

810 CMR: DIVISION OF CAPITAL ASSET MANAGEMENT

810 CMR 2.00: ASSET MANAGEMENT BOARD

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2.01: Definitions

Agency: Any executive office, department, agency, board or commission of the Commonwealth, including institutions under the Higher Education Coordinating Council, and not including independent authorities.

Asset: Any property that is in the lawful possession of or otherwise held by an Agency, including, without limitation both real and personal property in tangible or intangible form. The word "Asset" shall include, but shall not be limited to, land, buildings, structures, leases, easements, licenses, electronic and communication equipment, time sharing capacities, air, water, or mineral rights, utilities, vehicles, and professional and technical services and expertise.

Board or Asset Management Board: The Asset Management Board established pursuant to St. 1990, c. 150, § 220, M.G.L. c. 7B.

Chairman: The Secretary of Administration and Finance, or his/her designee.

Chapter 7B: M.G.L. c. 7B as the same may be amended from time to time.

Commissioner: The Commissioner of the Division of Capital Planning and Operations of the Executive Office of Administration and Finance.

Contract: Any written agreement entered into to implement an Approved Project between an Agency and any private individual(s) or entities for the property disposition of any Asset or the procurement of any goods, services, or real property, including, without limitation a lease.

Preliminary Project Proposal: A written submission by an Agency to the Board for preliminary approval of a Project in accordance with 810 CMR 2.04.

Project or Asset Management Project: Any project to promote the sound management of an Asset or Assets that is proposed for the consideration of the Board by an Agency pursuant to the provisions of M.G.L. c. 7B and 810 CMR 2.00; provided, however, that this term shall not include any project involving the sale or permanent disposition of any Asset. Prior to final approval by the Board hereunder, any such Project shall be referred to as a "Proposed Project". From and after such final approval by the Board, any such Project shall be referred to as an "Approved Project".

Project Proposal: A written submission of an Agency to the Board for final approval of a Project in accordance with 810 CMR 2.06.

Trust Fund: A repository established in conformance with 810 CMR 2.00 by the state treasurer at the request of an Agency for the purpose of receiving and disbursing revenues generated by one or more Projects of an Agency.

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2.02: Powers of the Board

(1) The Board is authorized to review and approve Proposed Projects which meet each of the standards set forth in 810 CMR 2.02(1)(a) through (g). The Board may approve any Proposed Project which:

- (a) represents sound management of Assets held by the Agency;
- (b) is technically and financially viable;
- (c) does not interfere with current or foreseeable legal obligations of the Agency;
- (d) does not constitute a conflict of interest;
- (e) does not result in windfall profits to any individual or group of individuals;
- (f) serves a public purpose or is in the public interest; and
- (g) establishes an open and competitive process for property procurement and disposition, consistent with the intended public benefit.

(2) In approving a Project, the Board is authorized to determine that property procurement and disposition laws and regulations otherwise applicable to Projects shall not apply to a specific Project, provided that the Board shall not have the authority to limit or modify in any way (a) the requirements of M.G.L. c. 7 § 40J; M.G.L. c. 62c, § 49A; or any certification of noncollusion in contracting; or (b) the application of any such law or regulation that by its terms applies equally to both public and private agencies or entities. The Board is authorized to require alternative property disposition or procurement measures as a condition to any Project approval, consistent with the standards set forth in 810 CMR 2.00. A determination to waive any property procurement or disposition law or regulation to require any such alternative measure shall be made in conformity with the standards of 810 CMR 2.02(1).

(3) The Board is authorized to exercise all powers necessary to implement the provisions of M.G.L. c. 7B, including but not limited to the following powers:

- (a) The Board is authorized to monitor Approved Projects to safeguard the public trust in accordance with 810 CMR 2.08.
- (b) The Board is authorized to establish Trust Funds in accordance with 810 CMR 2.09.
- (c) The Board is authorized to terminate any Approved Project in accordance with 810 CMR 2.10.
- (d) The Board is authorized to maintain records of all Approved Projects in accordance with 810 CMR 2.11.

