
SPORTS FACILITY PROJECT APPROVAL GUIDELINES

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APPLIES TO

Sports Facility Projects

GUIDELINES

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I. Background

This guideline outlines the major steps that the Ohio Facilities Construction Commission (the “Commission”) and the Commission staff undertake in the review and approval of a bond-funded Sports Facility Project (the “Project”) based upon relevant information, including materials provided by the applicant (the “Project Sponsor”).

The Project Sponsor will submit requisite information according to a grant checklist provided by the Commission. The Commission staff then verifies, reviews, and analyzes a number of critical factors, considering all relevant laws, the requirements related to the tax-exempt bonds used to fund Commission projects, and public policy standards for proper use of public funds. Once the Commission staff completes their review, analysis and assessment, the Commission staff develops a recommendation to the Executive Director for approval.

Once the grant is approved by the Executive Director and the state Controlling Board, the Project Sponsor and the Commission enter into a Cooperative Use Agreement (“CUA”). The CUA fully describes the understanding between the two parties regarding use of the grant funds and continuing obligations over the life of the capital bonds that finance the project.

II. Due Diligence Prior to Approval

A. Sponsor Organization

As required in Section 123.281(D) of the ORC, the Commission staff verifies whether the Project Sponsor is a governmental agency or nonprofit corporation that will, on behalf of the state, provide or direct construction services for the Project.

If the Project Sponsor is not a governmental agency, Commission staff will verify that it is:

- a 501(c)(3) corporation in good standing;
- in good standing with the Attorney General’s Office, Charitable Law Section;
- in good standing with the Secretary of State’s Office; and
- not listed in the Auditor of State’s Findings for Recovery database per Section 9.24 of the ORC.

B. Scope

1. Qualifying Work

The Commission staff verifies that the Project scope is for “construction” as defined in Section 123.28(K) of the ORC, which can include acquisition, including acquisition by lease-purchase, demolition, reconstruction, alteration, renovation, remodeling, enlargement, improvement, site improvements, and related equipping and furnishing.

2. Presentation of Sporting Events

Commission staff verifies that sporting events are presented or will be presented at the facility that satisfies Section 123.28(M) of the ORC, where the primary purpose of the facility shall be to provide a site or venue for the presentation to the public of motorsports events, professional tennis

tournaments, or events of one or more major or minor league professional athletic or sports teams that are associated with the state or with a city or region of the state.

If the facility is a motorsports complex, both of the following apply:

- Motorsports events shall be presented at the facility pursuant to a lease entered into with the owner of the facility. The term of the lease shall be for a period of not less than the greater of the useful life of the portion of the facility financed from proceeds of state bonds as determined using the guidelines for maximum maturities as provided under divisions (B) and (C) of Section 133.20 of the ORC, or the period of time remaining to the date of payment or provision for payment of outstanding state bonds allocable to costs of the facility, all as determined by the Director of the Office of Budget and Management and certified by the Executive Director of the Commission and to the Ohio Treasurer of State.
- Any motorsports organization that commits to using the facility for an established period of time shall give the political subdivision in which the facility is located not less than six months' advance notice if the organization intends to cease utilizing the facility prior to the expiration of that established period. Such a motorsports organization shall be liable to the state for any state funds used on the construction costs of the facility.

If the facility is a tennis facility, the owner or manager of the facility must provide contractual commitments from a national or international professional tennis organization in a form acceptable to the Commission that assures that one or more sanctioned professional tennis events will be presented at the facility during each year that the bonds remain outstanding.

C. Financial Considerations

1. Business Plan

As required by Section 123.281(E)(1) of the ORC, the Project Sponsor will submit a financial and development plan, which Commission staff will review prior to making the recommendation to the Executive Director for Project approval.

2. Full Funding

The Commission staff reviews the Project costs and the available funding to determine whether the Project can be constructed with the available funds, measured by the Commission's fully funded project standard, as described below.

The Project Sponsor will submit to the Commission a project cost estimate prepared by a design or construction professional. This estimate will be used as the basis for full funding.

A fully funded Project is one in which the Project Sponsor can demonstrate that the funds to pay for all hard and soft costs of the Project have been raised. "Raised" means written pledges from credit-worthy entities, written funding commitments from governmental entities and/or written guaranties and/or cash receipts, sponsorship agreements, personal seat license agreements, naming rights, or a combination of these supported by evidence to the Commission staff's satisfaction.

Any lines of credit, loans, bond financing, bridge financing, and/or other cash flow mechanisms must be secured by acceptable written agreements.

