MICHIGAN STATE
UNIVERSITY

APPROVED

APRIL 12, 2019

BOARD OF TRUSTEES
MICHIGAN STATE UNIVERSITY

April 12, 2019

MEMORANDUM

To: Committee on Budget and Finance

From: Daniel J. Bollman Daniel J Bollman
Vice President for Strategic Infrastructure Planning and Facilities

Subject: Replacement Policy 02-06-01 - Capital Project Planning and Approval

RECOMMENDATION

The Trustee Committee on Budget and Finance recommends that the Board of Trustees revise its policies for the acquisition, construction, renovation, and maintenance of the University's buildings, roads, and infrastructure by increasing the approval threshold from One Million Dollars to Five Million Dollars and permitting the Administration to revise the procedures for obtaining Board of Trustee approval to provide efficiency and cost savings.

RESOLUTION

BE IT RESOLVED, that the Board of Trustees of Michigan State University hereby renames Policy 02-06-01 (Construction and Other Real Property Improvements Project Planning and Approvals) "Capital Project Planning and Approval" and restates the Policy in its entirety as shown in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board of Trustees of Michigan State University hereby authorizes the Administration to make any necessary changes to the Campus Land Use Master Plan, University Ordinances, and University Policies to conform them to the Capital Project Planning and Approval Policy.

BACKGROUND

The Board of Trustees of Michigan State University ("Board") is responsible for the general control and supervision of all lands and facilities of Michigan State University ("MSU Property"). As a part of this responsibility, the Board undertakes the oversight and approval of new construction and other real property improvements and maintenance projects on MSU Property, pursuant to Policy 02-06-01 (Construction and Other Real Property Improvements

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Project Planning and Approvals). The current Policy requires Board approval for the following types of projects:

- Estimated costs exceeding One Million Dollars
- Causing a material change to the landscape
- Changing the height or footprint of any existing building

After careful consideration, the Board determined that it could more effectively fulfill its strategic planning and policy formation functions, in the context of MSU Property oversight, by taking a more active part in the early stages of construction and other physical improvement projects. As a practical matter, the Board can most effectively serve this role by focusing its time and effort on higher-cost projects.

Policy 02-06-01 was last revised in January of 2013, but the current threshold was established in 2006. Since that time, inflation and increases in labor and material costs have impacted the overall price of a project. In short, our dollars today do not buy what they did over 10 years ago. Further, our ability to deliver capital projects in a timelier manner by streamlining our processes will better support our mission by bringing on-line new construction, renovation, and infrastructure projects more quickly; be more responsive to projects with acute time sensitivity; redirect staff resources to higher functions; and close-out projects quicker with potential project savings available for earlier reinvestment. The current procedures require two approvals from the Board before beginning most projects, which can often add up to six months to the project timeline. Because the current threshold for taking projects to the Board for approval is One Million Dollars, many of these projects are relatively simple in nature, including replacement of elevators or roofs, utility distribution upgrades, or minor lab and office renovations. This is even more pronounced for footprint and landscape projects because all are currently required to go through the same two-step process, regardless of project cost.

In the past five fiscal years, the Board has approved more than One Billion Dollars in projects. This increases to nearly Two Billion Dollars if the FRIB civil construction is included. Sixty-five percent of these projects were under Five Million Dollars, but they only accounted for eleven percent of the total project value.

MSU's One Million Dollar threshold is the second-lowest in the Big Ten, behind only Wisconsin. Half of the institutions are at or above Four Million Dollars. Penn State is the only other institution required to return for contract award, but at a Ten Million Dollar threshold. As we are competing to attract and retain the best students and faculty and increase the University's competitiveness, it is critical that we are positioned to deliver capital projects in a timely and efficient fashion. The current two-step Board approval process makes this difficult.