(4) The Board shall exercise its authority in accordance with 810 CMR 2.00.

2.03: Meeting and Voting Procedures

(1) Meetings of the Board shall be called at the request of the Chairman or of a majority of the members of the Board. The Chairman shall prepare an agenda for each meeting identifying each Proposed Project to be reviewed by the Board and other business matters to be considered by the Board. The identification of Proposed Projects shall include, at minimum, the name of the proposing Agency, a brief description of the proposal and the Asset involved, and a description of the laws or regulations which would be waived if the request were approved, and proposed alternative property procurement or disposition methods. The Chairman shall place on the agenda any item requested for inclusion by any member of the Board.

(2) Meetings shall be held in the office of the Chairman, unless otherwise noted in the agenda and public notice of the meeting. Meetings will be held in other appropriate locations upon the determination by the Chairman of the desirability thereof, or upon the request of a majority of the members of the Board.

The Board shall act in accordance with the procedures set forth in Robert's Rules of Order or any other recognized procedures which may be adopted by the Board; provided that in the event of a conflict between such procedures and 810 CMR 2.00, 810 CMR 2.00 shall govern, and provided further that any failure on the part of the Board to act in accordance with such procedures shall not invalidate any actions taken by the Board.

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2.03: continued

- (3) An agenda and materials to be reviewed at any meeting shall be made available to Board members at least 14 days prior to the meeting and, unless any such materials are to be considered in an executive session as defined in M.G.L. c. 30A, § 11A, shall simultaneously be available for public inspection at the office of the Chairman of the Board. The requirements of 810 CMR 2.03 may be waived by vote of four members of the Board.
- (4) A quorum shall consist of no less than three members present.
- (5) A vote shall require the presence of a quorum. Approval of any matter put to a vote of the Board shall, unless otherwise required by 810 CMR 2.00, require the affirmative vote of no less than three members present.
- (6) The Board may vote to conduct a public hearing on any Project Proposal, in addition to any public hearing which the Agency is required to conduct under 810 CMR 2.05(3)
- (7) No Board member shall participate in the approval of a Project or in consideration of any other matter in which the Board member or any member of his/her immediate family has a direct or indirect present or future financial interest or which would financially benefit such person in any way. Compliance with the requirements placed upon a state employee under M.G.L. c. 268A shall constitute presumptive compliance with the requirements of the preceding sentence. Any disclosure, report or other writing filed by a Board member with the State Ethics Commission under the provisions of M.G.L. c. 268A shall also be filed with the Board.

2.04: Preliminary Project Proposals

- (1) An Agency shall submit a Preliminary Project proposal to the Board containing sufficient information for the Board to understand the Proposed Project and make a preliminary assessment of whether the Proposed Project, including any proposed alternative property procurement or disposition methods, meets the standards for approval set forth in M.G.L. c. 7B and 810 CMR 2.02(1). The submission shall include the following information:
 - (a) Description of the Project.
 - (b) Description of the Asset involved, its current use, and an explanation as to why that current use is no longer required;
 - (c) The public purpose of the Project and the public benefits to be realized from the Project;
 - (d) Identification of property procurement or disposition laws or regulations otherwise applicable which must be waived to accomplish the Project;
 - (e) Description of proposed alternative property disposition or procurement requirements;
 - (f) Financial and market information (if appropriate) to demonstrate Project feasibility;
 - (g) List of any materials identified in 810 CMR 2.06(2) which may not be relevant to the proposed Project;
 - (h) Plan for public review prior to submission of the Project Proposal, including public hearing(s).
- (2) Following a review of any such Preliminary Project Proposal, the Board shall vote to:
 - (a) Grant preliminary approval to such a Proposed Project, in which case the Agency may proceed with public notice and comment under 810 CMR 2.05 and submission of a Project Proposal under 810 CMR 2.06; or
 - (b) Disapprove the Preliminary Project Proposal, in which case the Agency shall not proceed with public notice and comment under 810 CMR 2.05 or submission of a Project Proposal under 810 CMR 2.06.

