minimum evaluation criteria contained in the request for proposal. In the event that a local government unit is unable to negotiate final terms and conditions with the selected private entity, the local government unit may negotiate final terms and conditions with the next most favorable private entity.

5. If only one proposal is received, the local government unit shall negotiate in good faith and, if not satisfied with the results of the negotiations, the local government unit may, at its sole discretion, terminate negotiations.

(d) All public hearings and findings shall include the following:

1. After ranking the proposals, and the identification of a potential private entity for the project under review, in addition to negotiation of final terms and conditions, the local government unit shall conduct a public hearing on the project, in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., prior to submitting the public-private proposal to the State Treasurer for consideration. The hearing shall be conducted in accordance with (d)2 through 5 below.

2. Notice under this subsection shall include:

- i.** Notice of a public hearing must be provided not less than 14 days prior to a hearing, and shall state the date, time, and location of the public hearing;
 - ii.** The notice must state the purpose and nature of the project under consideration by the local government unit;
 - iii.** The notice must state the process for receipt of public comments, either at or before the public hearing, including any procedures required for participation in the public hearing;
 - iv.** The notice must be published in at least one newspaper with Statewide circulation and on the official website of the local government unit;
- 3.** Public comments regarding the proposed project shall be received at or before the public hearing, in accordance with any procedures specified in the public notice, and the local government unit shall keep a record of such public comments. A local government unit shall permit the public an opportunity to comment at a hearing. The local government unit shall respond to such public comments, either informally at the hearing, or in a writing made available to the public after the hearing, and shall indicate whether any changes will be made to the project, or the ranking and/or selection process, in response to the comment. A local government unit may, after appropriate consideration of a public comment, state in response that no changes to the project and/or selection process will be made;
- 4.** The local government unit shall determine, on the record at a public hearing, that a project is in the best interest of the public by finding, with any relevant supports, that based on facts:
- i.** The project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
 - ii.** There is a public need for the project and the project is consistent with existing long-term plans;
 - iii.** There are specific significant benefits to the project;
 - iv.** There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
 - v.** The private development will result in timely and efficient development and operation; and
 - vi.** The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement;
- 5.** A record of the public hearing, including the required findings, and any public comments received and responses thereto, either made at the hearing or issued in writing after the hearing, shall be made available within seven days after conclusion of the public hearing.

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N.J.A.C. 17:49-6.4

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 52 No. 8, April 20, 2020

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§ 17:49-6.4 Unsolicited proposals

(a)A local government unit may accept unsolicited proposals from private entities for public-private partnership agreements. A local government unit shall develop a process for accepting unsolicited proposals in expectation of receipt of an unsolicited proposal.

(b)An unsolicited proposal shall include, at a minimum, the following:

- 1.A description of the proposed public-private project, including the identified local government unit need to be fulfilled by the proposed project;
- 2.The estimated construction and life-cycle costs;
- 3.A timeline for development;
- 4.Proposed plan of financing, including projected revenues, public or private, debt, equity investment, and a description of how the project meets needs identified in existing plans;
- 5.An identification of the permits, approvals, and/or variances needed from local, State, and/or Federal agencies in order to develop the project; and
- 6.A projected schedule for obtaining such permits and approvals, and a statement of risks, liabilities, and responsibilities to be assumed by the private entity.

(c)A private entity submitting an unsolicited proposal shall provide a copy in which all proprietary information has been redacted, so that the description of the proposed public-private project may be shared publicly. In the event that a redacted copy is not provided, all materials shall be considered releasable.

(d)In the event that an unsolicited proposal is received, a local government unit's governing body shall determine, on the record, whether the following factors have been met:

- 1.There is a public need for the project and the project is consistent with existing long-term plans;
- 2.The project will cost less than a public sector option, or if it costs more, there are factors that warrant the additional expense;
- 3.There are specific significant benefits to the project;
- 4.There are specific significant benefits to using the public-private partnership instead of other options including No-Build;

5.The private development will result in timely and efficient development and operation; and

6.The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

(e)If the local government unit receives an unsolicited proposal, and determines that it meets the above factors, the local government unit shall give notice to the public of an opportunity to submit competing proposals to be considered in comparison to the proposed project outlined in the unsolicited proposal. The local government unit shall:

1.Publish a notice of the receipt of the proposal on the Internet site of the local government unit and through advertisement in at least one newspaper with Statewide circulation;

2.Provide notice of the proposal at its next scheduled public meeting of the local government unit and to the State Treasurer. The notice shall specify the standards for evaluation and ranking of any proposals received in response to the notice;

3.The notice shall provide that the local government unit shall accept, for 120 days after the initial date of publication, proposals meeting the standards outlined in the unsolicited proposal from other private entities for eligible projects that satisfy the same basic purpose and need; and

4.Mail a copy of the notice to each municipal and county local government body in the geographic area affected by the proposal.

(f)After the 120 days of public notice have expired and any additional proposals have been received, the local government unit shall rank the proposals in order of preference.

1.In ranking the proposals, the local government unit shall, at a minimum, rely upon the factors outlined in (d) above.

2.The local government unit may also consider factors that include, but are not limited to: professional qualifications of the entities participating in the proposed project; general business terms and conditions of the proposed project; any innovative engineering, architectural services, or cost-reduction terms, included in the project; the terms of the finance plan for the project; and the need for any contribution of local government funds required to deliver the project and/or discharge the agreement.

3.The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 (

N.J.S.A. 52:32-44), sections 2 through 8 of P.L. 1975, c. 127 (

N.J.S.A. 10:5-32 to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A.

52:25.24-2), P.L. 2005, c. 51 (

N.J.S.A. 19:44A-20.13 et seq.), P.L. 2005, c. 271 (

N.J.S.A. 40A:11-51 et seq.), Executive Order No. 117 of 2008,

Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.

(g)If no proposals are received in addition to the unsolicited proposal, then the local government unit shall negotiate in good faith and, if not satisfied with the results of the negotiations, the local government unit may, at its sole discretion, terminate negotiations.

(h)All unsolicited proposals shall be subject to the requirements of N.J.A.C. 17:49-6.2 and 6.3 .

Annotations

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N.J.A.C. 17:49-6.5

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§ 17:49-6.5 Project review

(a)A local government unit shall provide the Office of Public Finance the following items for review of a public-private partnership project in an application format prescribed by the Office of Public Finance:

- 1.**A full description of the proposed public-private partnership project;
- 2.**A copy of the proposed public-private partnership agreement between the local government unit and the private entity, including any supporting documents such as the development agreement, any relevant contracts and leases, and all information obtained by, and findings of, the local government unit, as well as a redacted copy of all materials for purposes of providing any public document as required under the Open Public Records Act;
- 3.**A proposed public-private partnership agreement between the local government unit and the private entity, including the following minimum criteria:
 - i.**An agreement term length clearly defined to include the estimated construction and operational period, as needed;
 - ii.**A complete description of the public-private partnership project to be developed and the functions and responsibilities to be performed by the local government unit and the private entity;
 - iii.**Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the public-private partnership project;
 - iv.**A provision allowing express permission of the public entity, and State and local officials, to inspect project-related assets or property; such provision shall include any specific limitations, particular requirements or allowances related to such review. Examples of limitations, particular requirements or allowances may include, but are not limited to, any notice requirements, time constraints, or review restrictions;
 - v.**The roles and responsibilities of the parties for the duration of the agreement;

- vi.** Requirements for bonds or other forms of security in amounts acceptable to the local government unit;
- vii.** Standards and rights of parties relating to payments by the local government unit to the private entity if payments are part of the project;
- viii.** Requirements for any payment by the private entity of any costs incurred by the local government unit before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the local government unit with respect to the project;
- ix.** Standards for construction and maintenance of the project;
- x.** Standards for allocation of costs of development, including allocation of liability for cost overruns;
- xi.** Performance criteria and incentives, if any;
- xii.** Risk mitigation plans and responsibilities at all project stages, including at project development, construction, operations, and maintenance, for both the private entity and local government unit;
- xiii.** The rights that the local government unit and the private entity may have, if any, to revenue generated as a result of the agreement, and any standards for allocation of such revenue between the parties;
- xiv.** A maximum rate of return to the private entity and a provision for the distribution of excess earnings to the local government unit or to the private party for debt reduction;
- xv.** The minimum quality standards, technical requirements, and/or performance criteria applicable to the public-private partnership project, including key performance indicators, reporting requirements, incentives, cure periods, standards of performance or metrics, including performance points systems, monitoring rights of the local government unit, and penalties for failure to achieve these standards;
- xvi.** A maintenance plan for the full life cycle of the public-private partnership project;
- xvii.** A hand-back plan that includes requirements regarding return of the facility in a state of good repair and standards for determining such state of repair;
- xviii.** Any compensation and/or revenue structure of the private entity related to the project coming into the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the public-private partnership project, as well as a full payment schedule (if applicable);
- xix.** Rights and remedies, including, but not limited to, compensatory, liquidated or other types of damages, and dispute resolution procedures available or applicable in the event of nonperformance or breach of contract, up to and including, material default;

- xx.**Procedures for notice and cure of default;
- xxi.**Insurance requirements for any project to be operated by the private entity;
- xxii.**Grounds for termination of the public-private partnership agreement by the local government unit and the financial impact of that termination;
- xxiii.**Grounds for termination of the public-private partnership agreement by the private entity and the financial impact of that termination;
- xxiv.**Procedures for amending the public-private partnership agreement;
- xxv.**Provisions for the termination of the public-private partnership agreement and the disposition of the public-private partnership facility upon termination;
- xxvi.**Identification of funding sources to be used to fully fund the capital, operation, maintenance, and other expenses under the public-private partnership agreement;
- xxvii.**The nature of the local government and private entity's property interest including the acquisition of any property, of which the local government unit shall retain full ownership of the land upon which the project is located;
- xxviii.**An articulation of the legal relationship and requirements of the parties involved, including the rights and responsibilities of the parties, as to design elements, technologies, techniques, methods, information, or intellectual property contained in an agreement;
- xxix.**Details on distribution of costs between the private entity and local government unit, including costs of retaining independent experts to review, analyze, and advise the local government unit with respect to the proposal; and any stipends authorized for work completed, which shall not exceed 0.5 percent of the project total; and
- xxx.**When applicable, a provision in the agreement establishing that the private entity will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Outstanding Tax-Exempt Bonds under Section 103 of the Internal Revenue Code (Code). The provision shall also establish that the applicant will not directly or indirectly use or permit the use of any proceeds of any Outstanding Tax-Exempt Bonds or take or omit to take any action that would cause any Outstanding Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code.

4.A project agreement, including the following terms and conditions:

- i.**Ensure each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a local government unit be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.);

ii. Guarantee that any building construction projects under a public-private partnership agreement contain a project labor agreement. The project labor agreement shall be subject to

N.J.S.A. 52:38-1 et seq., and shall be in a manner that, to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location;

iii. Ensure the general contractor, construction manager, design-build team, or subcontractor for a construction project be registered pursuant to

N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction, or shall be pre-qualified by the Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, as appropriate, to perform work on a Public-Private Partnership project;

iv. When practicable, adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system and the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L. 2007, c. 132

(N.J.S.A. 52:27D-130.6);

v. Ensure that the general contractor, construction manager, or design-build contractor post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of

N.J.S.A. 2A:44-143 et seq.;

vi. Where a project is less than \$ 50 million, include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity's financing of the project in an amount of more than 10 percent of the project's financing costs;

vii. Where appropriate, include a requirement that work performed under the agreement are subject to the provisions of the Construction Industry Independent Contractor Act, P.L. 2007, c. 114 (

N.J.S.A. 34:20-1 et seq.); and

viii. In the event that a private entity assumes full financial and administrative responsibility for a project, a stipulation that the private entity shall not be subject to the procurement and contracting requirements of statutes applicable to the local government unit at which the project is completed, including, but not limited to, the Local Public Contracts Law, P.L. 1971, c. 198 (

N.J.S.A. 40A:11-1 et seq.);

5. The estimated costs, including development and operating costs, as well as financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include:

i. At least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios, including a net present value analysis for each of the scenarios; and

ii. A long-range maintenance plan and a long-range maintenance bond specifying the expenditures that qualify as an appropriate investment in maintenance;

6. A completed Initial Screening Tool, including any changes to the project made in response to the results of the self-assessment;

7. A completed project analysis, including any supporting documents, as well as documentation of the qualification of any experts retained to perform any aspect of the project analysis;

8. A timetable for completion of the construction of the project, including all pre-development and development phases;

9. All relevant engineering and architectural plans, drawings, and schematics;

10. An analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;

11. A performance monitoring plan for the agreement. The performance monitoring plan will provide details on how the local government unit will monitor the performance of the private entity for the full term of the agreement. This plan shall identify the required skills and resources for monitoring performance, specify schedules for periodic monitoring, and specify the requirements for the preparation and issuance of reports and/or updates to support performance monitoring, and specify any applicable metrics for monitoring performance, including the use of possible performance-points systems, the use of possible performance-points systems, and any performance bonuses or reductions based upon the early or late completion and delivery of a project;

12. A record of the public hearing held, including any public comments received and responses to public comments;

13. A resolution by the local government unit's governing body of its intent to enter into a public-private partnership agreement pursuant to this section;

14. A list of all experts retained, including information on expert qualification and industry experience;

15. An affirmation that any proposed procurement contains all necessary elements, based upon minimum contract standards outlined in this section; and

16. When applicable, an opinion of Bond Counsel, defined as an opinion signed by an attorney or firm of attorneys in good standing in the field of law related to municipal bonds, that such project will not adversely affect the tax-exempt status of any Outstanding Bonds.

