

**NEW JERSEY ECONOMIC STIMULUS ACT OF 2009
HIGHER EDUCATION INSTITUTION
PUBLIC-PRIVATE PARTNERSHIPS**

PROGRAM GUIDELINES

BACKGROUND

On July 28, 2009, Governor Corzine signed into law the New Jersey Economic Stimulus Act of 2009, which now permits a state or county college (hereinafter “college”) to enter into a private-public partnership “that permits [a] private entity to assume full financial and administrative responsibility for the on-campus construction, reconstruction, repair, alteration, improvement or extension of a building, structure, or facility of the institution” so long as the college retains ownership of the land, and the project is 100% privately financed. N.J. Stat. 18A:64-85.a.

The Act requires that the Authority “review all completed applications, and request additional information as is needed to make a complete assessment of the project.” N.J. Stat. 18A:64-85.f(3). A complete application must be submitted for approval within 18 months after the Act became law, and the projects must be completed within five years of the Authority’s approval. N.J. Stat. 18A:64-85.f(1) and (2)(a)(iv).

THE PROCESS

Under the Act, the college will be responsible for procuring a private development partner, entering into a lease and partnership agreement, which should include negotiating all the relevant use, occupancy, financial, liability, and legal terms of the transaction. Included as Appendix 1 to this guide is a chart which summarizes the Act’s requirements that should be considered when the college issues an RFP for a partner. **Colleges are strongly encouraged to consult the Authority early during project’s initial feasibility stages (i.e., while the college is developing the project concept and request for proposals) to ensure that the project will meet the Act’s requirements.**

After the college and private partner negotiate the lease and partnership agreements, develop the project concept, and the development partner secures financing commitments, an application may be filed with the Authority. The Authority will review the application, request for additional information if necessary, and issue an approval. The following chart summarizes the process:



THE APPLICATION

To obtain approval, the Authority will require the college and the private partner to submit the following items:

- a copy of the draft public-private partnership agreement between the college and the private developer (a fully negotiated agreement between the parties subject to comments)
- the copy of the draft land lease or land agreement between the college and the private developer (a fully negotiated agreement between the parties subject to comments)
- a project narrative that includes, but is not limited to the following:
 - a description and experience of the private developer and its team members
 - a full description of the project
 - a description of how the project will implement the Department of Community Affairs green building manual practices
 - a description of how the long term maintenance plan was developed and the assumptions used to create the plan
 - project schematics (site plan, floor plan and elevations)
- financial information, which shall include, but not be limited to the following:
 - a sources and uses statement
 - operating proforma coterminous with the financing of the project (i.e., debt and/or equity fully repaid)
 - evidence of legally binding financing commitments
 - evidence of the private developer's bonding capacity for the development and operation of the project as required by the Act, and
 - a long range maintenance plan
- a detailed project schedule, including all predevelopment, development, and place-in-service tasks and milestones (schedule cannot extend 5 years beyond the Authority's approval date)
- DPMC classifications as required
- evidence of how the partnership will fulfill the following obligations under the Act:
 - obtaining project labor agreements for the development and operation of the project
 - payment of the prevailing wage during the development and operation of the project

The Authority will make a sources and uses statement and operating proforma templates available that shall be included in the application.

APPLICATION REVIEW, APPROVAL, AND PROJECT MONITORING

Upon receipt of the application, the Authority will initially review the application for completeness; if any items are missing, the Authority will follow up with the applicant to obtain the omitted information.

After receipt of all the required documents, the Authority will perform a substantive review of the application, which will include assessing:

- the feasibility and design of the project
- the experience and qualification of the development partner
- soundness of the financial plan
- adequacy of the required exhibits (e.g., land lease, partnership agreement)
- adequacy of the long range maintenance plan

This review may require follow up with the applicant. After the Authority completes its substantive review, it will either provide a deficiency letter to the applicant to supplement the application, or approve the project.