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- (3) If the Board votes to approve a Preliminary Project Proposal under 810 CMR 2.04(2), the Board may:
- (a) Specify additional requirements for public hearing and public notice other than those set forth under 810 CMR 2.05;
 - (b) Waive otherwise applicable public hearing requirements in accordance with 810 CMR 2.05(4);
 - (c) Waive Project Proposal submission requirements of 810 CMR 2.06(2) (provided, however, that in the case of 810 CMR 2.06(2)(g), the requirements may be waived only by a vote of at least four members of the Board); or
 - (d) Require additional information to be submitted with the Project Proposal under 810 CMR 2.06; provided, however, that no such approval shall relieve the Agency of the requirement to submit a Project Proposal under 810 CMR 2.06; nor shall it in any way require the Board to approve or disapprove the Project Proposal.

2.05: Public Notice and Comment Requirements

- (1) Agencies shall, prior to submitting a Project Proposal to the Board for a Proposed Project which has received preliminary approval under 810 CMR 2.04(2), publish a Notice of Intent to Submit a Proposal. Such notice shall include:
- (a) a brief summary of the Project, including a description of the Asset, the general location of any real property involved in the Proposed Project, and an estimate of the value of the Asset;
 - (b) the location or office at which draft Project Proposals are available;
 - (c) an invitation for public comment and, if required by 810 CMR 2.00, the date, time, and location of a public hearing on the proposal; and
 - (d) the procedures and deadlines for submitting comments. A copy of such notice shall also be sent to each member of the Board. Notices shall also be sent, in the case of a Proposed Project involving the acquisition or disposition of an interest in real property or any other Asset with an estimated value greater than \$100,000,
 - 1. to the members of the General Court in the legislative district in which the Project is located,
 - 2. in the case of a city under the "Plan E" form of government, to the city manager
 - 3. in the case of all other cities, to the mayor and the city council and
 - 4. in the case of a town, to the chairman of the board of selectman, the county commissioners, and the regional planning agency.
- (2) The Agency shall cause a Notice of Intent to Submit a Proposal to be advertised for two consecutive weeks in the Central Register and once a week for two consecutive weeks in at least one newspaper of general circulation covering the Project area. The last notice shall appear no less than seven days prior to the submission of the proposal to the Board or the conduct of a public hearing, whichever is sooner.
- (3) Prior to the submission of any Project Proposal for which, under the provisions of 810 CMR 2.05(1), notice must be given to members of the General Court, the Agency preparing such Project Proposal shall conduct a public hearing on the proposal in the legislative district in which the Project is located; except that the Board may vote to waive this public hearing requirement under 810 CMR 2.05(4). Board members may participate in any such hearing. The Agency conducting the hearing shall maintain minutes of the hearing which accurately reflect comments received at the hearing. The public hearing shall be conducted under any special requirements established by the Board under 810 CMR 2.04(2).
- (4) The Board may, by an affirmative vote of not less than four members, waive any otherwise applicable public hearing requirement if the Board determines, based upon review of the Preliminary Project Proposal, that such a public hearing is not necessary to insure that the Proposed Project meets the standards for approval set forth in M.G.L. c. 7B and in 810 CMR 2.02(1).