(b) Upon receipt of a complete proposed project:

- 1.** Within 14 days of receipt of a complete project application, the Office of Public Finance shall convene a project review committee, which will consist of, at a minimum, representatives from the Economic Development Authority, the Division of Property Management and Construction within the Department of the Treasury, the Division of Local Government Services within the Department of Community Affairs, and, as appropriate, the Department of Transportation, for projects where a transportation component is included or the transportation infrastructure is impacted.
- 2.** The project shall be added to the project report maintained by the Office of Public Finance.
- 3.** The Office of Public Finance shall assign a project to a public-private partnership advisor for review and analysis of the project.
 - i.** The public-private partnership advisor's review shall include a value for money analysis to determine whether a project provides more benefit to its user and the local government unit when delivered through a public-private partnership delivery process than when delivered through a traditional method; a review of the financial strength of the private entity and a risk assessment of the project.
 - ii.** The public-private partnership advisor shall provide a report on the project to the Project Review Committee within 45 days of project assignment; such time limit shall be extended at the discretion of the Office of Public Finance.
- 4.** An application shall be reviewed for completeness upon receipt by the Office of Public Finance. An application shall not be processed for review, or reviewed, until all submission requirements have been satisfied.
- 5.** The Director of the Division of Local Government Services shall determine if a project is subject to review by the Local Finance Board or whether enhanced review is required by the Division of Local Government Services. If a project is subject to review and approval, such approval is required prior to progressing through the procurement process. Project approvals shall be held in abeyance pending review by the Division of Local Government Services or the Local Finance Board, as appropriate.
- 6.** The project review committee shall assess the viability of the project as well as the advisability of the project for the local government unit. This review shall be informed by the work of the public-private partnership advisor, and include, at a minimum:
 - i.** All technical aspects of the proposal, including proposed project scope, innovative use of technology, engineering and design, and operation and maintenance of the project.
 - ii.** All financial aspects of each proposal including financing to be provided by the private partner, any external source of financing, and any fiscal obligations of the local government unit for the project as proposed.
- 7.** The review shall include, but is not limited to, a review of the following:
 - i.** The feasibility of the project's design, construction, and operation;

ii.The local government unit's assumptions regarding the project's scope, benefits, risks, and the cost of the public sector option, and whether such assumptions were fully and reasonably developed;

iii.The sufficiency of the experience and qualifications of the private entity;

iv.The soundness of the financial plan, within the context of the local government unit;

v.The adequacy of the long-range maintenance plan to protect the investment; and

vi.The validity of the local government unit's determination that the project is in the best interest of the public, including an evaluation of the local government unit's determination that:

(1)The development and operation of the project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;

(2)There is a public need for the project and the project is consistent with existing long-term plans;

(3)There are specific significant benefits to the project;

(4)There are specific significant benefits to using the public-private partnership instead of other options including No-Build;

(5)The private development will result in timely and efficient development and operation; and

(6)The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

8.Members of the project review committee may request additional information as needed to make a complete assessment of the project.

9.The review and recommendation by the project review committee shall be provided to the State Treasurer within 90 days of assignment of the project proposal; however, the time for review may be extended if the applicant has yet to supply information requested by the committee. The committee's recommendation letter to the State Treasurer, as to approval or disapproval, shall also include any conditions or requirements as the committee deems necessary.

10.The State Treasurer may waive minor errors, omissions, or irregularities in an application and reserves the right to determine that such an act is minor in nature.

11.The State Treasurer may also condition any approval upon specific stipulations as outlined in the approval letter.

12.Within seven days of the completion of a review by the State Treasurer, the Office of Public Finance shall notify the local government unit of the finding of the State Treasurer in writing.

13.Any time frame prescribed under these rules may be extended or modified by the Office of Public Finance, within the Department of the Treasury, as necessary to ensure a complete review of a project.

14.No public-private partnership agreement shall be executed until a project has been approved by the State Treasurer.

15.In the event that a project materially deviates from the approved project parameters, the local government unit shall immediately notify the Office of Public Finance of the change and seek approval of the material change.

16.A signed copy of the agreement and any post agreement documents, with appropriate redaction, shall be provided to the Office of Public Finance.

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N.J.A.C. 17:49-6.6

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§ 17:49-6.6 Lease arrangements

(a) Any lease arrangement with a private entity pursuant to a public-private partnership agreement may provide that a private entity shall assume some or all of the financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project, provided that the project is financed in whole by the private entity and the local government unit retains full ownership of the land upon which the project is located.

(b) A project may include a lease of a revenue-producing public building, road, structure, infrastructure, or facility in exchange for an up-front or structured financing by a private entity for the project, provided that the private entity is responsible for the management, operation, and maintenance of the building, road, structure, infrastructure, or facility.

(c) The private entity may receive some or all of the revenue generated by the building, road, structure, infrastructure, or facility and shall, in turn, operate the building, structure, infrastructure, or facility in accordance with local government standards.

(d) A lease term shall not exceed 30 years and shall be subject to all applicable laws governing leases by a local government unit.

(e) Upon completion of the lease term, subsequent revenue generated, and any capital improvements, shall revert to the local government unit.

(f) Leases may include lease back arrangements.

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§ 17:49-6.7 Construction contract standards and account requirements

(a) Any construction contract shall meet NJ Uniform Construction Code (UCC) requirements for all construction and applicable environmental permitting requirements and include the following minimum building maintenance standards and building maintenance benchmarks, including long-range maintenance plan requirements:

1. The performance of a Baseline Facility Condition Assessment at the close of construction, including: identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, number of floors, an evaluation of all systems, equipment, and other components of a facility, organized by individual component or item, and identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, and number of floors;
2. Current replacement value estimating the scope of items that may need to be repaired, renovated, or replaced during any operating and maintenance lease term, including, but not limited to, physical systems, basic building components, and/or major appliances or equipment;
3. Financial assessment including an analysis of reserve accounts, an estimate of cost of capital repairs annually, rate of return on reserve accounts, and project interest;
4. Building system and component lifecycle data analysis organized by specific building component, planned/estimated useful life/lifecycle, unit cost, quantity relative to each component, and unit cost per item, linear foot, square foot, or other unit of measure;
5. Capital Reserve Draw Schedule for replacement expenditures, including timing of replacement of components, number of building components being replaced, and planned disbursements from the reserve account to cover such replacements;
6. Reserve fund account analysis and availability including a summary of current reserve account balance, projected account funding, rate of investment returns, planned capital expenditures and withdrawals, and projected ending annual reserve account balance; and
7. Posting of a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and

conforming to, the requirements of
N.J.S.A. 2A:44-143 et seq.

(b) Upon approval by the State Treasurer, but prior to commencing work on a project, the local government unit shall require a private entity to:

1. Establish a construction account and appoint a third-party financial institution, which shall be pre-qualified by the State Treasurer pursuant to Subchapter 2, to act as a collateral agent, and manage the construction account.

i. The construction account shall include the funding and financial instruments that shall be used to fully capitalize and fund the project.

ii. The collateral agent shall maintain a full accounting of the funds and instruments in the account.

iii. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project.

iv. The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full.

v. The construction account shall not be designated for more than one project.

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N.J.A.C. 17:49-7.1

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§ 17:49-7.1 Minimum school district standards for operation of a project

(a)A school district, except a charter school, may enter into a public-private partnership agreement with a private entity to assume full financial and administrative responsibility for the development, construction, reconstruction, repair, alternation, improvement, extension, operation, and maintenance of a school facility project consistent with P.L. 2000, c. 72 (N.J.S.A. 18A:7G-3), including any infrastructure or facility to be used by the public, or in support of a public purpose, for the benefit of a school district, provided that:

- 1.The project is financed in whole by a private entity; and
- 2.The school district has received approvals by all appropriate governing bodies, including the board of education and, where appropriate, a municipal governing body.

(b)In order to pursue a public-private partnership project, a school district shall, at a minimum, possess an investment grade bond rating from at least one nationally recognized statistical rating agency.

(c)A school district shall demonstrate compliance with the provisions at N.J.S.A. 18A:7G-1 et seq., unless the provision has been specifically exempted by N.J.S.A. 18A:18A-60 et seq., 18A:18A-16 , 18A:18A-16.1, and 18A:18A-17 regarding the preparation and approval of plans and specification for public school buildings, capacity requirements, and facilities requirements for students with disabilities, respectively. A school district shall conduct a public hearing for facility lease in excess of five years as required by N.J.A.C. 6A:26-10.11 . A school district shall provide documentation necessary to obtain the approval of the Commissioner of Education for the proposed project prior to filing an application for approval to enter into a public-private partnership with the Office of Public Finance.

(d)Where applicable, a school district, shall include the New Jersey Schools Development Authority to facilitate the transfer of property for the benefit of the school district, contingent upon inclusion of the New Jersey Schools Development Authority's involvement and expertise in the construction and management of the project.

(e)A school district shall complete the following steps to ensure a project meets the policy, risk allocation/transfer, funding, social equity, market readiness, legal, innovation, life cycle,

and accelerated delivery requirements requisite within a public-private partnership agreement:

1.Step 1: Complete a self-assessment utilizing the initial screening criteria outlined in Treasury's Initial Screening Tool available at www.treasury.nj.gov/p3screening1. A school district shall submit this self-assessment screening, along with the formal letter of project approval received from the Commissioner of Education, with their application to the Office of Public Finance; and

2.Step 2: Assuming successful completion of a self-assessment, report to the Office of Public Finance, through an email to

p3@treas.nj.gov

, that it is considering pursuing a public-private partnership. The school district shall conduct a project analysis, in conjunction with legal, financial, and other experts possessing the requisite minimum criteria outlined at N.J.A.C. 17:49-3.2 , to determine the financial and technical viability of a potential project, prior to submission to the Office of Public Finance. A school district shall submit all supporting documents with their application to the Department of the Treasury, Office of Public Finance, including information on the credentials of the experts retained for purposes of conducting the project analysis, as required by N.J.A.C. 17:49-7.5 .

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N.J.A.C. 17:49-7.2

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§ 17:49-7.2 Project analysis

(a)In addition to a formal letter of project approval obtained from the Commissioner of Education, a school district, via a determination by the board of education, and where relevant, a municipal governing body, shall determine and document, for submission of an application to the Office of Public Finance, for approval to enter into a public-private partnership, its analyses based upon the following threshold criteria:

- 1.A narrative of the project, including the role and responsibilities of the parties, and an assessment of the project's viability, including the outcome and objectives to be realized by the project;
- 2.An assessment of the benefits or risks to be realized by the project;
- 3.The total risk-adjusted cost of the project, including costs associated with procurement, financing, design, construction, operation, and maintenance (including oversight costs) over the useful life of the asset that will be built or the length (in years) of the potential public-private partnership agreement, both for delivery as a public-private partnership and delivery under a conventional public sector approach, or, for a charter school, the cost of using an existing facility, including rehabilitation of an existing building, in accordance with N.J.S.A. 18A:36B-10, supported by evidence from comparable projects. Except for a charter school, the analysis must include, at a minimum, a comparison of the present value of the future cost of leasing the completed project from the private entity over the lease term to the cost of self-financing the project using available capital reserve fund balances, and/or financing at the anticipated rate of debt issuance and debt service aid. The analysis must also include assumptions about the cost of early termination of the lease in accordance with the provisions at N.J.A.C. 6A:26-10.10 ;
- 4.A comparison of the financial and non-financial benefits of the public-private partnership, including the technical, technological, or socioeconomic merit of a project, compared to other options, including a public sector option, or not proceeding with a project;
- 5.A list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the school district as well as an analysis of the financial

capacity of the private entity and school district, including an analysis of how the project's execution shall impact the financial status of the school district;

6. An analysis that delivery as a public-private partnership will optimize schedule, cost (on a risk-adjusted and useful life basis) and quality outcomes for the project, relative to a public sector option; and

7. Whether the project has a high, medium, or low level of project delivery risk and how the public is protected from these risks.

(b) A school district's governing body, or in the case of a school district that requires municipal approval, both the school district's and municipality's governing body, shall make the following findings to establish that a project is in the best interests of the public, and shall provide supporting documents, including information on the financial strength of the school district, to support the findings made by a school district's governing body that:

1. There is a public need for the project and the project is consistent with the school district's long-range facilities plan pursuant to N.J.S.A. 18A:7G-4 , or for a charter school, with the charter school's existing long-term plans, including its charter;

2. There are specific significant benefits to the project;

3. The project, including procurement, land acquisition, development approval, and financial analysis costs, will cost less than the public sector option, or if it costs more, there are demonstrable factors that warrant the additional expense, and that the project is consistent with Core Curriculum Content Standards established pursuant to N.J.S.A. 18A:7F-46 ;

4. There exists sufficient public sector financial and technical capability as well as market interest for the project to be delivered efficiently as a public-private partnership;

5. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;

6. The private development will result in timely and efficient development and operation; and

7. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement and preserve the health, safety, and welfare of the building's occupants.

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N.J.A.C. 17:49-7.3

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§ 17:49-7.3 Public notice and hearing requirements

(a)A request for qualification shall include the following:

- 1.A request for qualification, soliciting response from private entities for participation in a public-private partnership project shall be advertised by a school district a minimum of 45 days prior to the required date of receipt.
- 2.The advertisement of the request for qualification shall be published on the official Internet website of the school district and at least one newspaper with Statewide circulation.
- 3.A request for qualification shall clearly set forth the requirements for a public-private partnership agreement pursuant to N.J.A.C. 17:49-7.5(a) .
- 4.Prior to issuing the request for qualification, the school district shall ensure there is a public need for the project, including a determination that the district can demonstrate to the satisfaction of the Commissioner of Education and the Chief Executive Officer of the Schools Development Authority that a school facility is necessary due to overcrowding or is in need of replacement, and that the project is consistent with the school district's long-range facilities plan pursuant to N.J.S.A. 18A:7G-4 , or for charter schools, the existing long-term plans, including its charter.
- 5.The request for qualification shall define the standards for responsiveness, including identification of any required submissions, documents, proof of licensure or qualification, or other material information, and shall define the qualification standards for determining whether a private entity is eligible to participate in the request for proposals process.