After approval of the application, the higher education institution and the private developer shall submit quarterly reports until the project receives a final certificate of occupancy. The project must be completed within 5 years of receiving the Authority's approval.

Appendix 2 includes the application checklist and the proforma template.

APPLICATION AND MONITORING FEE

The application fee, due upon filing with the Authority, will be .125% of the total development cost, with a minimum fee of \$15,000.

This fee includes the initial application review, approval and subsequent monitoring until a final certificate of occupancy is obtained at construction completion.

APPENDIX 1: SUMMARY CHART OF THE ACT'S REQUIREMENTS THAT SHOULD BE CONSIDERED WHEN ISSUING A REQUEST FOR PROPOSALS FOR DEVELOPMENT PARTNERS

Higher Education Private Public Partnership Request for Proposals Checklist

The following checklist summarizes the requirements of any project developed under the Act. The Partnership between the institution of higher education and the private partner must ensure that these requirements are met for the duration of the project’s development and operation. This checklist is provided as guidance to ensure that institutions of higher education solicit proposals that comply with the Act’s requirements. These requirements are **IN ADDITION** to any other procurement requirements that the institution of higher education must adhere to when issuing Request for Proposals for the required services. **Colleges are strongly encouraged to consult the Authority early during project’s initial feasibility stages (i.e., while the college is developing the project concept and request for proposals) to ensure that the project will meet the Act’s requirements.**

Law Sec.	Statutory Language	Explanation
N.J. Stat. 18A:64-85.a.	A State college or county college may enter into a contract with a private entity, subject to subsection f. of this section, to be referred to as a public-private partnership agreement, that permits the private entity to assume full financial and administrative responsibility for the on-campus construction, reconstruction, repair, alteration, improvement or extension of a building, structure, or facility of the institution, provided that the project is financed in whole by the private entity and that the State or institution of higher education, as applicable, retains full ownership of the land upon which the project is completed.	Institution of Higher Education may enter into a private public partnership agreement if (1) the project is privately financed and (2) institution retains ownership of the land.
N.J. Stat. 18A:64-85.b.	A private entity that assumes financial and administrative responsibility for a project is not be subject to the procurement and contracting requirements of all statutes applicable to the institution of higher education at which the project is completed, including, but not limited to, the “State College Contracts Law,” and the “County College Contracts Law.”	Private partner is not subject to the institution of higher education’s procurement and contracting laws/regulations, including, but not limited to State College Contracts Law or County College Contracts Law.
N.J. Stat. 18A:64-85.c.	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 shall be paid no less than prevailing wage	Each worker employed in the construction, rehabilitation or building services for the project shall be paid no less than prevailing wage.
N.J. Stat. 18A:64-85.d(1)	All construction projects under a public-private partnership agreement entered into pursuant to this section shall contain a project labor agreement.	Construction of the project must include a project labor agreement.

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Law Sec.	Statutory Language	Explanation
N.J. Stat. 18A:64-85.d(1)	general contractor, construction manager, design-build team, or subcontractor for a construction project proposed in accordance with this paragraph shall be registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-44 56.48 et seq.), and shall be classified by the Division of Property Management and Construction to perform work on a public-private partnership higher education project	General contractor, construction manager, design-build team, or subcontractor shall be registered with and classified by DPMC to perform work on public-private partnership higher education projects
N.J. Stat. 18A:64-85.d(2)	Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement	Private Partner must post a bond guaranteeing payment to the contractor, subcontractors and all persons supplying labor or materials for the development of the project.
N.J. Stat. 18A:64-85.f(1)	The projects are encouraged, when practicable, to adhere to the green building manual prepared by the Commissioner of Community Affairs pursuant to section 1 of 27 P.L.2007, c.132 (C.52:27D-130.6).	Partners are encouraged to adhere to the green building manual for the project.
N.J. Stat. 18A:64-85.f(2)(b)	[Projects] shall contain a long-range maintenance plan and shall specify the expenditures that qualify as an appropriate investment in maintenance.	Projects require a long term maintenance plan outlining long term maintenance expense and capital improvements during the project's life under the partnership agreement
N.J. Stat. 18A:64-85.f(2)(b)	All contracts to implement a long-range maintenance plan pursuant to this paragraph shall contain a project labor	Contracts to implement the long-range maintenance plan are subject to prevailing