The proposed policy changes include the following:

1. Increase the project threshold to Five Million Dollars.
2. Simplify the Board review of footprint and landscape changes so that approval is a one-step process and only required if the Zoning Administrator and the Campus Infrastructure Planning Work Group has determined that a proposed project would result in a material change to the landscape or would be inconsistent with the Campus Land Use Master Plan.
3. Eliminate Step 3 (Bid and Contract Award) for design-bid-build projects. We are using more collaborative methods for most projects, but there are some that still warrant competitive bidding, and the current policy effectively discourages the approach.
4. Clarify the scope of the Policy.
5. Remove language related to Project Labor Agreements which are prohibited by State law.
6. Align the policy with the design-assist process, which is a key element in faster and more reliable project delivery.

cc: Board of Trustees, S. Udpa, J. Youatt, K. Wilbur, N. Barr, M. Zeig, B. Quinn, V. Gore, M. Haas, J. Gaboury, B. Kranz, M. McCabe, J. Mumma, L. Gremel, C. Carter

CAPITAL PROJECT PLANNING AND APPROVAL 02-06-01

pproval Requirement: Prior approval of the Board of Trustees is required for the following:

1. planning and implementation of a Capital Project for which the estimated cost would exceed $5,000,000; and
2. the implementation of a Capital Project that the University Zoning Administrator and the Campus Infrastructure Planning Work Group (CIPWG) has determined would result in a material change to the landscape or would be inconsistent with the Campus Land Use Master Plan.

For purposes of this Policy, "Capital Project" means a project that requires a long-term substantial investment to acquire, plan, build, renovate, or maintain the University's land, buildings, roads, and other infrastructure. Such projects are typically coordinated through Infrastructure Planning and Facilities (IPF) and require substantial planning and design. Other types of projects that could also fall under this Policy include public private partnerships (P3) and leasehold improvements. This Policy is not intended to apply to projects whose approval is covered under other Board policies applicable to real property or the acquisition of capital assets such as furnishings and equipment.

Procedures. The Administration shall prepare written procedures for obtaining the required Board of Trustees approval. The written procedures will specify the types of approvals necessary for a particular project and whether more than one approval is required to proceed with the project. When preparing the written procedures, the Administration will take into account project factors that include:

1. the level of design and planning services,
2. costs to be incurred prior to budget development, and
3. ownership of project (owned, leased or P3).

Emergency Construction. If an emergency (such as damage or destruction resulting from fire, flood, or explosion) compels immediate action involving construction so that waiting to obtain Board of Trustees approval would jeopardize, for example, the safety, security, or viability of a building or increase the later cost of restoration or replacement, the Administration is authorized to undertake and continue to implement measures to secure the building and to remediate the damage or destruction arising from the emergency, and to approve work necessary in light of the circumstances, even though no Board approvals for that project have been obtained. In such a situation, the Vice President for Strategic Infrastructure Planning and Facilities (VPSIPF) shall follow the notification process described below.

Changes During Approved Construction. Approval of a Capital Project also authorizes the Administration to award contracts and incur other costs on the project that exceed the approved budget, but in total, do not exceed the approved project budget by more than ten percent. If during the performance of construction approved under this Policy an unforeseen exigent condition or occurrence is identified that requires immediate action, the Administration is authorized to undertake and continue to implement measures to resolve or remediate the unforeseen exigent circumstances and to approve work necessary in light of the circumstances, even though such action may result in total construction project expenses exceeding the approved budget by more than ten percent. In such a situation, the VPSIPF shall follow the notification process described below.

Notification Process. Upon the occurrence of an emergency requiring immediate construction planning and implementation or upon the discovery of an exigent circumstance that is likely to result in total construction project expenses exceeding the approved budget by more than ten percent, the VPSIPF will promptly notify the Executive Vice President for Administration (EVPA) who will inform the Chair of the Trustee Committee on Budget and Finance of the situation, provide information about the emergency or the exigent circumstances, identify the project costs (as known at the time), and identify the planned source of funding for the new or additional costs. The Trustee Committee on Budget and Finance will be apprised of the information previously provided to the Chair at its next scheduled meeting unless requested earlier. The VPSIPF will add to the file a written memorandum that will include the EVPA's approval of expenditures, the information discussed with the Chair of the Trustee Committee on Budget and Finance, and a description of the circumstances precipitating the costs. The Board shall receive a copy of the file memorandum. Once final costs are determined, a project budget for emergency construction, or an amended project budget, reflecting additional work on an approved project due to exigent circumstances will be presented to the Board for approval.