(b)A request for proposal shall include the following:

- 1.After a school district determines the qualified respondents utilizing the qualification standards, the school district shall issue a notice of the list of qualified respondents, and shall issue a request for proposal to each qualified respondent no less than 90 days prior to the date established for submission of the proposals.
- 2.The request for proposals shall define the standards for responsiveness to the request for proposal, including identification and description of any required technical

submissions, or other required documents or material, and shall also specify the minimum evaluation criteria to be used in the selection of the designated respondent, and the weight of each criterion.

3.The request for proposal shall include a provision allowing a school district to terminate a public-private agreement without penalty should the Department of Education or the State Treasurer deny approval of a school facilities project, or any local or State code official deny approval to the project, or, in the case of a charter school, the non-renewal or revocation of its charter.

(c)The ranking of proposals shall be in accordance with this subsection.

1.After the proposal or proposals have been received, and any public notification period has expired, the school district shall rank the proposals based upon the established evaluation criteria.

2.The school district may consider, in addition to cost, factors that include, but are not limited to: professional qualifications and capacity of the entity and its agents; timing of project delivery; general business terms; innovative engineering and architectural services; cost-reduction terms; finance plans; and the need for school district funds to complete the project and discharge the agreement.

3.The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 (

N.J.S.A. 52:32-44), sections 2 through 8 of P.L. 1975, c. 127 (N.J.S.A. 10:5-32 to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A.

52:25.24-2), P.L. 2005, c. 51 (

N.J.S.A. 19:44A-20.13 et seq.), P.L. 2005, c. 271 (

N.J.S.A. 40A:11-51 et seq.), Executive Order No. 117 of 2008,

Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.

4.A school district unit may negotiate with the selected private entity on the final terms and conditions, subject to the minimum evaluation criteria contained in the request for proposal. In the event that a school district is unable to negotiate final terms and conditions with the selected private entity, the school district may negotiate final terms and conditions with the next most favorable private entity.

5.If only one proposal is received, the school district shall negotiate in good faith and, if not satisfied with the results of the negotiations, the school district may, at its sole discretion, terminate negotiations.

(d)All public hearing and findings shall include the following:

1.After the school district has ranked the proposals and identified a potential private entity for the project under consideration, in addition to negotiation of final terms and conditions, the school district shall conduct a public hearing on the project prior to submitting the public-private proposal to the State Treasurer for review. The public hearing shall be held at a regular meeting of the school district's board of education, conducted pursuant to the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., or for a charter school, at a meeting of the

charter school board of trustees. The hearing shall be conducted in accordance with (d)2 through 5 below.

2. Notice under this subsection shall include:

- i.** Notice of a public hearing must be provided not less than 14 days prior to a hearing, and shall state the date, time, and location of the public hearing;
- ii.** The notice must state the purpose and nature of the project under consideration by the school district;
- iii.** The notice must state the process for receipt of public comments, either at or before the public hearing, including any procedures required for participation in the public hearing; and
- iv.** The notice must be published in at least one newspaper with Statewide circulation and on the official website of the school district.

3. Public comments regarding the proposed project shall be received at or before the public hearing, in accordance with any procedures specified in the public notice, and the school district shall keep a record of such public comments. The school district shall respond to such public comments, either informally at the hearing, or in a writing made available to the public after the hearing, and shall indicate whether any changes will be made to the project, or the ranking and/or selection process, in response to the comment. A school district may, after appropriate consideration of a public comment, state in response that no changes to the project and/or selection process will be made.

4. The school district shall determine, on the record at a public hearing, that a project is in the best interest of the public by finding, with any relevant supports, that based on facts:

- i.** The project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
- ii.** There is a public need for the project and the project is consistent with existing long-term plans;
- iii.** There are specific significant benefits to the project;
- iv.** There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
- v.** The private development will result in timely and efficient development and operation; and
- vi.** The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

5. A record of the public hearing, including the required findings, and any public comments received and responses thereto, either made at the hearing or issued in writing after the hearing, shall be made available within seven days after conclusion of the public hearing.

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N.J.A.C. 17:49-7.4

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§ 17:49-7.4 Unsolicited proposals

(a)A school district may accept unsolicited proposals from private entities for public-private partnership agreements. A school district shall develop a process for accepting unsolicited proposals in expectation of receipt of an unsolicited proposal.

(b)An unsolicited proposal shall include, at a minimum, the following:

- 1.A description of the proposed public-private project, including the identified school district need to be fulfilled by the proposed project;
- 2.The estimated construction and life-cycle costs;
- 3.A timeline for development;
- 4.Proposed plan of financing, including projected revenues, public or private, debt, equity investment, and a description of how the project meets needs identified in existing plans;
- 5.An identification of the permits, approvals, and/or variances needed from local, State, and/or Federal agencies in order to develop the project; and
- 6.A projected schedule for obtaining such permits and approvals, a statement of risks, liabilities, and responsibilities to be assumed by the private entity.

(c)A private entity submitting an unsolicited proposal shall provide a redacted copy of the description of the proposed public-private project, excluding all proprietary information, so that the proposal may be shared publicly. In the event that a redacted copy is not provided, all materials shall be considered releasable.

(d)In the event that an unsolicited proposal is received, a school district's governing body shall determine, on the record, whether the following factors have been met:

- 1.There is a public need for the project and the project is consistent with existing long-term plans;
- 2.The project will cost less than a public sector option, or if it costs more there are factors that warrant the additional expense;
- 3.There are specific significant benefits to the project;
- 4.There are specific significant benefits to using the public-private partnership instead of other options including No-Build;

5.The private development will result in timely and efficient development and operation; and

6.The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

(e)If the school district receives an unsolicited proposal, and determines that it meets the above factors, the school district shall give notice to the public of an opportunity to submit competing proposals to be considered in comparison to the proposed project outlined in the unsolicited proposal. The school district shall:

1.Publish a notice of the receipt of the proposal on the Internet site of the school district and through advertisement in at least one newspaper with Statewide circulation;

2.Provide notice of the proposal at its next scheduled public meeting of the school district and to the State Treasurer. The notice shall specify the standards for evaluation and ranking of any proposals received in response to the notice;

3.Provide notice that the school district shall accept, for 120 days after the initial date of publication, proposals meeting the standards outlined in the unsolicited proposal from other private entities for eligible projects that satisfy the same basic purpose and need; and

4.Mail a copy of the notice to each municipal and county local government body in the geographic area affected by the proposal.

(f)After the 120 days of public notice have expired and any additional proposals have been received, the school district shall rank the proposals in order of preference.

1.In ranking the proposals, the school district shall, at a minimum, rely upon the factors outlined in (d) above.

2.The school district may also consider factors that include, but are not be limited to, professional qualifications of the entities participating in the proposed project, general business terms and conditions of the proposed project, any innovative engineering, architectural services, or cost-reduction terms included in the project, the terms of the finance plan for the project, and the need for any contribution of local government funds required to deliver the project and/or discharge the agreement.

3.The private entity selected shall comply with all laws and regulations, including, but not limited to, section 1 of P.L. 2001, c. 134 (

N.J.S.A. 52:32-44), sections 2 through 8 of P.L. 1975, c. 127 (

N.J.S.A. 10:5-32 to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A.

52:25.24-2), P.L. 2005, c. 51 (

N.J.S.A. 19:44A-20.13 et seq.), P.L. 2005, c. 271 (

N.J.S.A. 40A:11-51 et seq.), Executive Order No. 117 of 2008,

Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.

(g)If no proposals are received in addition to the unsolicited proposal, then the school district shall negotiate in good faith and, if not satisfied with the results of the negotiations, the school district may, at its sole discretion, terminate negotiations.

(h)All unsolicited proposals shall be subject to the requirements of N.J.A.C. 17:49-7.2 and 7.3 .

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§ 17:49-7.5 Project review

(a)A school district shall provide the Office of Public Finance, the following items for review of a public-private partnership project in an application format prescribed by the Office of Public Finance:

- 1.**A full description of the proposed public-private partnership project;
- 2.**A copy of the school facilities project approval letter issued by the Commissioner of Education pursuant to the requirements of N.J.A.C. 6A:26-3.3 ;
- 3.**A copy of the proposed public-private partnership agreement between the school district and the private entity, as well as any supporting documents including the development agreement, any relevant contracts and leases between the school district and the private entity, and all information obtained by, and findings of, the school district, including redacted copies of all documents for purposes of providing any public document as required under the Open Public Records Act;
- 4.**A proposed public-private partnership agreement between the school district and the private entity, including the following minimum criteria:
 - i.**An agreement term length clearly defined to include the estimated construction and operational period, as needed;
 - ii.**A complete description of the public-private partnership project to be developed and the functions and responsibilities to be performed by the school district and the private entity;
 - iii.**Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the public-private partnership project;
 - iv.**A provision allowing express permission of the public entity, and State and local officials, to inspect project-related assets or property; such provision shall include any specific limitations, particular requirements or allowances related to such review. Examples of limitations, particular requirements or allowances may include, but are not limited to, any notice requirements, time constraints, or review restrictions;

- v.**The roles and responsibilities of the parties for the duration of the agreement;
- vi.**Requirements for bonds or other forms of security in amounts acceptable to the school district;
- vii.**Standards and rights of parties relating to payments by the school district to the private entity if payments are part of the project;
- viii.**Requirements for any payment by the private entity of any costs incurred by the school district before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the school district with respect to the project;
- ix.**Standards for construction and maintenance of the project, which shall be consistent with N.J.A.C. 6A:26-6.1 et seq., and the facilities efficiency standards developed by the Commissioner pursuant to N.J.S.A. 18A:7G-4, or for charter schools, consistent with those sections of N.J.A.C. 6A:26-6, pertaining to the health and safety of pupils;
- x.**Standards for allocation of costs of development including allocation of cost overruns; under no circumstance shall cost overruns result in the expenditure of funds by a school district;
- xi.**Performance criteria and incentives, if any;
- xii.**Risk mitigation plans and responsibilities at all project stages, including at project development, construction, operations, and maintenance, for both the private entity and the school district;
- xiii.**The rights and the standards for allocation of any revenue generated by the project and the agreement, in addition to the school district's retention of full ownership of the land upon which a project is located;
- xiv.**A maximum rate of return to the private entity and a provision for the distribution of excess earnings to the school district or to the private party for debt reduction;
- xv.**The minimum quality standards, technical requirements, and/or performance criteria applicable to the public-private partnership project, including key performance indicators, reporting requirements, incentives, cure periods, standards of performance or metrics, including performance points systems, monitoring rights of the school district, and penalties for failure to achieve these standards;
- xvi.**A maintenance plan for the full life cycle of the project, which shall include, at a minimum, the criteria set forth in N.J.A.C. 6A:26-20.3 ;
- xvii.**A hand-back plan that includes requirements regarding return of the facility in a state of good repair and standards for determining such state of repair;

xviii.Any compensation and/or revenue structure of the private entity related to the project coming into the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the public-private partnership project, as well as a full payment schedule (if applicable);

xix.Rights and remedies, including, but not limited to, compensatory, liquidated, or other types of damages, and dispute resolution procedures available or applicable in the event of nonperformance or breach of contract, up to and including, material default;

xx.Procedures for notice and cure of default;

xxi.Insurance requirements for any project to be operated by the private entity;

xxii.Grounds for termination of the public-private partnership agreement by the school district and the financial impact of that termination, which shall include express permission to terminate a lease due to lack of availability and appropriation annually of sufficient funds as provided for in N.J.S.A. 18A:18A-42(n) or non-renewal or revocation of a charter of a charter school. Under no circumstance shall a public-private partnership agreement require payment of a termination penalty by a school district for lack of availability or appropriation annually of sufficient funds or the non-renewal or revocation of a charter by a charter school;

xxiii.Grounds for termination of the public-private partnership agreement by the private entity and the financial impact of that termination;

xxiv.Procedures for amending the public-private partnership agreement;

xxv.Provisions for the termination of the public-private partnership agreement by either party and upon expiration of term of the agreement and the disposition of the public-private partnership facility upon termination;

xxvi.Identification of funding sources to be used to fully fund the capital, operation, maintenance, and other expenses under the public-private partnership agreement;

xxvii.The nature of the school district and private entity's property interest including the acquisition of any property, of which the school district shall retain full ownership of the land upon which the project is located;

xxviii.An articulation of the legal relationship and requirements of the parties involved, including the rights and responsibilities of the parties as to design elements, technologies, techniques, methods, information, or intellectual property contained in an agreement;

xxix.Details on distribution of costs between the private entity and school district, including costs of retaining independent experts to review, analyze, and advise the school district with respect to the proposal; and

xxx.When applicable, a provision in the agreement establishing that the private entity will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the

interest on any Outstanding Tax-Exempt Bonds under Section 103 of the Internal Revenue Code (Code). The provision shall also establish that the applicant will not directly or indirectly use or permit the use of any proceeds of any Outstanding Tax-Exempt Bonds or take or omit to take any action that would cause any Outstanding Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code;

5.A project agreement, including the following terms and conditions:

i. Ensure each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a school district be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.);

ii. Guarantee that any building construction projects under a public-private partnership agreement contain a project labor agreement. The project labor agreement shall be subject to N.J.S.A. 52:38-1 et seq., and shall be in a manner that, to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location;

iii. Ensure the general contractor, construction manager, design-build contractor, or subcontractor for a construction project be registered pursuant to N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction, or shall be pre-qualified by the Schools Development Authority, Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, as appropriate, to perform work on a public-private partnership project;

iv. When practicable, adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system and the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6);

v. Ensure that the general contractor, construction manager, or design-build contractor post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of N.J.S.A. 2A:44-143 et seq.;

vi. Where a project is less than \$ 50 million, include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the

private entity's financing of the project in an amount of more than 10 percent of the project's financing costs;

vii.Where appropriate, include a requirement that work performed under the agreement is subject to the provisions of the Construction Industry Independent Contractor Act, P.L. 2007, c. 114 (N.J.S.A. 34:20-1 et seq.); and

viii.In the event that a private entity assumes full financial and administrative responsibility for a project, a stipulation that the private entity shall not be subject to the procurement and contracting requirements of statutes applicable to the school district at which the project is completed, including, but not limited to, the Public School Contracts Law, N.J.S.A. 18A:18A-1 ;