Adequate funding is additionally based on the idea that the Project Sponsor can show a positive cash flow during the construction period.

If the Project is not fully funded, Commission staff may recommend that the Project enter into a Sports Facility Memorandum of Understanding. Please see Section III.E (Memorandum of Understanding) below for applicable conditions.

2. Maximum State Contribution

In accordance with statutory requirements [Section 123.281(E) of the ORC], state funds shall not be used to pay or reimburse more than 15 percent of the initial estimated construction cost of the facility, excluding any site acquisition cost.

The Commission staff verifies that provision has been made for a contribution amounting to not less than 85 percent of the total estimated construction cost of the facility, excluding any site acquisition cost, from sources other than the state.

D. Real Estate and Construction

1. Property Title

The Project Sponsor certifies that the state or a governmental agency owns or has sufficient property interests in the facility (or in the site of the facility or in the portion or portions of the facility financed from proceeds of state bonds), which may include, but is not limited to, the right to use or to require the use of the facility for the presentation of sport and athletic events to the public at the facility.

If the facility is a motorsports complex, the facility must be owned by the state or a governmental agency.

The Project Sponsor certifies that the Project site (the “Premises”) is, and will be, free of any restrictions of record with respect to the Premises or the Project, including without limitation, any encumbrances, liens or other matters, which would interfere with or otherwise impair the use of the Premises as an Ohio sports facility or restrict the rights and obligations granted by the Project Sponsor to the Commission.

Commission staff may request supporting documentation, including but not limited to:

- Deed and legal description of the property, and site survey map, if available
- Title opinion letter or title insurance commitment letter and/or title insurance policy
- Loan or mortgage documents and/or liens against the property identifying any bond documents, letters of credit or security/collateral agreements and a loan pay-down plan
- Facility lease agreement—if the property is not owned by the Project Sponsor, plus written approval from the owner of the Premises to enter into agreements with the Commission

2. Schedule

The Project Sponsor will be required to submit a Project Schedule with a start and end date. In the Cooperative Use Agreement, the Project Sponsor will be required to affirm that it will reasonably adhere to the schedule, and construct the Project with reasonable speed.

3. Construction Self-Performance

Pursuant to Section 123.281(D) of the ORC, construction administration services may be provided on a Project by, or at the direction of, a governmental agency or nonprofit that will own or be responsible for the management of the facility.

If the Project Sponsor is not retaining the services of a professional construction administrator and is planning on self-performing construction administration, the Commission staff may assess the qualifications of the construction administration team, as submitted by the Project Sponsor. The review may take into account relevant factors including, but not limited to, the experience of the proposed administration team to:

- Oversee the selection process for hiring design and/or construction management consultants
- Oversee an appropriate selection process for construction contractors
- Oversee a Project of the size, type and construction as proposed
- Control costs of the proposed Project
- Ensure compliance with all applicable laws and regulations

4. Historic Preservation Evaluation

Per Section 149.53 of the ORC, the Commission cooperates with the Ohio Historical Society and Ohio Historic Preservation Office in the evaluation of capital improvements at historic properties. Proposed changes to all properties of a historic nature (50 years old or more) should be evaluated. The Commission requests that the Project Sponsor provide their plans, in advance of commencing work, to the Ohio Historic Preservation Office for review. OHPO will evaluate whether the proposed actions meet the Secretary of the Interior's Standards for Treatment of Historic Properties.

E. Operations and Maintenance

In accordance with best practices for the use of public funds, contractual obligations, and Internal Revenue Service requirements, the Commission staff will analyze whether or not the Project Sponsor will be able to operate the facility and present sporting events to the public over a sustained period of time.

Commission staff will first review the financial and development plan submitted by the Project Sponsor.

If the Project Sponsor is a nonprofit, Commission staff will conduct a review based upon the Project Sponsor's publicly available IRS Form 990, Return of Organization Exempt from Income Tax. Commission staff may request supporting documentation in an attempt to substantiate the Project Sponsor's current and historical financial condition, including but not limited to:

- Audited financials for the last two years

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- An operating pro forma which projects income and expenses for the organization for a time commensurate with the Project or as determined by Commission staff, but typically not less than five years
 - A fundraising report and cash flow schedule for any anticipated funds
 - Any loan or mortgage documents

In cases where the Project Sponsor is facing financial challenges, the Commission may require, as a condition of approval, additional security from the Project Sponsor to better protect state bond funds through a guaranty of repayment of state funds, or a guaranty of performance of contractual obligations, in the event of default by the Project Sponsor.