Enacted: 7/24/81
Amended: 9/13/02, 10/10/13, 4/13/06, 2/22/08, 1/25/13, 4/12/19

~~CONSTRUCTION AND OTHER REAL PROPERTY IMPROVEMENTS~~ CAPITAL PROJECT PLANNING AND APPROVAL 02-06-01

Approval Requirement: Prior approval of the Board of Trustees is required for the following: ~~planning and implementation of construction of a new building or other real property improvement or maintenance project:~~

1. ~~whose~~ planning and implementation of a Capital Project for which the estimated cost would exceed $~~1,000,000~~5,000,000; and
2. the implementation of a Capital Project that the University Zoning Administrator and the Campus Infrastructure Planning Work Group (CIPWG) has determined would result in a material change to the landscape or would be inconsistent with the Campus Land Use Master Plan.
3. ~~would change the height or footprint of an existing building other than a temporary building; or~~
4. ~~that would make a material long-term change to the landscape.~~

For purposes of this Policy, "Capital Project" means a project that requires a long-term substantial investment to acquire, plan, build, renovate or maintain the University's land, buildings, roads, and other infrastructure. Such projects are typically coordinated through Infrastructure Planning and Facilities (IPF) and require substantial planning and design. Other types of projects that could also fall under this Policy include public private partnerships (P3) and leasehold improvements. This Policy is not intended to apply to projects whose approval is covered under other Board policies applicable to real property or the acquisition of capital assets such as furnishings and equipment. ~~or the acquisition and implementation of capital assets that does not require significant planning or design.~~

Procedures. The A~~a~~dministration shall prepare written procedures for obtaining the ~~following~~ required Board of Trustees approval. The written procedures will specify the types of approvals necessary for a particular project and whether more than one approval is required to proceed with the project. When preparing the written procedures, the Administration will take into account project factors that include:

1. the level of design and planning services,
2. costs to be incurred prior to budget development, and
3. ownership of project (owned, leased or P3).

1. ~~Project planning approval, including authorization to obtain design and planning services, such as architecture or engineering, for more detailed planning~~
2. ~~Project implementation approval, including approval of a recommended project budget and schematic designs and authorization to submit documentation to the State of Michigan concerning the project and to award contracts (except for design-bid-build contracts) and incur other costs on the project that, in total, do not exceed the approved project budget by more than ten percent; and~~
3. ~~For design-bid-build projects, the award of the contract after the bid process.~~

~~**Project Labor Agreements.** A project labor agreement (PLA) is an agreement between a construction manager, design builder, or general contractor on a University construction project and the union(s) representing workers on that project.~~

1. ~~The University will not enter into a PLA for its construction projects, but, in certain circumstances, in order to obtain project. Specific benefits in cost savings, efficiency, timeliness, and quality, it may require a construction manager, design builder, or general contractor on a project, with its contractors and subcontractors on that project, to enter into a PLA in connection with that project, and may specify one or more of the terms that the PLA must contain, including the basis, if any, upon which a contractor or subcontractor on the project may be excused from entering into the PLA.~~
2. ~~The written procedures prepared by the administration for obtaining Board approval shall include a requirement that the Vice President for Finance and Treasurer (VPFT) report to the Board on the utility of requiring that the successful construction manager, design builder, or general contractor on the project agree to enter into a PLA in connection with the project. If a construction manager or~~