6.In addition, a school district shall provide the estimated costs, including development and operating costs, as well as financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include:

i.At least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios, including a net present value analysis for each of the scenarios;

ii.A long-range maintenance plan and a long-range maintenance bond specifying the expenditures that qualify as an appropriate investment in maintenance;

7.A completed Initial Screening Tool, including any changes to the project made in response to the results of the self- assessment;

8.A completed project analysis, including any supporting documents, as well as documentation of the qualification of any experts retained to perform any aspect of the Project Analysis;

9.A timetable for completion of the construction of the project, including all pre-development and development phases;

10.All relevant engineering and architectural plans, drawings, and schematics;

11.An analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;

12.A performance monitoring plan for the agreement. The performance monitoring plan will provide details on how the school district will monitor the performance of the private entity for the full term of the agreement. This plan shall identify the required skills and resources for monitoring performance, specify schedules for periodic monitoring, and specify the requirements for the preparation and issuance of reports and/or updates to support performance monitoring, and specify any applicable metrics for monitoring performance, including the use of possible performance-points

systems, and any performance bonuses or reductions based upon the early or late completion and delivery of a project;

13.A record of the public hearing held, including any public comments received and responses to public comments;

i.In the event that a lease is considered, a copy of the minutes of the meeting of the board of education at which the public hearing for facility leases in excess of five years was discussed accompanied by a copy of the district board of education resolution endorsing a facility lease in excess of five years, if a project involves a lease;

14.A resolution by the school district's governing body of its intent to enter into a public-private partnership agreement pursuant to this section;

15.A list of all experts retained, including information on expert qualification and industry experience;

16.An affirmation that any proposed procurement contains all necessary elements, based upon minimum contract standards outlined in this section; and

17.When applicable, an opinion of Bond Counsel, defined as an opinion signed by an attorney or firm of attorneys in good standing in the field of law related to municipal bonds, that such project will not adversely affect the tax-exempt status of any Outstanding Bonds.

(b)Upon receipt of a complete proposed project:

1.Within 14 days of receipt of a complete project application, the Office of Public Finance shall convene a project review committee, which will consist of, at a minimum, representatives from the Economic Development Authority, the Department of Education, the Division of Property Management and Construction within the Department of the Treasury, the Schools Development Authority, and as appropriate, the Division of Local Government Services within the Department of Community Affairs for projects where municipal approval is required, and the Department of Transportation, for projects where a transportation component is included or the transportation infrastructure is impacted;

2.The project shall be added to the project report maintained by the Office of Public Finance in the Department of the Treasury;

3.The Office of Public Finance shall assign a project to a public-private partnership advisor for review and analysis of the project;

i.The public-private partnership advisor's review shall include a value for money analysis to determine whether a project provides more benefit to its user and the school district when delivered through a public-private partnership delivery process than when delivered through a traditional method; a review of the financial strength of the private entity and a risk assessment of the project;

ii.The public-private partnership advisor shall provide a report on the project to the Project Review Committee within 45 days of project assignment; such time limit shall be extended at the discretion of the Office of Public Finance;

4. An application shall be reviewed for completeness upon receipt by the Office of Public Finance. An application shall not be processed for review, or reviewed, until all submission requirements have been satisfied;

5. The Commissioner of the Department of Education shall:

- i. Verify that the project conforms to the requirements in N.J.S.A. 18A:36A-1 et seq., and 18A:7G-3, and that the project is consistent with the provisions of N.J.S.A. 18A:7G-1 et seq., unless specifically exempted by N.J.S.A. 18A:18A-60 et seq., 18A:18A-16, 18A:18A-16.1, and 18A:18A-17 regarding the preparation and approval of plans and specification for public school buildings, capacity requirements, and facilities requirements for students with disabilities, respectively; and
- ii. Where necessary, determine if a project is subject to voter approval pursuant to N.J.S.A. 18A:24-10. If the project is subject to voter approval, such approval is required to progress through the review process. Project approvals shall be held in abeyance pending approval by the voters;

6. The project review committee shall review the viability of the project as well as the advisability of the project for the school district. This review shall be informed by the work of the public-private partnership advisor, and include, at a minimum:

- i. All technical aspects of the proposal, including proposed project scope, innovative use of technology, engineering, and design, and operation and maintenance of the project;
- ii. All financial aspects of each proposal including financing to be provided by the private partner, any external source of financing, and any fiscal obligations of the school district for the project as proposed;

7. The review shall include, but is not limited to, a review of the following:

- i. The feasibility of the project's design, construction, and operation;
- ii. The school district's assumptions regarding the project's scope, benefits, risks, and the cost of the public sector option, and whether such assumptions were fully and reasonably developed;
- iii. The sufficiency of the experience and qualifications of the private entity;
- iv. The soundness of the financial plan, within the context of the school district;
- v. The adequacy of the long-range maintenance plan to protect the investment;
- vi. The validity of the school district's determination that the project is in the best interest of the public, including an evaluation of the school district's determination that:

(1) The development and operation of the project will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense;

- (2)**There is a public need for the project and the project is consistent with existing long-term plans;
 - (3)**There are specific significant benefits to the project;
 - (4)**There are specific significant benefits to using the public-private partnership instead of other options including No-Build; and
 - (5)**The private development will result in timely and efficient development and operation;
- 8.**The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement;
- 9.**Members of the project review committee may request additional information as needed to make a complete assessment of the project;
- 10.**The review and recommendation by the project review committee shall be provided to the State Treasurer within 90 days of assignment of the project proposal; however, the time for review may be extended if the applicant has yet to supply information requested by the committee. The committee's recommendation letter to the State Treasurer, as to approval or disapproval, shall also include any conditions or requirements as the committee deems necessary;
- 11.**The State Treasurer may waive minor errors, omissions, or irregularities in an application and reserves the right to determine that such an act is minor in nature;
- 12.**The State Treasurer may also condition any approval upon specific stipulations as outlined in the approval letter;
- 13.**Within seven days of the completion of a review by the State Treasurer, the Office of Public Finance shall notify the school district of the finding of the State Treasurer in writing;
- 14.**Any time frame prescribed under these rules may be extended or modified by the Office of Public Finance, as necessary, to ensure a complete review of a project;
- 15.**No public-private partnership agreement shall be executed until a project has been approved by the State Treasurer;
- 16.**In the event that a project materially deviates from the approved project parameters, the school district shall immediately notify the Office of Public Finance of the change and seek approval of the material change; and
- 17.**A signed copy of the agreement and any post agreement documents, with appropriate redaction, shall be provided to the Office of Public Finance.

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N.J.A.C. 17:49-7.6

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§ 17:49-7.6 Lease arrangements

(a) Any lease arrangement between a school district and a private entity shall specify that the private entity shall assume all of the financial and administrative responsibility for the management, operation, and maintenance of a school facility in return for an annual lease payment, and, if applicable, some or all of the revenue generated by a building, structure, or facility. In addition, for a school district other than a charter school, such a lease agreement shall be subject to

N.J.A.C. 6A:26-10.10 and
10.11

(b) A project involving a lease between the school district and the private entity shall be financed in whole by the private entity.

(c) The private entity shall assume full financial and administrative responsibility for a project of, or for the benefit of, the school district.

(d) A private entity shall operate the building, structure, infrastructure, or facility in accordance with school district standards, including, but not limited to, those involving health and safety, building maintenance, and repair.

(e) A lease term shall not exceed 30 years and shall be subject to all applicable law governing leases by a school district.

(f) Upon completion of the lease term, subsequent revenue generated, as well as any management, maintenance, and operation responsibility, and any capital improvement, shall revert to the school district or charter school, where applicable.

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N.J.A.C. 17:49-7.7

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§ 17:49-7.7 Construction contract standards and account requirements

(a)Any construction contract shall be consistent with N.J.A.C. 6A:26-6, and the facilities efficiency standards developed by the Commissioner of Education pursuant to N.J.S.A. 18A:7G-4, or for a charter school, N.J.A.C. 6A:26-6, pertaining to health or safety of pupils and meet NJ Uniform Construction Code (UCC) requirements for all construction and applicable environmental permitting requirements, and include the following minimum building maintenance standards and building maintenance benchmarks, including long-range maintenance plan requirements:

- 1.A Baseline Facility Condition Assessment at the close of construction, including: identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, number of floors, an evaluation of all systems, equipment, and other components of a facility, organized by individual component or item, and identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, and number of floors;
- 2.Current replacement value estimating the scope of items that may need to be repaired, renovated, or replaced during any operating and maintenance lease term, including, but not limited to, physical systems, basic building components, and/or major appliances or equipment;
- 3.Financial assessment including an analysis of reserve accounts, an estimate of cost of capital repairs annually, rate of return on reserve accounts, and project interest;
- 4.Building system and component lifecycle data analysis organized by specific building component, planned/estimated useful life/lifecycle, unit cost, quantity relative to each component, and unit cost per item, linear foot, square foot, or other unit of measure;
- 5.Capital Reserve Draw Schedule for replacement expenditures, including timing of replacement of components, number of building components being replaced, and planned disbursements from the reserve account to cover such replacements;
- 6.Reserve fund account analysis and availability including a summary of current reserve account balance, projected account funding, rate of investment returns,

planned capital expenditures and withdrawals, and projected ending annual reserve account balance; and

7. Posting of a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and conforming to, the requirements of N.J.S.A. 2A:44-143 et seq.

(b) Upon approval by the State Treasurer, but prior to commencing work on a project, the school district shall require a private entity to:

1. Establish a construction account and appoint a third-party financial institution, who shall be pre-qualified by the State Treasurer pursuant to N.J.A.C. 17:49-2, to act as a collateral agent, and manage the construction account.

i. The construction account shall include the funding and financial instruments that shall be used to fully capitalize and fund the project.

ii. The collateral agent shall maintain a full accounting of the funds and instruments in the account.

iii. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project.

iv. The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full.

v. The construction account shall not be designated for more than one project.

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N.J.A.C. 17:49-8.1

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§ 17:49-8.1 Minimum State government entity standards for operation of a project

(a)A State government entity may enter into a public-private partnership agreement with a private entity to assume full financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a public building or highway, including any infrastructure or facility to be used by the public or in support of a public purpose, or for the benefit of the public, provided that the project is financed in whole or part by the private entity, and the State government entity retains full ownership of the land upon which the project is located.

(b)A State government entity shall complete the following steps to ensure a project meets the policy, risk allocation/transfer, funding, social equity, market readiness, legal, innovation, life cycle, and accelerated delivery requirements requisite within a public-private partnership agreement:

1. Step 1: Complete a self-assessment utilizing the initial screening criteria outlined in Treasury's Initial Screening Tool available at www.treasury.nj.gov/p3screening1. A State government entity shall submit this self-assessment screening, along with proof of any necessary approvals by the State House Commission or Legislature, with its application to the Office of Public Finance; and

2. Step 2: Assuming successful completion of a self-assessment, report to the Office of Public Finance, through an email to

p3@treas.nj.gov

, that it is considering pursuing a public-private partnership. The State government entity shall conduct a project analysis, in conjunction with financial and other experts possessing the requisite minimum criteria outlined at

N.J.A.C. 17:49-3.2, to determine the financial and technical viability of a potential project, prior to submission to the Office of Public Finance. A State government entity shall submit all supporting documents with its application to the Office of Public Finance, including information on the credentials of the experts retained for purposes of conducting the project analysis, as required by

N.J.A.C. 17:49-8.5

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§ 17:49-8.2 Project analysis

(a)An application to enter into a public-private partnership from a State government entity, shall include full documentation of the following information and analyses for submission to the Office of Public Finance, for approval to enter into a public-private partnership:

1. A narrative of the project, including the role and responsibilities of the parties, and an assessment of the project's viability, including the outcome and objectives to be realized by the project;
2. An assessment of the benefits or risks to be realized by the project;
3. The total risk-adjusted cost of the project, including costs associated with procurement, financing, design, construction, operation, and maintenance (including oversight costs) over the useful life of the asset that will be built or the length (in years) of the potential public-private partnership agreement, both for delivery as a public-private partnership and delivery under a conventional public sector approach, supported by evidence from comparable projects;
4. The maximum public contribution of public funds or assets that a State government entity will invest in or contribute to the project under the public-private partnership;
5. A comparison of the financial and non-financial benefits of the public-private partnership, including the technical, technological, or socioeconomic merit of a project, compared to other options including a public sector option or not proceeding with a project;
6. A list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the State government entity as well as an analysis of the financial capacity of the private entity and State government entity, including an analysis of how the project's execution shall impact the financial status of the State government entity;
7. An analysis that delivery as a public-private partnership will optimize schedule, cost (on a risk-adjusted and useful life basis), and quality outcomes for the project, relative to a public sector option; and
8. Whether the project has a high, medium, or low level of project delivery risk and how the public is protected from these risks.

(b)A State government entity shall make the following findings to establish that a project is in the best interests of the public, and shall provide supporting documents, to support the findings that:

1. There is a public need for the project and the project is consistent with existing long-term plans;
2. There are specific significant benefits to the project;
3. The project, including procurement, land acquisition, development approval, and financial analysis costs, will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
4. There exists sufficient public sector financial and technical capability as well as market interest for the project to be delivered efficiently as a public-private partnership;
5. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
6. The private development will result in timely and efficient development and operation; and
7. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

(c)The State government entity shall also document that the findings were made at a public hearing or through notice to the public.