Some of the alternatives that may be used include, but are not limited to, the following:

- Letter of Credit: A bank names the Ohio Facilities Construction Commission as beneficiary of a letter of credit in the amount of the state appropriation. The bank would pay the state an amount equal to the unamortized bonds outstanding.
- Third-Party Guaranty: A credit-worthy third party signs a financial guaranty for repayment in the amount of the state appropriation. (The standard for “credit worthy” is net assets or net worth of 10 times the amount of the guaranty). The amount of the guaranty would automatically reduce each year on a straight line basis over the life of the bonds (assume a 10-year period).
- Restriction of Funds: Dollars are set aside in an amount equal to the appropriation, usually restricted against an endowment or reserve. The amount restricted would automatically reduce each year on a straight line basis over the life of the bonds (assume a 10-year period).
- Performance Guaranty: A performance guaranty by a responsible third party [a 501(c)(3) or a local government] to perform under the contract in the event the Project Sponsor is unable to do so. This would involve the guarantor providing similar programming to the public and operating and maintaining the facility for the time period the bonds are outstanding.
- A combination of guaranties and/or restriction of funds totaling the amount of the appropriation, per the descriptions above.

In all cases, Commission staff analyzes the risks to the state, as the risk pertains to the Project Sponsor’s sustainability, and makes a recommendation to the Commission.

F. Risk Management

The Project Sponsor is required to submit documentation that it maintains, and will continue to maintain, commercial general liability and property insurance, in an amount sufficient to cover the full replacement costs of the improvements funded. Alternatively, if the Project Sponsor is self-insured, it may fulfill the insurance requirement by naming the state as an additional insured.

III. Approval of the Project and Authorization of Expenditure of Funds

The Commission may approve the Project and authorize reimbursement to the Project Sponsor for certain costs of the Project.

A. Delegation of Authority to the Executive Director

In accordance with Section 123.21 of the ORC, the Commission delegates its authority to approve projects, authorize the expenditure of funds, and enter into legal agreements for all sports facility projects to the Executive Director of the Commission. A report of project approvals is provided to the Commission at the next quarterly Commission meeting and is incorporated into the minutes for that meeting.

B. Legal Agreements

Upon full approval of the Project, the Project Sponsor and Commission must enter into legal agreements prior to expenditure of state funds.

Pursuant to Section 123.281 of the ORC and to the terms of the bonds used to fund Commission projects, the Commission must enter into a Cooperative Use Agreement (CUA) for each approved Project, which provides for the cooperative use of the facility. The CUA must be signed by an authorized representative of the Project Sponsor. Commission staff may request a copy of the Project Sponsor's resolution or ordinance authorizing its execution of agreements.

All matters related to the reimbursement of approved Project-related expenses are documented in the CUA.

In cases where the Project Sponsor leases the facility, the Commission, the fee simple owner and the Project Sponsor enter into a Non-Disturbance and Estoppel Agreement ("NDE") dated the effective date of the CUA. The NDE identifies all restrictions or encumbrances affecting the premises so the Commission may determine that the Project can be constructed on the premises and operated for the term of the agreement.

C. State Controlling Board Approval

The state Controlling Board or the director of the Office of Budget and Management approves and certifies the release and availability of funds.

D. Reimbursement of Project Costs

The overall cost of the Project may include, but is not limited to, administration and consulting costs, facility construction, fixtures, furniture and equipment, start-up costs, and the cost of debt.

Commission staff reviews the Project budget to ensure that only expenses that meet the criteria for reimbursement are included in the Project costs submitted to the Commission for reimbursement approval. Criteria for allowable capital expenditures are set forth in the ORC and in each capital bill and capital re-appropriation bill, and may be amended from time to time.

Reimbursement of Project costs is made on a pro rata basis, up to the lesser of (a) the available state appropriations for the Project or (b) the available funds due to any other cap established in

legislation. Payments to the Project Sponsor are made after costs are incurred and in accordance with the terms of the CUA. The CUA provides, among other things, that the Project Sponsor submit invoices no less frequently than on a quarterly basis to the Commission, with sufficient documentation to substantiate each invoice and certifications that the work being invoiced is completed.

E. Memorandum of Understanding

If a Project Sponsor is unable to satisfactorily complete certain conditions for Project approval, the Executive Director may wish to enter into a Memorandum of Understanding (MOU) with the Project Sponsor. The purpose of the MOU is to assist the Project Sponsor in understanding and fulfilling the requirements that need to be met in order to permit the Commission to approve release of the state funds.

Upon satisfaction of the conditions outlined in the MOU and based on Commission staff recommendation, the Executive Director may approve the Project and authorize the expenditure of state funds.