2.06 Project Proposal

- (1) After public notice and public hearing, if applicable, an Agency may submit a Project Proposal for action by the Board. Any such Project Proposal shall include sufficient information for the Board to determine whether the Proposed Project meets the standard for approval set forth in M.G.L. c. 7B and in 810 CMR 2.02(1).
- (2) The proposal shall include, at a minimum, the following:
 - (a) A detailed description of the Project including:
 1. the Asset involved and its current use;
 2. anticipated public benefits to be realized from the Project;
 3. anticipated publicly paid capital and operating costs, and the source of funds for such costs;
 4. estimated revenues, their sources and application;
 5. the anticipated market for the property procurement or disposition;
 6. private sector participation required for the Proposed Project and the feasibility of obtaining such participation;
 7. a schedule for implementation showing major milestones and completion dates; and
 8. performance measures to determine the success or failure of the Proposed Project.
 - (b) An inventory of the Agency's Assets, identifying those that are underutilized. The inventory must be current within one year of the submission, describe the method used to compile the inventory, and specify the measures employed to determine which Assets are underutilized. If the Proposed Project is limited to one or more specific institutions or facilities, the inventory may be limited to the Assets contained at such institutions or facilities.
 - (c) In the case of a Proposed Project involving real property, certification by the Commissioner that the Commissioner has received a copy of the inventory and that the Commissioner believes the inventory to be accurate and current. The Commissioner shall also certify that the Proposed Project does not conflict with the current and foreseeable needs of any Agency or, if there is a conflict with the needs of any Agency, shall identify the conflict and recommend whether the Board should approve the Project notwithstanding such conflicts.
 - (d) Certification by the secretary of the executive office within which the proposing Agency is located (or the Higher Education Coordinating Council for Agencies under its jurisdiction) that the office has reviewed and approved the Proposed Project.
 - (e) A copy of all comments received as a result of the public comment process and minutes of any hearing held pursuant to 810 CMR 2.05, and the Agency's response to such comments, including changes made in the Project Proposal, if any.
 - (f) In the case of a Proposed Project involving real property, an independent appraisal of the property, conducted within one year of the submission, for both the highest and best use and the Proposed Project use, if different, taking into consideration the terms of the proposed acquisition or disposition, and describing the methods and assumptions employed to make the appraisal.
 - (g) A description of the specific laws and regulations which conflict with the Proposed Project and the manner in which utilizing alternative procedures will ensure an open and competitive process for property procurement or disposition. This shall include, at minimum, provisions for: advertising the time and place at which the request for proposals may be obtained, the time and place for submission of proposals, and the nature and scope of the Project; providing all interested parties with information, sufficient to develop a responsive proposal; establishing and following an evaluation process which ensures fair treatment of all proposers; and providing all interested parties with the proposal evaluation criteria which will be utilized to judge proposals.
 - (h) A statement of the Agency's plan to provide ongoing information required to assist the Board in its monitoring responsibilities, as detailed in 810 CMR 2.08.
 - (i) Identification of the Agency responsible for Project implementation, the name and title of the official responsible within the Agency, and the qualifications of said official and other key personnel who will be assigned to insure successful implementation. If the Agency will require contracted services to assist in the implementation, the proposal shall include a description of the services to be procured.

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- (j) Copies of any reports, analyses, or studies employed in the development of the Project Proposal and a description of the methods used therein.
- (k) If the Project Proposal includes a request for authorization to establish a Trust Fund under 810 CMR 2.09, the request must include the following:
 - 1. the percentage of proceeds proposed to be deposited in the Trust Fund,
 - 2. the specific purpose for which the Trust Fund would be established,
 - 3. projected revenues and expenditures from the Trust Fund for the first five years,
 - 4. identification of the beneficiaries of the Trust Fund, and
 - 5. a recommendation by the Secretary of Administration and Finance recommending the establishment of such Trust Fund.
- (l) Identification of any private individual or entity involved in the preparation of the Project Proposal other than through the public comment process and disclosure of the nature and extent of such involvement.
- (m) Any other information deemed pertinent by the Agency or previously requested by the Board in the preliminary review.

(3) A complete submission by an Agency shall consist of ten copies of all documents required by 810 CMR 2.00 which shall be delivered to the Board in care of the Office of Real Estate Management, DCPO, 1 Ashburton Place, 15th Floor, Boston, MA 02108.