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N.J.A.C. 17:49-8.3

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§ 17:49-8.3 Public notice and hearing requirements

(a)A request for qualification shall include the following:

- 1.A request for qualification, soliciting a response from private entities for participation in a public-private partnership project shall be advertised sufficiently in advance to generate competitive interest, but at a minimum at least 45 days prior to the advertised date for submission of responses to the request for qualification.
- 2.The advertisement of the request for qualifications shall be published on the official Internet website of the State government entity and at least one newspaper with Statewide circulation.
- 3.A request for qualification shall clearly set forth the requirements for a public-private partnership agreement pursuant to N.J.A.C. 17:49-8.5(a) .
- 4.The request for qualification shall define the standards for responsiveness, including identification of any required submissions, documents, proof of licensure or qualification, or other material information, and shall define the qualification standards for determining whether a private entity is eligible to participate in the request for proposals process.

(b)A request for proposal shall include the following:

- 1.After a State government entity determines the qualified respondents utilizing the qualification standards, the State government entity shall issue a notice of the list of qualified respondents, and shall issue a request for proposal to each qualified respondent no less than 90 days prior to the date established for submission of the proposals.
- 2.The request for proposals shall define the standards for responsiveness to the request for proposal, including identification and description of any required technical submissions, or other required documents or material, and shall also specify the minimum evaluation criteria to be used in the selection of the designated respondent, and the weight of each criterion.
- 3.A State governmental entity may authorize the use of stipends on public-private partnership projects when there is a substantial opportunity for innovation and the costs for developing a proposal are significant. The extent of such stipend shall solely

relate to the costs associated with work product of unsuccessful proposers submitted in response to a request for proposals.

i. The aggregate value of stipends provided to all private entities afforded stipends shall not exceed 0.05 percent of the total projected cost of the project.

ii. The extent to which any stipend will be available for work product submitted shall be affirmatively outlined in the request for proposal.

(c) The ranking of proposals shall be in accordance with this subsection.

1. After the proposal or proposals have been received, and any public notification period has expired, the State government entity shall rank the proposals based upon the established evaluation criteria.

2. The State government entity may consider, in addition to cost, factors that include, but are not limited to: professional qualifications and capacity of the entity and its agents; timing of project delivery; general business terms; innovative engineering and architectural services; cost-reduction terms; finance plans; and the need for State government funds to deliver the project and discharge the agreement.

3. The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 (N.J.S.A. 52:32-44), sections 2 through 8 of P.L. 1975, c. 127 (N.J.S.A. 10:5-32 to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 (N.J.S.A. 19:44A-20.13 et seq.), section 2 of P.L. 2018, c. 9 (N.J.S.A. 10:5-12), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.

4. A State government entity may negotiate with the selected private entity on the final terms and conditions, subject to the minimum evaluation criteria contained in the request for proposal. In the event that a State government entity is unable to negotiate final terms and conditions with the selected private entity, the State government entity may negotiate final terms and conditions with the next most favorable private entity.

5. If only one proposal is received, the State government entity shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State government entity may, at its sole discretion, terminate negotiations.

(d) All public hearings or public comments shall include the following:

1. After the State government entity has ranked the proposals and identified a potential private entity for the project under consideration, in addition to negotiation of final terms and conditions, the State government entity shall conduct a public hearing or provide a public comment period on the project, prior to submitting the public-private proposal to the State Treasurer for approval.

2. Notice under this subsection shall include:

- i.** Notice of a public hearing or public comment period must be provided not less than 14 days prior to a hearing or public comment period opening, and shall state the date, time, and location of the public hearing or public comment period;
- ii.** The notice must state the purpose and nature of the project under consideration by the State government entity;
- iii.** The notice must state the process for receipt of public comments, either at or before the public hearing, including any procedures required for participation in the public hearing;
- iv.** The notice must state the process for receipt of public comments, either at or before a public hearing, including any procedure for participation in the public hearing; and
- v.** The notice must be published in at least one newspaper with Statewide circulation and on the official website of the State government entity.

3. Public comments regarding the proposed project shall be received at or before the public hearing in accordance with any procedures specified in the public notice, and the State government entity shall keep a record of such public comments. The State government entity shall respond to such public comments, either informally at the hearing, or in a writing made available to the public after the hearing or public notice period, and shall indicate whether any changes will be made to the project, or the ranking and/or selection process, in response to the comment. A State government entity may, after appropriate consideration of a public comment, state in response that no changes to the project and/or selection process will be made.

4. The State government entity shall determine, on the record at a public hearing or via notice following the end of a public comment period conducted in lieu of a hearing, that a project is in the best interest of the public by finding, with any relevant supports, that based on facts:

- i.** The project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
- ii.** There is a public need for the project and the project is consistent with existing long-term plans;
- iii.** There are specific significant benefits to the project;
- iv.** There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
- v.** The private development will result in timely and efficient development and operation; and
- vi.** The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

5. A record of the public hearing and all public comment received, as well as the responses to the comments, either made at the hearing or issued in writing after the hearing shall be made within seven days after conclusion of the public hearing. Where

public engagement was solicited through a comment period in lieu of a public hearing, the State government entity shall retain a record of all comments received, and shall issue a document summarizing the comments and the State government entity's response to those comments within seven days after the conclusion of the public comment period.

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N.J.A.C. 17:49-8.4

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§ 17:49-8.4 Unsolicited proposals

(a)A State governmental entity may accept unsolicited proposals from private entities for public-private partnership agreements. A State government entity shall develop a process for accepting unsolicited proposals in expectation of receipt of an unsolicited proposal.

(b)An unsolicited proposal shall include, at a minimum, the following:

- 1.A description of the proposed public-private project, including the State government entity need to be fulfilled by the proposed project;
- 2.The estimated construction and life-cycle costs;
- 3.A timeline for development;
- 4.The proposed plan of financing, including projected revenues, public or private, debt, equity investment, and a description of how the project meets needs identified in existing plans;
- 5.An identification of the permits, approvals, and/or variances needed from local, State, and/or Federal agencies in order to develop the project;
- 6.A projected schedule for obtaining such permits and approvals; and
- 7.A statement of risks, liabilities, and responsibilities to be assumed by the private entity.

(c)A private entity submitting an unsolicited proposal shall provide a copy in which all proprietary information has been redacted, so that the description of the proposed public-private project may be shared publicly. In the event that a redacted copy is not provided, all materials shall be considered releasable.

(d)In the event that an unsolicited proposal is received, a State government entity's governing body shall determine, on the record, whether the following factors have been met:

- 1.There is a public need for the project and the project is consistent with existing long-term plans;
- 2.The project will cost less than a public sector option, or if it costs more, there are factors that warrant the additional expense;
- 3.There are specific significant benefits to the project;

4. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
5. The private development will result in timely and efficient development and operation; and
6. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

(e) If the State government entity determines that the unsolicited proposal meets the above factors, the entity shall give notice to the public of an opportunity to submit competing proposals to be considered in comparison to the proposed project outlined in the unsolicited proposal. The State government entity shall:

1. Publish a notice of the receipt of the proposal on the Internet site of the State governmental entity and through advertisement in at least one newspaper with Statewide circulation;
2. Provide notice of the proposal at its next scheduled public meeting of the State governmental entity and to the State Treasurer. The notice shall specify the standards for evaluation and ranking of any proposals received in response to the notice;
3. Provide notice that the State government entity shall accept, for 120 days after the initial date of publication, proposals meeting the standards outlined in the unsolicited proposal from other private entities for eligible projects that satisfy the same basic purpose and need; and
4. Mail a copy of the notice to each municipal and county local government body in the geographic area affected by the proposal.

(f) After the 120 days of public notice have expired and any additional proposals have been received, the State government entity shall rank the proposals in order of preference.

(g) If no proposals are received in addition to the unsolicited proposal, then the State governmental entity shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State governmental entity may, at its sole discretion, terminate negotiations.

(h) All unsolicited proposals shall be subject to the requirements of N.J.A.C. 17:49-8.2 and 8.3 .

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§ 17:49-8.5 Project review

(a)A State government entity shall provide the Office of Public Finance the following items for review of a public-private partnership project in an application format prescribed by the Office of Public Finance:

- 1.**A full description of the proposed public-private partnership project;
- 2.**A copy of the entire proposed public-private partnership agreement, including, without limitation, riders, appendices, sub-agreements, and contingency agreements between the State government entity and the private entity, as well as any supporting documents including the development agreement, any relevant contracts and leases between the State government entity and the private entity, and all information obtained by, and findings of, the State government entity, including redacted copies of all documents for purposes of providing any public document as required under the Open Public Records Act.
- 3.**In order to be eligible for consideration as a public-private partnership, an agreement between the State government entity and the private entity shall include adequate documentation of, at a minimum, the following:
 - i.**An agreement term length clearly defined to include the estimated construction and operational period, as needed;
 - ii.**A complete description of the public-private partnership project to be developed and the functions and responsibilities to be performed by the State government entity and the private entity;
 - iii.**Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the public-private partnership project;
 - iv.**A provision allowing express permission of the public entity, and State and local officials, to inspect project-related assets or property; such provision shall include any specific limitations, particular requirements, or allowances related to such review. Examples of limitations, particular requirements, or allowances may include, but are not limited to, any notice requirements, time constraints, or review restrictions;

- v.**The roles and responsibilities of the parties for the duration of the agreement;
- vi.**Procedures for amendment of the public-private partnership agreement;
- vii.**Requirements for bonds or other forms of security in amounts acceptable to the State government entity;
- viii.**Standards and rights of parties relating to payments by the State government entity to the private entity if payments are part of the project;
- ix.**Requirements for any payment by the private entity of any costs incurred by the State governmental entity before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the local government unit with respect to the project;
- x.**Standards for construction and maintenance of the project;
- xi.**Standards for allocation of costs of development including allocation of liability for cost overruns;
- xii.**Performance criteria and incentives, if any;
- xiii.**Risk mitigation plans and responsibilities at all project stages, including at project development, construction, operations, and maintenance for both the private entity and State government entity;
- xiv.**The rights that the State government entity and the private entity may have, if any, to revenue generated as a result of the agreement, and any standards for allocation of such revenue between the parties;
- xv.**A maximum rate of return to the private entity and a provision for the distribution of excess earnings to the State government entity or to the private party for debt reduction;
- xvi.**The minimum quality standards, technical requirements, and/or performance criteria applicable to the public-private partnership project, including key performance indicators, reporting requirements, incentives, cure periods, standards of performance or metrics, including performance points systems, monitoring rights of the State government entity, and penalties for failure to achieve these standards;
- xvii.**A maintenance plan for the full life cycle of the public-private partnership project;
- xviii.**A hand-back plan that includes requirements regarding return of the facility in a state of good repair, and standards for determining such state of repair;
- xix.**Any compensation and/or revenue structure of the private entity related to the project coming into the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the public-private partnership project, as well as a full payment schedule (if applicable);

xx.Rights and remedies, including, but not limited to, compensatory, liquidated, or other types of damages, and dispute resolution procedures available or applicable in the event of nonperformance or breach of contract, up to and including, material default;

xxi.Procedures for notice and cure of default;

xxii.Insurance requirements for any project to be operated by the private entity;

xxiii.Grounds for termination of the public-private partnership agreement by the State government entity and the financial impact of that termination;

xxiv.Grounds for termination of the public-private partnership agreement by the private entity and the financial impact of that termination;

xxv.Provisions for the termination of the public-private partnership agreement and the disposition of public-private partnership facility upon termination;

xxvi.Identification of funding sources to be used to fully fund the capital, operation, maintenance, and other expenses under the public-private partnership agreement;

xxvii.The nature of the State government entity and private entity's property interest including the acquisition of any property, which must provide that the State government entity shall retain full ownership of the land upon which the project is located;

xxviii.An articulation of the legal relationship and requirements of the parties involved, including the rights and responsibilities of the parties as to design elements, technologies, techniques, methods, information, or intellectual property contained in an agreement; and

xxix.Details on distribution of costs between the private entity and State government entity, including costs of retaining independent experts to review, analyze, and advise the State government entity with respect to the proposal, and any stipends authorized for work completed, which shall not exceed 0.5 percent of the project total; and

xxx.When applicable, a provision in the agreement establishing that the private entity will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Outstanding Tax-Exempt Bonds under Section 103 of the Internal Revenue Code (Code). The provision shall also establish that the applicant will not directly or indirectly use or permit the use of any proceeds of any Outstanding Tax-Exempt Bonds or take or omit to take any action that would cause any Outstanding Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code;

4.A project agreement, including the following terms and conditions:

i.Ensure each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State government entity be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the

Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (N.J.S.A. 34:11-56.58 et seq.);

ii. Guarantee that any building construction projects under a public-private partnership agreement contain a project labor agreement. The project labor agreement shall be subject to

N.J.S.A. 52:38-1 et seq., and shall be in a manner that, to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location;

iii. Ensure the general contractor, construction manager, design-build team, or subcontractor for a construction project be registered pursuant to N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction, or shall be pre-qualified by the Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, as appropriate, to perform work on a public-private partnership project;

iv. When practicable, adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system and the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L. 2007, c. 132 (N.J.S.A. 52:27D-130.6);

v. Ensure that the general contractor, construction manager, or design-build contractor post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of N.J.S.A. 2A:44-143 et seq.;

vi. Where a project is less than \$ 50 million, include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity's financing of the project in an amount of more than 10 percent of the project's financing costs;

vii. Where appropriate, include a requirement that work performed under the agreement is subject to the provisions of the Construction Industry Independent Contractor Act, P.L. 2007, c. 114 (N.J.S.A. 34:20-1 et seq.); and

viii. In the event that a private entity assumes full financial and administrative responsibility for a project, a stipulation that the private entity shall not be subject to the procurement and contracting requirements of statutes applicable to the State government entity at which the project is completed, including, but not limited to, the public contracting provisions of P.L. 1954, c. 48 (N.J.S.A. 52:34-6 et seq.);

5.A State government entity shall provide the estimated costs, including development and operating costs, as well as financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include:

i. At least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed, and an explanation for how the estimated costs were determined based on the three scenarios, including a net present value analysis for each of the scenarios; and

ii. A long-range maintenance plan and a long-range maintenance bond specifying the expenditures that qualify as an appropriate investment in maintenance;

6.A completed Initial Screening Tool, including any changes to the project made in response to the results of the self-assessment;

7.A completed project analysis, including any supporting documents, as well as documentation of the qualification of any experts retained to perform any aspect of the project analysis;

8.A timetable for completion of the construction of the project, including all pre-development and development phases;

9. All relevant engineering and architectural plans, drawings, and schematics;

10. An analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;

11. A performance monitoring plan for the agreement. The performance monitoring plan will provide details on how the State government entity will monitor the performance of the private entity for the full term of the agreement. This plan shall identify the required skills and resources for monitoring performance, specify schedules for periodic monitoring, and specify the requirements for the preparation and issuance of reports and/or updates to support performance monitoring, and specify any applicable metrics for monitoring performance, including the use of possible performance-points systems;

12. The record of the entity's compliance with
N.J.A.C. 17:49-8.3(d) ;

13. A list of all experts retained, including information on expert qualification and industry experience;

14. An affirmation that any proposed procurement contains all necessary elements, based upon minimum contract standards outlined in this section; and

15. When applicable, an opinion of Bond Counsel, defined as an opinion signed by an attorney or firm of attorneys in good standing in the field of law related to municipal bonds, that such project will not adversely affect the tax-exempt status of any Outstanding Bonds.