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Law Sec.	Statutory Language	Explanation
	agreement.	wage
N.J. Stat. 18A:64-85.f(4)	Where no public fund has been established for the financing of a public improvement, the chief financial officer of the public owner shall require the private entity for whom the public improvement is being made to post, or cause to be posted, a bond guaranteeing prompt payment of moneys due to the contractor, his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of the work on the public improvement.	Private Partner must post a bond guaranteeing payment to the contractor, subcontractors and all persons supplying labor or materials to implement the long term maintenance plan.

APPENDIX 2: APPLICATION CHECKLIST

**Higher Education Private Public Partnership
Application Requirements**
**[One Original, submitted in 3 Ring Binder along with one CD with a copy of
the application in PDF format]**

1. Applicant Information

- a. Institution Name
- b. Primary Business Address
- c. Contact Person Title, Telephone, Email and Fax
- d. Tax ID Number
- e. Proposed Ownership Structure
- f. What, if any, Board of Trustees action is required to proceed with the project
- g. Certification

2. Private Partner Information

Include a narrative [not to exceed 10 pages, single spaced, 12 point font] that addresses the following items:

- a. Development Experience (for all team members)
- b. Operation and Management Experience
- c. Financial Capacity
 - i. Development
 - ii. Operating
 - iii. Bonding Capacity
 - iv. Financial Controls
- d. List of Prior Similar Projects with Contact Information

3. Project Narrative

Include a narrative [not to exceed 10 pages, single spaced, 12 point font] that addresses the following items:

- a. Project_Description
 - i. Describe the Existing Conditions and Project Need (include a market analysis/study when appropriate, i.e., commercial retail, office projects).
 - ii. Describe the Proposed Uses (e.g., residential, commercial, educational, other)
 - iii. Describe how the project will attempt to incorporate the NJ DCA green building manual and/or LEED standards

iv. Describe:

1. The status of the college's long range facilities plan with the Commission of Higher Education
2. How the proposed project is consistent with college's long range facilities plan

- b. Provide Schematics (site plan, elevations, floor plans)
- c. Provide Draft Specifications

4. Project Schedule

Include a narrative [not to exceed 5 pages, single spaced, 12 point font] that addresses the following items:

- a. Narrative
 - i. Describe Current Status
 - ii. Describe Major Milestones
 - iii. Describe Next Steps
 - iv. Describe how the project will meet the 5 year deadline (from date of approval), and any tactics or strategies that will be employed to mitigate schedule slippage
- b. Provide a Detailed Schedule with Tasks and Major Milestones (Gant Chart)

5. Financing

Include a narrative [not to exceed 10 pages, single spaced, 12 point font] that addresses the following items:

- a. Narrative Describing Financing Structure
- b. Financing Commitments
- c. Budgets
 - i. Sources and uses statement with explanatory notes
 - ii. Operating proforma with explanatory notes

d. Long Term Maintenance Plan

- i. Describe the process and assumptions used to develop the plan.
- ii. Describe how the plan applies applicable BOMA or IFMA standards for building maintenance, repair, and capital improvement/replacement.

EXHIBITS

- A. Proof of Site Control (e.g., deed to existing land, lease, option or sale agreement for land to be acquired)
- B. Proposed Land Lease and Board of Trustees approval resolution
- C. Proposed Partnership/Development Agreement and Board of Trustees approval resolution
- D. Long Term Maintenance Plan
- E. DPMC Registration
- F. Proposed Project Labor Agreement