2.07: Project Approvals

- (1) Votes on a Project Proposal shall take one of the following forms:
 - (a) approval of the Project and establishment of alternative property procurement and disposition procedures;
 - (b) disapproval of the Project; or
 - (c) request that the Agency submit a modified Project Proposal.

The Board may condition approval of a Project on modifications specified by the Board.

(2) In voting to request that an Agency submit a modified Project Proposal, the Board shall determine whether the modification is of such significance so as to require the Agency to comply with the provisions of 810 CMR 2.05 regarding public notice and public hearings.

(3) All decisions of the Board under 810 CMR 2.07(6) hereof shall be published in the Central Register within 14 days of the Board's action. No binding agreements to implement the Project shall be executed prior to seven days after publication of such notice.

(4) The proposing Agency and its employees, agents and contractors shall be responsible for complying with all applicable property procurement and disposition laws and regulations not specifically identified in the Project Proposal and not specifically waived by the Board in approving the Project. Without limiting the generality of the foregoing sentence, for any Approved Project which includes a Contract or Contracts, any such Contract shall be awarded in conformity with all applicable property procurement and disposition laws and regulations not specifically waived by the Board. The Board may waive any property procurement or disposition laws or regulations applicable to any Approved Project retroactive to the date of approval of the Project by the Board, upon a written finding by the Board that such a retroactive waiver does not constitute a significant change to the Project as originally approved by the Board. The provisions of 810 CMR 2.04 and 810 CMR 2.05 shall not apply to any request for a retroactive waiver unless specifically otherwise determined by the Board.

(5) The Board shall establish in writing for each Approved Project for which any property procurement or disposition law or regulation has been waived, alternative property procurement or disposition procedures consistent with standards set forth in 810 CMR 2.00.

2.08: Project Monitoring Responsibilities

- (1) The Board shall monitor Approved Projects by conducting such activities as the Board deems appropriate, which activities shall include one or more of the following:
 - (a) periodic site visits;
 - (b) review of annual reports submitted by the Agency under 810 CMR 2.08(2) and annual independent audits submitted by the Agency if such audits were required by the Board ; and
 - (c) periodic review of the public purposes set forth in the Project Proposal and compliance with any terms and conditions of the Project approval.

- (2) Each Agency with an Approved Project shall file an annual report on the progress and performance of the Project for review by the Board. Said report shall be filed within 90 days of the end of each Fiscal year. Said report shall be signed by the individual identified pursuant to 810 CMR 2.06(2)(i) as responsible for Project implementation and shall include:
 - (a) a review of the planned and actual performance of the Project for each of the items included in the Project Proposal under the provisions of 810 CMR 2.06(2)(a);
 - (b) an explanation of any deviations between the planned and actual performance;
 - (c) identification of any modifications in the Project anticipated to be necessary and the reasons therefor; and
 - (d) identification of the parties to any contract awarded pursuant to the Project authorization, together with the value and term of the contract.

- (3) The Board shall review the annual reports and other materials submitted pursuant to 810 CMR 2.08. The Board shall also notify the Agency of any specific respects in which the report does not comply with requirements of this 810 CMR 2.08(2) and any specific approvals voted by the Board; and may require an Agency to submit additional information.

- (4) An Agency shall promptly report to the Board any change in the identification of the individual identified pursuant to 810 CMR 2.06(2)(i) as responsible for Project implementation.

- (5) All Agencies shall cooperate with the Board and its staff in its Project monitoring activities.

- (6) Any agreement executed to implement a Approved Project shall contain provisions granting the Board reasonable access to records and information necessary to adequately monitor the Project.