(b) Actions for application review upon receipt of a complete proposed project shall include:

- 1.**An application shall be reviewed for completeness upon receipt by the Office of Public Finance. An application shall not be processed for review, or reviewed, until all submission requirements have been satisfied.
- 2.**Within 14 days of receipt of a complete project application, the Office of Public Finance shall convene a project review committee, which will consist of, at a minimum, representatives from the Economic Development Authority, the Division of Property Management and Construction within the Department of the Treasury, and, as appropriate, the Department of Transportation, for projects where a transportation component is included or the transportation infrastructure is impacted.
- 3.**The project shall be added to the project report maintained by the Office of Public Finance in the Department of the Treasury.
- 4.**The Office of Public Finance shall assign a project to a public-private partnership advisor for review and analysis of the project.
 - i.**The public-private partnership advisor's review shall include a value for money analysis to determine whether a project provides more benefit to its user and the State government entity when delivered through a public-private partnership delivery process than when delivered through a traditional method; a review of the financial strength of the private entity and a risk assessment of the project.
 - ii.**The public-private partnership advisor shall provide a report on the project to the Project Review Committee within 45 days of project assignment; however, such time limit shall be extended at the discretion of the Office of Public Finance.
- 5.**The project review committee shall review the viability of the project as well as the advisability of the project for the State government entity. This review shall be informed by the work of the public-private partnership advisor, and include, at a minimum:
 - i.**All technical aspects of the proposal, including proposed project scope, innovative use of technology, engineering and design, and operation and maintenance of the project; and
 - ii.**All financial aspects of each proposal including financing to be provided by the private partner, any external source of financing, and any fiscal obligations of the State government entity for the project as proposed.
- 6.**Members of the project review committee may request additional information as needed to make a complete assessment of the project.
- 7.**The review shall include, but is not limited, to a review of the following:
 - i.**The feasibility of the project's design, construction, and operation;
 - ii.**The State government entity's assumptions regarding the project's scope, benefits, risks, and the cost of the public sector option, and whether such assumptions were fully and reasonably developed;
 - iii.**The sufficiency of the experience and qualifications of the private entity;

iv.The soundness of the financial plan, within the context of the State government entity;

v.The adequacy of the long-range maintenance plan to protect the investment;

vi.The validity of the State government entity's determination that the project is in the best interest of the public, including an evaluation of the State government entity's determination that:

(1)The development and operation of the project will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense;

(2)There is a public need for the project and the project is consistent with existing long-term plans;

(3)There are specific significant benefits to the project;

(4)There are specific significant benefits to using the public-private partnership instead of other options including No-Build;

(5)The private development will result in timely and efficient development and operation; and

(6)The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

8.The review and recommendation by the project review committee shall be provided to the State Treasurer within 90 days of assignment of the project proposal; however, the time for review may be extended if the applicant has yet to supply information requested by the committee. The committee's recommendation letter to the State Treasurer, as to approval or disapproval, shall also include any conditions or requirements as the committee deems necessary.

9.The State Treasurer may waive minor errors, omissions, or irregularities in an application and reserves the right to determine that such an act is minor in nature.

10.The State Treasurer may also condition any approval upon specific stipulations as outlined in the approval letter.

11.Within seven days of the completion of a review by the State Treasurer, the Office of Public Finance shall notify the State government entity of the finding of the State Treasurer in writing.

12.Any time frame prescribed under these rules may be extended or modified by the Office of Public Finance, as necessary, to ensure a complete review of a project.

13.No public-private partnership agreement shall be executed until a project has been approved by the State Treasurer.

14.In the event that a project materially deviates from the approved project parameters, the State government entity shall immediately notify the Office of Public Finance of the change and seek approval of the material change.

15.Two signed copies of the agreement and any post agreement documents, one with appropriate redaction, shall be provided to the Office of Public Finance.

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N.J.A.C. 17:49-8.6

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 52 No. 8, April 20, 2020

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§ 17:49-8.6 Lease arrangements and availability payments

(a) Any availability payment or lease arrangement with a private entity pursuant to a public-private partnership agreement may include a lease of a revenue-producing public building, road, structure, infrastructure, or facility in exchange for upfront or structured financing by a private entity for the project, provided that the private entity is responsible for the management, operation, and maintenance of the building, road, structure, infrastructure or facility, so long as the State government entity retains full ownership of the land upon which the project is located.

(b) The private entity may receive some or all of the revenue generated by the building, road, structure, infrastructure, or facility and shall, in turn, operate the building, structure, infrastructure, or facility in accordance with State standards.

(c) A lease term shall not exceed 30 years, unless it includes a highway project component in which case the lease agreement shall be limited in duration to a term not more than 50 years, and shall be subject to all applicable law governing leases by a State government entity.

(d) Upon completion of the lease term, subsequent revenue generated, and any capital improvement, shall revert to the State government entity.

(e) Leases may include lease back arrangements.

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N.J.A.C. 17:49-8.7

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§ 17:49-8.7 Construction contract standards and account requirements

(a)Any construction contract shall meet NJ Uniform Construction Code (UCC) requirements for all construction and applicable environmental permitting requirements and include the following minimum building maintenance standards and building maintenance benchmarks, including long-range maintenance plan requirements:

- 1.The performance of a Baseline Facility Condition Assessment at the close of construction, including: identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, number of floors, an evaluation of all systems, equipment, and other components of a facility, organized by individual component or item, and identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, and number of floors;
- 2.Current replacement value estimating the scope of items that may need to be repaired, renovated, or replaced during any operating and maintenance lease term, including, but not limited to, physical systems, basic building components, and/or major appliances or equipment;
- 3.Financial assessment including an analysis of reserve accounts, an estimate of cost of capital repairs annually, rate of return on reserve accounts, and project interest;
- 4.Building system and component lifecycle data analysis organized by specific building component, planned/estimated useful life/lifecycle, unit cost, quantity relative to each component, and unit cost per item, linear foot, square foot, or other unit of measure;
- 5.Capital Reserve Draw Schedule for replacement expenditures, including timing of replacement of components, number of building components being replaced, and planned disbursements from the reserve account to cover such replacements;
- 6.Reserve fund account analysis and availability including a summary of current reserve account balance, projected account funding, rate of investment returns, planned capital expenditures and withdrawals, and projected ending annual reserve account balance; and
- 7.Posting of a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and

conforming to, the requirements of
N.J.S.A. 2A:44-143 et seq.

(b) Upon approval by the State Treasurer, but prior to commencing work on a project, the State government entity shall require a private entity to:

1. Establish a construction account and appoint a third-party financial institution, which shall be pre-qualified by the State Treasurer pursuant to N.J.A.C. 17:49-2, to act as a collateral agent and manage the construction account.

- i.** The construction account shall include the funding and financial instruments that shall be used to fully capitalize and fund the project;
- ii.** The collateral agent shall maintain a full accounting of the funds and instruments in the account;
- iii.** The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project;
- iv.** The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full; and
- v.** The construction account shall not be designated for more than one project.

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N.J.A.C. 17:49-9.1

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§ 17:49-9.1 Minimum county college, State college, or State university standards for operation of a project

(a)Contingent upon approval of its governing board, a county college, State college, or State university may enter into a public-private partnership agreement with a private entity to construct, reconstruct, repair, alter, improve, extend, operate, or manage an on-campus or off-campus building, structure, or facility, if:

1.The project is financed in whole or in part by the private entity and the State or county college or university retains full ownership of the land upon which the project is completed.

(b)In order to pursue a public-private partnership project, a county college, State college, or State university shall, at a minimum, possess an investment grade bond rating from at least one nationally recognized statistical rating agency.

(c)A county college, State college, or State university shall complete the following steps to ensure a project meets the policy, risk allocation/transfer, funding, social equity, market readiness, legal, innovation, life cycle, and accelerated delivery requirements requisite within a public-private partnership agreement:

1.Step 1: Complete a self-assessment utilizing the initial screening criteria outlined in Treasury's Initial Screening Tool available at www.treasury.nj.gov/p3screening1. A county college, State college, or State university shall submit this self-assessment screening with its application to the Office of Public Finance;

2.Step 2: Assuming successful completion of a self-assessment, report to the Office of Public Finance, through an email to

p3@treas.nj.gov

, that it is considering pursuing a public-private partnership. The county college, State college, or State university shall conduct a project analysis, in conjunction with legal, financial, and other experts possessing the requisite minimum criteria outlined at N.J.A.C. 17:49-3.2, to determine the financial and technical viability of a potential project, prior to submission to the Office of Public Finance. A county college, State college, or State university shall submit all supporting documents with its application to the Office of Public Finance, including information on the credentials

of the experts retained for purposes of conducting the project analysis, as required by
N.J.A.C. 17:49-9.5 .

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N.J.A.C. 17:49-9.2

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§ 17:49-9.2 Project analysis

(a)A county college, State college, or State university, by resolution of the governing board, shall determine whether to apply for approval to enter into a public-private partnership and shall document in its application to the Office of Public Finance, its analyses based upon the following threshold criteria:

- 1.A narrative of the project, including the role and responsibilities of the parties, and an assessment of the project's viability, including the outcome and objectives to be realized by the project;
- 2.An assessment of the benefits or risks to be realized by the project;
- 3.The total risk-adjusted cost of the project, including costs associated with procurement, financing, design, construction, operation, and maintenance (including oversight costs) over the useful life of the asset that will be built or the length (in years) of the potential public-private partnership agreement, both for delivery as a public-private partnership and delivery under a conventional public sector approach, supported by evidence from comparable projects;
- 4.The maximum public and institutional contribution that the county college, State college, or State university will invest in or contribute to the project under the public-private partnership;
- 5.A comparison of the financial and non-financial benefits of the public-private partnership, including the technical, technological, or socioeconomic merit of a project, compared to other options including a public sector option or not proceeding with a project;
- 6.A list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the county college, State college, or State university as well as an analysis of the financial capacity of the private entity and county college, State college, or State university, including an analysis of how the project's execution will impact the financial status of the county college, State college, or State university;
- 7.An analysis that delivery as a public-private partnership will optimize schedule, cost (on a risk-adjusted and useful life basis), and quality outcomes for the project, relative to a public sector option; and

8. Whether the project has a high, medium, or low level of project delivery risk and how the public is protected from these risks.

(b) A county college, State college, or State university's governing board shall make the following findings to establish that a project is in the best interests of the public, and shall provide supporting documents, including information on the financial strength and bonding capacity of the State or county college or university, to support the findings that:

1. There is a public need for the project and the project is consistent with existing long-term plans;
2. There are specific significant benefits to the project;
3. The project, including procurement, land acquisition, development approval, and financial analysis costs, will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
4. There exists sufficient public sector financial and technical capability as well as market interest for the project to be delivered efficiently as a public-private partnership;
5. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
6. The private development will result in timely and efficient development and operation; and
7. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

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N.J.A.C. 17:49-9.3

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§ 17:49-9.3 Public notice and hearing requirements

(a)A request for qualification shall include:

- 1.A request for qualification, soliciting response from private entities for participation in a public-private partnership project shall be advertised by a county college, State college, or State university a minimum of 45 days prior to the required date of receipt.
- 2.The advertisement of the request for qualifications shall be published on the official Internet website of the county college, State college, or State university and at least one newspaper with Statewide circulation.
- 3.A request for qualification shall clearly set forth the requirements for a public-private partnership agreement pursuant to N.J.A.C. 17:49-9.5(a)
- 4.The request for qualification shall define the standards for responsiveness, including identification of any required submissions, documents, proof of licensure or qualification, or other material information, and shall define the qualification standards for determining whether a private entity is eligible to participate in the request for proposals process.

(b)A request for proposal shall include:

- 1.After a county college, State college, or State university determines the qualified respondents satisfy the qualification standards, it shall issue a notice of the list of qualified respondents, and shall issue a request for proposal to each qualified respondent no less than 90 days prior to the date established for submission of the proposals.
- 2.The request for proposals shall define the standards for responsiveness to the request for proposal, including identification and description of any required technical submissions, or other required documents or material, and shall also specify the minimum evaluation criteria to be used in the selection of the designated respondent, and the weight of each criterion.
- 3.A county college, State college, or State university may authorize the use of stipends on public-private partnership projects when there is a substantial opportunity for innovation and the costs of developing a proposal are significant. The extent of

such stipend shall solely relate to the costs associated with work product of unsuccessful proposers submitted in response to a request for proposals.

i. The aggregate value of stipends provided to all private entities afforded stipends shall not exceed 0.05 percent of the total projected cost of the project.

ii. The extent to which any stipend will be available for work product submitted shall be affirmatively outlined in the request for proposal.