~~design builder will be used for the project, the VPFT will make the report when obtaining project planning approval from the Board. If a general contractor will be used for the project, the VPFT will make the report when obtaining project implementation approval from the Board. In the event that the VPFT chooses to require that a PLA be used in connection with the project, the VPFT will explain to the Board, by reference to one or more project specific factors like those following, why that requirements advantageous to the University:~~

a. ~~Cost savings (e.g., from reduced costs for extra shifts or shifts starting at atypical hours, as on work near classrooms, laboratories, or offices that must be kept open during the day);~~
b. ~~Reduced risk of delay in completion of a time-sensitive project (such as work on residence halls that must be finished by the start of school in the Fall or athletic projects that must be completed before a season begins);~~
c. ~~Enhanced access to skilled trades whose work is needed to complete a project (taking into consideration other major construction projects in the area); or~~
d. ~~Improved efficiency in project management on large, complex, multi-year projects.~~

Emergency Construction. If an emergency~~,~~ (such as damage or destruction resulting from fire, flood, or explosion)~~,~~ compels immediate action involving construction~~,~~ so that waiting to obtain Board of Trustees approval would jeopardize, for example, the safety, security, or viability of a building or increase the later cost of restoration or replacement, the ~~a~~Administration is authorized to undertake and continue to implement measures to secure the building and to remediate the damage or destruction arising from the emergency, and to approve work necessary in light of the circumstances, even though no Board approvals for that project have been obtained. In such a situation, the ~~VPFT~~ Vice President for Strategic Infrastructure Planning and Facilities (VPSIPF) shall follow the notification process described below.

Changes During Approved Construction. Approval of a Capital Project also authorizes the Administration to award contracts and incur other costs on the project that exceed the approved budget, but in total, do not exceed the approved project budget by more than ten percent. If during the performance of construction approved under this Policy an unforeseen exigent condition or occurrence is identified that requires immediate action, the ~~a~~Administration is authorized to undertake and continue to implement measures to resolve or remediate the unforeseen exigent circumstances and to approve work necessary in light of the circumstances, even though such action may result in total construction project expenses exceeding the approved budget by more than ten percent. In such a situation, the ~~VPFT~~ VPSIPF shall follow the notification process described below.

Notification Process. Upon the occurrence of an emergency requiring immediate construction planning and implementation or upon the discovery of an exigent circumstance that is likely to result in total construction project expenses exceeding the approved budget by more than ten percent, the ~~VPFT~~ VPSIPF will promptly notify the Executive Vice President for Administration (EVPA) who will inform the Chair of the Trustee ~~Finance~~ Committee on Budget and Finance of the situation, provide information about the emergency or the exigent circumstances, identify the project costs (as known at the time), and identify the planned source of funding for the new or additional costs. ~~Unless the Finance Committee Chair requests earlier notification, at its next scheduled meeting the VPFT will give t~~The Trustee Committee on Budget and Finance ~~Committee~~ will be apprised~~an update~~ of the information previously provided to the Chair at its next scheduled meeting unless requested earlier. The ~~VPFT~~ VPSIPF will add to the file a written memorandum that will include ~~his/her~~the EVPA's approval of expenditures, the information discussed with the Chair of the Trustee Committee on Budget and Finance, ~~Committee Chair~~ and a description of the circumstances precipitating the costs. The Board shall receive a copy of the file memorandum. Once final costs are determined, a project budget~~,~~ for emergency construction, or an amended project budget, reflecting additional work on an approved project due to exigent circumstances will be presented to the ~~Finance Committee and the~~ Board for approval.