- (7) For any Approved Project which includes one or more Contracts, the proposing Agency shall be responsible for obtaining information from any private individual or entity necessary for the Board to fulfill its monitoring obligations under 810 CMR 2.08. The failure of the proposing Agency or of the Board to fulfill its monitoring obligations hereunder shall not affect the rights of any private party under any such Contract. Every Contract shall specify that the failure of any private individual or entity upon written request to provide the Board or Agency material information necessary to permit the Board to fulfill its monitoring obligations pursuant to 810 CMR 2.08 shall be deemed a material breach of the private individual or entity's obligations under the Contract and may constitute grounds for termination of the Contract by the Commonwealth.

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2.09: Trusts

(1) Following review of an Agency request under 810 CMR 2.06(2)(k), the Board may vote to authorize a Trust Fund to be established by the State Treasurer to receive not more than 50% of the proceeds accruing to an Agency from an Approved Project. The administrator in charge of the proposing Agency shall serve as the sole trustee of any such Trust Fund and shall utilize the Trust Fund for administration of the Approved Project and to otherwise advance the purposes of the Agency. All expenditures from the Trust Fund shall require the authorization of such administrator and the approval of the Secretary of Administration and Finance and shall conform to standard state accounting procedures and to such further requirements as may be prescribed from time to time by the comptroller. Each Agency which administers a Trust Fund hereunder shall report annually to the House and Senate Committees on Ways and Means, within 90 days after the end of each Fiscal Year, as to the amount of funds received in and expenditures made from any Trust Fund during the Fiscal Year.

2.10: Termination

(1) The Board may, with the affirmative vote of four members, terminate any Approved Project if it finds that the Project no longer serves the public purpose justifying its approval by the Board, or that approval was based on information which was substantially incorrect or materially misrepresented, provided that:

- (a) such termination takes place only after careful review of the Project objectives, the Project's contribution to the public purpose justifying its approval to the Board, and the potential consequences of termination; and
- (b) no such termination shall affect the rights of any private party to any Contract unless such termination is a result of the fraud, material misrepresentation or material breach of such private party.

(2) Nothing herein shall be construed to limit the right or responsibility of an Agency to cancel any Approved Project before Contracts have been executed, or to terminate any Contract for a Project under the terms of that Contract. Any Agency taking such action shall, within 30 days, notify the Board of such cancellation or termination and the reasons therefor. No right of recovery under contract or under any other theory of liability shall accrue to a private party arising out of a Proposed Project prior to the final approval of an Approved Project by the Board, pursuant to 810 CMR 2.07(1), or prior to the execution of a written Contract signed by the public official(s) with authority to bind the Commonwealth thereto.

(3) Board approval for any Approved Project shall automatically terminate upon the occurrence of either of the following events:

- (a) failure to commence implementation of an Approved Project as submitted under 810 CMR 2.06(2) within one year of the date of Board approval; or
- (b) interruption for a period of one year of implementation of an Approved Project which has timely commenced. The Board may vote to reinstate any Approved Project for which approval has automatically terminated pursuant to 810 CMR 2.10(3).

2.11: Record Keeping

(1) The Board shall maintain records on all Approved Projects. Such records shall include:

- (a) A register of all Projects
 1. submitted for preliminary review,
 2. submitted for approval, or
 3. approved.

Such register shall be updated and distributed to Board members prior to each Board meeting, shall be published in the Central Register periodically, but not less than once every year, and shall be made available for public inspection; and

- (b) copies of all minutes, correspondence, Project Proposals, reports, and backup materials.

(2) All public records of the Board shall be kept at the Office of Real Estate Management, DCPO, and may be inspected during normal working hours.

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2.12: Severability

(1) If any article, section, subsection, sentence, clause, or phrase, of 810 CMR 2.00 is for any reason held to be unconstitutional, contrary to statute, in excess of the authority of the Board, or otherwise invalid, the remainder of 810 CMR 2.00 shall continue in full force and effect and shall not be affected thereby.

REGULATORY AUTHORITY

810 CMR 2.00: St. 1990, c. 150, § 220; M.G.L. c. 7B.

NON-TEXT PAGE