(c) The ranking of proposals shall be in accordance with this subsection.

1. After the proposal or proposals have been received, and any public notification period has expired, the county college, State college, or State university shall rank the proposals based upon the established evaluation criteria.

2. The county college, State college, or State university may consider, in addition to cost, factors that include, but are not limited to, professional qualifications and capacity of the entity and its agents, timing of project delivery, general business terms, innovative engineering, architectural services, cost-reduction terms, finance plans, and the need for State or county college or university funds to deliver the project and discharge the agreement.

3. The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 (N.J.S.A. 52:32-44), sections 2 through 8 of P.L. 1975, c. 127 (N.J.S.A. 10:5-32 to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 (N.J.S.A. 19:44A-20.13 et seq.), Executive Order No. 117 of 2008, Executive Order No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.

4. A county college, State college, or State university may negotiate with the selected private entity on the final terms and conditions, subject to the minimum evaluation criteria contained in the request for proposal. In the event that a county college, State college, or State university is unable to negotiate final terms and conditions with the selected private entity, the county college, State college, or State university may negotiate final terms and conditions with the next most favorable private entity.

5. If only one proposal is received, the county college, State college, or State university shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State or county college or university may, at its sole discretion, terminate negotiations.

(d) All public hearing and findings requirements shall include the following:

1. After the county college, State college, or State university has ranked the proposals and identified a potential private entity for the project under consideration, in addition to negotiation of final terms and conditions, it shall conduct a public hearing on the project, prior to submitting the public-private proposal to the State Treasurer for approval. The hearing shall be conducted in accordance with the Senator Byron M. Baer Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., prior to submitting the public-private proposal

to the State Treasurer for consideration. The hearing shall be conducted in accordance with (d)2 through 5 below.

2. Notice under this subsection shall include:

- i.** Notice of a public hearing must be provided not less than 14 days prior to a hearing, and shall state the date, time, and location of the public hearing;
- ii.** The notice must state the purpose and nature of the project under consideration;
- iii.** The notice must state the process for receipt of public comments, either at or before the public hearing, including any procedures required for participation in the public hearing; and
- iv.** The notice must be published in at least one newspaper with Statewide circulation and on the official website of the county college, State college, or State university.

3. Public comments regarding the proposed project shall be received at or before the public hearing, in accordance with any procedures specified in the public notice, and the county college, State college, or State university shall keep a record of such public comments. The county college, State college, or State university shall respond to such public comments, either informally at the hearing, or in a writing made available to the public after the hearing, and shall indicate whether any changes will be made to the project, or the ranking and/or selection process, in response to the comment. A State or county college or university may, after appropriate consideration of a public comment, state in response that no changes to the project and/or selection process will be made.

4. The county college, State college, or State university shall determine, on the record at a public hearing that a project is in the best interest of the public by finding, with any relevant supports, that based on facts:

- i.** The project will cost less than the public sector option, or if it costs more, there are factors that warrant the additional expense;
- ii.** There is a public need for the project and the project is consistent with existing long-term plans;
- iii.** There are specific significant benefits to the project;
- iv.** There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
- v.** The private development will result in timely and efficient development and operation; and
- vi.** The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

5. A record of the public hearing, including the required findings, the public comments received on the proposal, and the county college, State college, or State university's responses to those comments shall be made available within seven days after conclusion of the public hearing. The documentation of comments and responses

must include written comments received before or during the hearing, responses made orally during the hearing, and responses made in writing after the hearing.

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N.J.A.C. 17:49-9.4

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§ 17:49-9.4 Unsolicited proposals

(a)A county college, State college, or State university may accept unsolicited proposals from private entities for public-private partnership agreements. A county college, State college, or State university shall develop a process for accepting unsolicited proposals in expectation of receipt of an unsolicited proposal.

(b)An unsolicited proposal shall include, at a minimum, the following:

- 1.A description of the proposed public-private project, including the identified county college, State college, or State university need to be fulfilled by the proposed project;
- 2.The estimated construction and life-cycle costs;
- 3.A timeline for development;
- 4.Proposed plan of financing, including projected revenues, public or private, debt, and equity investment;
- 5.A description of how the project meets needs identified in existing plans;
- 6.An identification of the permits, approvals, and/or variances needed from local, State, and/or Federal agencies in order to develop the project;
- 7.A projected schedule for obtaining such permits and approvals; and
- 8.A statement of risks, liabilities, and responsibilities to be assumed by the private entity.

(c)A private entity submitting an unsolicited proposal shall provide a copy in which all proprietary information has been redacted, so that the description of the proposed public-private project, may be shared publicly. In the event that a redacted copy is not provided, all materials shall be considered releasable.

(d)In the event that an unsolicited proposal is received, a county college, State college, or State university's governing board shall determine, on the record, whether the following factors have been met:

- 1.There is a public need for the project and the project is consistent with existing long-term plans;
- 2.The project will cost less than a public sector option, or if it costs more there are factors that warrant the additional expense;

3. There are specific significant benefits to the project;
4. There are specific significant benefits to using the public-private partnership instead of other options including No-Build;
5. The private development will result in timely and efficient development and operation; and
6. The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

(e) If the county college, State college, or State university receives an unsolicited proposal and determines that it meets the above factors, the State or county college or university shall give notice to the public of an opportunity to submit competing proposals to be considered in comparison to the proposed project outlined in the unsolicited proposal. The State or county college or university shall:

1. Publish a notice of the receipt of the proposal on the Internet site of the State or county college or university and through advertisement in at least one newspaper with Statewide circulation;
2. Provide notice of the proposal at its next scheduled public meeting of the State or county college or university and to the State Treasurer. The notice shall specify the standards for evaluation and ranking of any proposals received in response to the notice;
3. The notice shall provide that the county college, State college, or State university shall accept, for 120 days after the initial date of publication, proposals meeting the standards outlined in the unsolicited proposal from other private entities for eligible projects that satisfy the same basic purpose and need; and
4. A copy of the notice shall be mailed to each municipal and county local government body in the geographic area affected by the proposal.

(f) After the 120 days of public notice have expired and any additional proposals have been received, the county college, State college, or State university shall rank the proposals in order of preference, relying, at a minimum, on the factors outlined above in (d) above.

1. The State or county college or university may also consider factors that include, but are not be limited to: professional qualifications of the entities participating in the proposed project; general business terms and conditions of the proposed project; any innovative engineering, and architectural services, or cost-reduction terms; the terms of the finance plan for the project; and the need for any contribution of local government funds required to deliver the project and/or discharge the agreement.
2. The private entity selected shall comply with all laws and rules, including, but not limited to, section 1 of P.L. 2001, c. 134 (N.J.S.A. 52:32-44), sections 2 through 8 of P.L. 1975, c. 127 (N.J.S.A. 10:5-32 to 38), section 1 of P.L. 1977, c. 33 (N.J.S.A. 52:25.24-2), P.L. 2005, c. 51 (N.J.S.A. 19:44A-20.13 et seq.), section 2 of P.L. 2018, c. 9 (N.J.S.A. 10:5-12), Executive Order No. 117 of 2008, Executive Order

No. 118 of 2008, and Executive Order No. 189 of 1988, prior to executing the public-private partnership agreement.

(g)If no proposals are received in addition to the unsolicited proposal, then the county college, State college, or State university shall negotiate in good faith and, if not satisfied with the results of the negotiations, the State or county college or university may, at its sole discretion, terminate negotiations.

(h)All unsolicited proposals shall be subject to the requirements of N.J.A.C. 17:49-9.2 and 9.3 .

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N.J.A.C. 17:49-9.5

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§ 17:49-9.5 Project review

(a)A county college, State college, or State university shall provide the Office of Public Finance, the following items for review of a public-private partnership project in an application format prescribed by the Office of Public Finance:

- 1.**A full description of the proposed public-private partnership project;
- 2.**A copy of the proposed public-private partnership agreement between the county college, State college, or State university and the private entity, including any supporting documents, such as the development agreement, any relevant contracts and leases, and all information obtained by, and findings of, the county college, State college, or State university, as well as a redacted copy of all materials for purposes of providing any public document as required under the Open Public Records Act;
- 3.**A proposed public-private partnership agreement between the county college, State college, or State university and the private entity shall include the following minimum criteria:
 - i.**An agreement term length clearly defined to include the estimated construction and operational period, as needed;
 - ii.**A complete description of the public-private partnership project to be developed and the functions and responsibilities to be performed by the county college, State college, or State university and the private entity;
 - iii.**Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the public-private partnership project;
 - iv.**A provision allowing express permission of the public entity, and State and local officials, to inspect project related assets or property; such provision shall include any specific limitations, particular requirements, or allowances related to such review. Examples of limitations, particular requirements or allowances may include, but are not limited to, any notice requirements, time constraints, or review restrictions;
 - v.**The roles and responsibilities of the parties for the duration of the agreement;

- vi.**Requirements for bonds or other forms of security in amounts acceptable to the State or county college or university;
- vii.**Standards and rights of parties relating to payments by the State or county college or university to the private entity if payments are part of the project;
- viii.**Requirements for any payment by the private entity of any costs incurred by the State or county college or university before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the county college, State college, or State university with respect to the project;
- ix.**Standards for construction and maintenance of the project;
- x.**Standards for allocation of costs of development including allocation of liability for cost overruns;
- xi.**Performance criteria and incentives, if any;
- xii.**Risk mitigation plans and responsibilities at all project stages, including at project development, construction, operations, and maintenance, for both the private entity and county college, State college, or State university;
- xiii.**The rights that the county college, State college, or State university and the private entity may have, if any, to revenue generated as a result of the agreement, and any standards for allocation of such revenue between the parties;
- xiv.**A maximum rate of return to the private entity and a provision for the distribution of excess earnings to the State or county college or university or to the private party for debt reduction;
- xv.**The minimum quality standards, technical requirements, and/or performance criteria applicable to the public-private partnership project, including key performance indicators, reporting requirements, incentives, cure periods, standards of performance or metrics including performance points systems, monitoring rights of the State or county college or university, and penalties for failure to achieve these standards;
- xvi.**A maintenance plan for the full life cycle of the public-private partnership project;
- xvii.**A hand-back plan that includes requirements regarding return of the facility in a state of good repair and standards for determining such state of repair;
- xviii.**Any compensation and/or revenue structure of the private entity related to the project coming into the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the public-private partnership project, as well as a full payment schedule (if applicable);
- xix.**Rights and remedies, including, but not limited to, compensatory, liquidated, or other types of damages, and dispute resolution procedures available or applicable

in the event of nonperformance or breach of contract, up to and including material default;

xx.Procedures for notice and cure of default;

xxi.Insurance requirements for any project to be operated by the private entity;

xxii.Grounds for termination of the public-private partnership agreement by the State or county college or university and the financial impact of that termination;

xxiii.Grounds for termination of the public-private partnership agreement by the private entity and the financial impact of that termination;

xxiv.Procedures for amending the public-private partnership agreement;

xxv.Provisions for the termination of the public-private partnership agreement and the disposition of the public-private partnership facility upon termination;

xxvi.Identification of funding sources to be used to fully fund the capital, operation, maintenance, and other expenses under the public-private partnership agreement;

xxvii.The nature of the State or county college or university and private entity's property interest including the acquisition of any property, of which the State or State or county college or university shall retain full ownership of the land upon which the project is located;

xxviii.An articulation of the legal relationship and requirements of the parties involved, including the rights and responsibilities of the parties as to design elements, technologies, techniques, methods, information, or intellectual property contained in an agreement;

xxix.Details on distribution of costs between the private entity and county college, State college, or State university, including costs of retaining independent experts to review, analyze, and advise the county college, State college, or State university with respect to the proposal, and any stipends authorized for work completed, which shall not exceed 0.5 percent of the project total; and

xxx.When applicable, a provision in the agreement establishing that the private entity will not take any action or fail to take any action, if any such action or failure to take action would adversely affect the exclusion from gross income of the interest on any Outstanding Tax-Exempt Bonds under Section 103 of the Internal Revenue Code (Code). The provision shall also establish that the applicant will not directly or indirectly use or permit the use of any proceeds of any Outstanding Tax-Exempt Bonds or take or omit to take any action that would cause any Outstanding Tax-Exempt Bond to be an "arbitrage bond" within the meaning of Section 148(a) of the Code;

4.A project agreement, including the following terms and conditions:

i.Ensure each worker employed in the construction, rehabilitation, or building maintenance services of facilities by a private entity that has entered into a public-private partnership agreement with a State or county college or university be paid not less than the prevailing wage rate for the worker's craft or trade as determined

by the Commissioner of Labor and Workforce Development pursuant to P.L. 1963, c. 150 (

N.J.S.A. 34:11-56.25 et seq.) and P.L. 2005, c. 379 (

N.J.S.A. 34:11-56.58 et seq.);

ii. Guarantee that any building construction projects under a public-private partnership agreement contain a project labor agreement. The project labor agreement shall be subject to

N.J.S.A. 52:38-1 et seq., and shall be in a manner that, to the greatest extent possible, enhances employment opportunities for individuals residing in the county of the project's location;

iii. Ensure the general contractor, construction manager, design-build team, or subcontractor for a construction project be registered pursuant to

N.J.S.A. 34:11-56.48 et seq., and be classified by the Division of Property Management and Construction, or shall be pre-qualified by the Department of Transportation, New Jersey Transit, or the New Jersey Turnpike Authority, as appropriate, to perform work on a public-private partnership project;

iv. When practicable, adhere to the Leadership in Energy and Environmental Design Green Building Rating System as adopted by the United States Green Building Council, the Green Globes Program adopted by the Green Building Initiative, or a comparable nationally recognized, accepted, and appropriate sustainable development rating system and the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of P.L. 2007, c. 132