Enacted: 7/24/81
Amended: 9/13/02, 10/10/13, 4/13/06, 2/22/08, 1/25/13, 4/12/19

~~Subsequent to the adoption of Board Policy 02-06-01, Michigan's Fair and Open Competition in Governmental Construction Act became law. The Act prohibits governmental units like the University from requiring or prohibiting project labor agreements on their construction projects. The United States Court of Appeals upheld the Act in Michigan Building & Construction Trades Council, et al v. Snyder, 729 F.3d 572 (6th Cir. 2013).~~

Current MSU Board Policy as Reflected Here: https://trustees.msu.edu/policies/index.html

CONSTRUCTION AND OTHER REAL PROPERTY IMPROVEMENTS PROJECT PLANNING AND APPROVAL **02-06-01**

Approval Requirement: Prior approval of the Board of Trustees is required for the planning and implementation of construction of a new building or other real property improvement or maintenance project:

1. whose estimated cost would exceed $1,000,000;
2. that would change the height or footprint of an existing building other than a temporary building; or
3. that would make a material long-term change to the landscape.

Procedures. The administration shall prepare written procedures for obtaining the following required Board of Trustees actions:

1. Project planning approval, including authorization to obtain design and planning services, such as architecture or engineering, for more detailed planning
2. Project implementation approval, including approval of a recommended project budget and schematic designs and authorization to submit documentation to the State of Michigan concerning the project and to award contracts (except for design-bid-build contracts) and incur other costs on the project that, in total, do not exceed the approved project budget by more than ten percent; and
3. For design-bid-build projects, the award of the contract after the bid process.

Project Labor Agreements. A project labor agreement (PLA) is an agreement between a construction manager, design builder, or general contractor on a University construction project and the union(s) representing workers on that project.

1. The University will not enter into a PLA for its construction projects, but, in certain circumstances, in order to obtain project. Specific benefits in cost savings, efficiency, timeliness, and quality, it may require a construction manager, design builder, or general contractor on a project, with its contractors and subcontractors on that project, to enter into a PLA in connection with that project, and may specify one or more of the terms that the PLA must contain, including the basis, if any, upon which a contractor or subcontractor on the project may be excused from entering into the PLA.
2. The written procedures prepared by the administration for obtaining Board approval shall include a requirement that the Vice President for Finance and Treasurer (VPFT) report to the Board on the utility of requiring that the successful construction manager, design builder, or general contractor on the project agree to enter into a

PLA in connection with the project. If a construction manager or design builder will be used for the project, the VPFT will make the report when obtaining project planning approval from the Board. If a general contractor will be used for the project, the VPFT will make the report when obtaining project implementation approval from the Board. In the event that the VPFT chooses to require that a PLA be used in connection with the project, the VPFT will explain to the Board, by reference to one or more project specific factors like those following, why that requirements advantageous to the University:

a. Cost savings (e.g., from reduced costs for extra shifts or shifts starting at atypical hours, as on work near classrooms, laboratories, or offices that must be kept open during the day);

b. Reduced risk of delay in completion of a time-sensitive project (such as work on residence halls that must be finished by the start of school in the Fall or athletic projects that must be completed before a season begins);

c. Enhanced access to skilled trades whose work is needed to complete a project (taking into consideration other major construction projects in the area); or

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Notification Process. Upon the occurrence of an emergency requiring immediate construction planning and implementation or upon the discovery of an exigent circumstance that is likely to result in total construction project expenses exceeding the approved budget by more than ten percent, the VPFT will promptly notify the Chair of the Trustee Finance Committee of the situation, provide information about the emergency or the exigent circumstances, identify the project costs (as known at the time), and identify the planned source of funding for the new or additional costs. Unless the Finance Committee Chair requests earlier notification, at its next

RESCINDED

scheduled meeting the VPFT will give the Finance Committee an update of the information previously provided to the Chair. The VPFT will add to the file a written memorandum that will include his/her approval of expenditures, the information discussed with the Finance Committee Chair and a description of the circumstances precipitating the costs. The Board shall receive a copy of the file memorandum. Once final costs are determined, a project budget, for emergency construction, or an amended project budget, reflecting additional work on an approved project due to exigent circumstances will be presented to the Finance Committee and the Board for approval.

Enacted: 7/24/81
Amended: 9/13/02, 10/10/13, 4/13/06, 2/22/08, 1/25/13

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