(N.J.S.A. 52:27D-130.6);

v. Ensure that the general contractor, construction manager, or design-build contractor post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys due in accordance with and conforming to the requirements of

N.J.S.A. 2A:44-143 et seq.;

vi. Where a project is less than \$ 50 million, include a requirement that precludes contractors from engaging in the project if the contractor has contributed to the private entity's financing of the project in an amount of more than 10 percent of the project's financing costs;

vii. Where appropriate, include a requirement that work performed under the agreement is subject to the provisions of the Construction Industry Independent Contractor Act, P.L. 2007, c. 114 (

N.J.S.A. 34:20-1 et seq.); and

viii. In the event that a private entity assumes full financial and administrative responsibility for a project, a stipulation that the private entity shall not be subject to the procurement and contracting requirements of statutes applicable to the county college, State college, or State university at which the project is completed, including, but not limited to, the State College Contracts Law, P.L. 1986, c. 43 (N.J.S.A. 18A:64-52 et seq.), and the County College Contracts

Law, P.L. 1982, c. 189 (N.J.S.A. 18A:64A-25.1 et seq.);

5.A county college, State college, or State university shall provide the estimated costs, including development and operating costs, as well as financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include:

i.At least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios, including a net present value analysis for each of the scenarios; and

ii.A long-range maintenance plan and a long-range maintenance bond specifying the expenditures that qualify as an appropriate investment in maintenance;

6.A completed Initial Screening Tool, including any changes to the project made in response to the results of the self-assessment;

7.A completed project analysis, including any supporting documents, as well as documentation of the qualification of any experts retained to perform any aspect of the project analysis;

8.A timetable for completion of the construction of the project, including all pre-development, development phases;

9.All relevant engineering and architectural plans, drawings, and schematics;

10.An analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership;

11.A performance monitoring plan for the agreement. The performance monitoring plan will provide details on how the State or county college or university will monitor the performance of the private entity for the full term of the agreement. This plan shall identify the required skills and resources for monitoring performance, specify schedules for periodic monitoring, and specify the requirements for the preparation and issuance of reports and/or updates to support performance monitoring, and specify any applicable metrics for monitoring performance, including the use of possible performance-points systems, including any performance bonuses or reductions based upon the early or late completion and delivery of a project, the use of possible performance-points systems, and any performance bonuses or reductions based upon the early or late completion and delivery of a project;

12.A record of the public hearing held, including any public comments received and responses to public comments;

13.A resolution by the county college, State college, or State university's governing board of its intent to enter into a public-private partnership agreement pursuant to this section;

14.Information on experts' qualification and industry experience;

15.An affirmation by both parties that any proposed procurement springing from the public private partnership project contains all necessary elements, based upon minimum contract standards outlined in N.J.A.C. 17:49-9.5 ; and

16.When applicable, an opinion of Bond Counsel, defined as an opinion signed by an attorney or firm of attorneys in good standing in the field of law related to municipal bonds, that such project will not adversely affect the tax-exempt status of any Outstanding Bonds.

(b)Upon receipt of a complete proposed project:

1.An application shall be reviewed for completeness upon receipt by the Office of Public Finance. An application shall not be processed for review, or reviewed, until all submission requirements have been satisfied.

2.Within 14 days of receipt of a complete project application, the Office of Public Finance shall convene a project review committee, which will consist of, at a minimum, representatives from the Economic Development Authority, the Office of the Secretary of Higher Education, the Division of Property Management and Construction within the Department of the Treasury, and, as appropriate, the New Jersey Educational Facilities Authority or the Department of Transportation, for projects where a transportation component is included or the transportation infrastructure is impacted.

3.The project shall be added to the project report maintained by the Office of Public Finance.

4.The Office of Public Finance shall assign a project to a public-private partnership advisor for review and analysis of the project.

i.The public-private partnership advisor's review shall include a value for money analysis to determine whether a project provides more benefit to its user and the State or county college or university when delivered through a public-private partnership delivery process than when delivered through a traditional method; a review of the financial strength of the private entity and a risk assessment of the project.

ii.The public-private partnership advisor shall provide a report on the project to the Project Review Committee within 45 days of project assignment; however, such time limit shall be extended at the discretion of the Office of Public Finance.

5.The project review committee shall review the viability of the project as well as the advisability of the project for the county college, State college, or State university. This review shall be informed by the work of the public-private partnership advisor, and include, at a minimum:

i.All technical aspects of the proposal, including proposed project scope, innovative use of technology, engineering and design, and operation and maintenance of the project; and

ii.All financial aspects of each proposal including financing to be provided by the private partner, any external source of financing, and any fiscal obligations of the county college, State college, or State university for the project as proposed.

6.Members of the project review committee may request additional information as needed to make a complete assessment of the project.

7.The review shall include, but is not limited to, a review of the following:

i.The feasibility of the project's design, construction, and operation;

ii.The county college, State college, or State university's assumptions regarding the project's scope, its benefits, its risks, and the cost of the public sector option, and whether such assumptions were fully and reasonably developed;

iii.The sufficiency of the experience and qualifications of the private entity;

iv.The soundness of the financial plan, within the context of the county college, State college, or State university;

v.The adequacy of the long-range maintenance plan to protect the investment;

vi.The validity of the county college, State college, or State university's determination that the project is in the best interest of the public, with any relevant supports, and that, based on facts:

(1)The development and operation of the project will cost less than the public sector option, or if it costs more there are factors that warrant the additional expense;

(2)There is a public need for the project and the project is consistent with existing long-term plans;

(3)There are specific significant benefits to the project;

(4)There are specific significant benefits to using the public-private partnership instead of other options including No-Build;

(5)The private development will result in timely and efficient development and operation; and

(6)The risks, liabilities, and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

8.The review and recommendation by the project review committee shall be provided to the State Treasurer within 90 days of assignment of the project proposal; however, the time for review may be extended if the applicant has yet to supply information requested by the committee. The committee's recommendation letter to the State Treasurer, as to approval or disapproval, shall also include any conditions or requirements as the committee deems necessary.

9.The State Treasurer may waive minor errors, omissions, or irregularities in an application and reserves the right to determine that such an act is minor in nature.

- 10.**The State Treasurer may exempt a county college, State college, or State university from conveyance of capital improvements or personal property owned by the State from approval by the State House Commission or the State Legislature.
- 11.**The State Treasurer may also condition any approval upon specific stipulations as outlined in the approval letter.
- 12.**Within seven days of the completion of a review by the State Treasurer, the Office of Public Finance shall notify the county college, State college, or State university of the finding of the State Treasurer in writing.
- 13.**Any time frame prescribed under these rules may be extended or modified by the Office of Public Finance, as necessary, to ensure a complete review of a project.
- 14.**No public-private partnership agreement shall be executed until a project has been approved by the State Treasurer.
- 15.**In the event that a project materially deviates from the approved project parameters, the State or county college or university shall immediately notify the Office of Public Finance of the change and seek approval of the material change.
- 16.**A signed copy of the agreement and any post agreement documents, with appropriate redaction, shall be provided to the Office of Public Finance.

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N.J.A.C. 17:49-9.6

This file includes all Regulations adopted and published through the New Jersey Register, Vol. 52 No. 8, April 20, 2020

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§ 17:49-9.6 Lease arrangements and availability payments

(a) Any availability payment or lease arrangement with a private entity pursuant to a public-private partnership agreement may provide that a private entity shall assume some or all of the financial and administrative responsibility for the development, construction, reconstruction, repair, alteration, improvement, extension, operation, and maintenance of a project, provided that the project is financed in whole or part by the private entity and the State or the county college, State college, or State university retains full ownership of the land and the facility upon which the project is located.

(b) A project may include a lease of a revenue-producing public building, road, structure, infrastructure, or facility in exchange for an up-front or structured financing by a private entity for the project, provided that the private entity is responsible for the management, operation, and maintenance of the building, road, structure, infrastructure, or facility.

(c) The private entity may receive some or all of the revenue generated by the building, road, structure, infrastructure, or facility and shall, in turn, operate the building, structure, infrastructure, or facility in accordance with State or county college or university standards.

(d) A lease term shall not exceed 30 years and shall be subject to all applicable law governing leases by a State or county college or university.

(e) Upon completion of the lease term, subsequent revenue generated, and any capital improvement, shall revert to the county college, State college, or State university.

(f) A lease agreement shall not affect the status or employment rights of county college, State college, or State university employees who are assigned to, or provide services to, the leased facility.

(g) Leases may include lease back arrangements.

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§ 17:49-9.7 Construction contract standards and account requirements

(a) Any construction contract shall meet the New Jersey Uniform Construction Code (UCC) requirements for all construction and applicable environmental permitting requirements and include the following minimum building maintenance standards and building maintenance benchmarks, including long-range maintenance play requirements:

- 1.** The performance of a Baseline Facility Condition Assessment at the close of construction, including: identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, an evaluation of all systems, equipment, and other components of a facility, organized by individual component or item, and identification of the facility, facility size and dimensions, date of construction, type of construction, intended functional use, and number of floors;
- 2.** Current replacement value estimating the scope of items that may need to be repaired, renovated, or replaced during any operating and maintenance lease term, including, but not limited to, physical systems, basic building components, and/or major appliances or equipment;
- 3.** Financial assessment including an analysis of reserve accounts, an estimate of cost of capital repairs annually, rate of return on reserve accounts, and project interest;
 - i.** Building system and component lifecycle data analysis organized by specific building component, planned/estimated useful life/lifecycle, unit cost, quantity relative to each component, and unit cost per item, linear foot, square foot, or other unit of measure;
 - ii.** Capital Reserve Draw Schedule for replacement expenditures, including timing of replacement of components, number of building components being replaced, and planned disbursements from the reserve account to cover such replacements;
- 4.** Reserve fund account analysis and availability including a summary of current reserve account balance, projected account funding, rate of investment returns, planned capital expenditures and withdrawals, and projected ending annual reserve account balance; and
- 5.** Posting of a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of moneys in accordance with, and

conforming to, the requirements of
N.J.S.A. 2A:44-143 et seq.

(b) Upon approval by the State Treasurer, but prior to commencing work on a project, the county college, State college, or State university shall require a private entity to:

1. Establish a construction account and appoint a third-party financial institution, which shall be pre-qualified by the State Treasurer pursuant to N.J.A.C. 17:49-2, to act as a collateral agent, and manage the construction account.

i. The construction account shall include the funding and financial instruments that shall be used to fully capitalize and fund the project.

ii. The collateral agent shall maintain a full accounting of the funds and instruments in the account.

iii. The funds and instruments in the construction account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project.

iv. The funds and instruments in the construction account shall not be the property of the private entity unless all amounts due to the construction account beneficiaries are paid in full.

v. The construction account shall not be designated for more than one project.

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N.J.A.C. 17:49-10.1

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§ 17:49-10.1 Revocation or termination of approval

(a)The State Treasurer may:

- 1.Revoke approval for a project, if it comes to the attention of the State Treasurer, after investigation, that a project has significantly deviated from the project approved; or
- 2.Terminate an approval for non-payment of the one percent set-aside required under N.J.A.C. 17:49-11.1 .

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N.J.A.C. 17:49-11.1

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§ 17:49-11.1 Public-Private Partnership Fund

(a)A local government unit, school district, State governmental entity or county college, State college or State university shall set aside one percent of a project and remit that amount upon execution of the project documentation to the Office of Public Finance for deposit within the Public-Private Partnership Fund.

(b)Upon written request, a local government unit, State governmental entity, school district, or county college, State college, or State university may request a reduction in the set-aside amount equal to the amount of application fees paid but not necessary for review of a project. Such request shall be received by the Office of Public Finance within 14 days of the receipt of the approval letter by the local government unit, State governmental entity, or county college, State college, or State university, or in the case of project involving a school district, the private entity with which the school district has contracted.

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N.J.A.C. 17:49-12.1

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NJ - New Jersey Administrative Code > TITLE 17. TREASURY -- GENERAL > CHAPTER 49. PUBLIC-PRIVATE PARTNERSHIPS RULES > SUBCHAPTER 12. APPEAL

§ 17:49-12.1 Appeal

(a)A local government unit, school district, State government entity or county college, State college, or State university may appeal the Treasurer's approval or denial by submitting, in writing, to the Office of Public Finance, within 60 calendar days from the date of the action, an explanation as to how the applicant has met the criteria required. Such appeals are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., and the Uniform Administrative Procedure Rules, N.J.A.C. 1:1 .

(b)Appeals that are timely submitted shall be handled as follows:

- 1.**The Treasurer shall designate an employee to serve as a hearing officer for the appeal and to make a recommendation on the merits of the appeal. The hearing officer shall perform a review of the written record and may require an in-person hearing. The hearing officer has sole discretion to determine if an in-person hearing is necessary to reach an informed decision on the appeal. The hearing officer may consider new evidence or information that would demonstrate that the applicant meets all of the application criteria.
- 2.**Following completion of the record review and/or in-person hearing, as applicable, the hearing officer shall issue a written report to the Office of Public Finance containing his or her finding(s) and recommendation(s) on the merits of the appeal. The hearing officer's report shall be advisory in nature. The Office of Public Finance may also include a recommendation to the written report of the hearing officer. The applicant shall receive a copy of the written report of the hearing officer, which shall include the recommendation of the Office of Public Finance, if any, and shall have the opportunity to file written comments and exceptions to the hearing officer's report within five business days from receipt of such report.
- 3.**The State Treasurer shall consider the hearing officer's report, the recommendation of the Office of Public Finance, if any, and any written comments and exceptions timely submitted by the applicant. Based on that review, a final decision on the appeal shall be issued.
- 4.**Final decisions rendered by the State Treasurer shall be appealable to the Superior Court, Appellate Division, in accordance with the Rules Governing the Courts of the State of New Jersey.

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