

**45A.077 Public-private partnership delivery method of awarding state contracts for capital construction projects.**

- (1) A public-private partnership delivery method may be utilized as provided in this section and administrative regulations promulgated thereunder. State contracts using this method shall be awarded by competitive negotiation.
- (2) A contracting body utilizing a public-private partnership shall continue to be responsible for oversight of any function that is delegated to or otherwise performed by a private partner.
- (3) On or before December 31, 2016, the secretary of the Finance and Administration Cabinet shall promulgate administrative regulations setting forth criteria to be used in determining when a public-private partnership is to be used for a particular project. The administrative regulations shall reflect the intent of the General Assembly to promote and encourage the use of public-private partnerships in the Commonwealth. The secretary shall consult with design-builders, construction managers, contractors, design professionals including engineers and architects, and other appropriate professionals during the development of these administrative regulations.
- (4) A request for proposal for a project utilizing a public-private partnership shall include at a minimum:
  - (a) The parameters of the proposed public-private partnership agreement;
  - (b) The duties and responsibilities to be performed by the private partner or partners;
  - (c) The methods of oversight to be employed by the contracting body;
  - (d) The duties and responsibilities that are to be performed by the contracting body and any other partners to the contract;
  - (e) The evaluation factors and the relative weight of each to be used in the scoring of awards;
  - (f) Plans for financing and operating the qualifying project and the revenues, service payments, bond financings, and appropriations of public funds needed for the qualifying project;
  - (g) Comprehensive documentation of the experience, capabilities, capitalization and financial condition, and other relevant qualifications of the private entity;
  - (h) The ability of a private partner or partners to quickly respond to the needs presented in the request for proposal, and the importance of economic development opportunities represented by the qualifying project. In evaluating proposals, preference shall be given to a plan that includes the involvement of small businesses as subcontractors, to the extent that small businesses can provide services in a competitive manner, unless any preference interferes with the qualification for federal or other funds; and
  - (i) Other information required by the contracting body or the cabinet to evaluate the proposals submitted by respondents and the overall proposed public-private partnership.
- (5) A private entity desiring to be a private partner shall demonstrate to the

satisfaction of the contracting body or the cabinet that it is capable of performing any duty, responsibility, or function it may be authorized or directed to perform as part of the public-private partnership agreement.

- (6) When a request for proposal for a project utilizing a public-private partnership is issued for a capital project, the contracting body shall transmit a copy of the request for proposal to the Capital Projects and Bond Oversight Committee staff, clearly identifying to the staff that a public-private partnership is being utilized.
- (7) A request for proposal or other solicitation may be canceled, or all proposals may be rejected, if it is determined in writing that the action is taken in the best interest of the Commonwealth and approved by the purchasing officer.
- (8) In the case of any public-private partnership for a capital project with an aggregate value of twenty-five million dollars (\$25,000,000) or more, the project shall be authorized by the General Assembly, by inclusion in the branch budget bill or by any other means, explicitly identifying and authorizing the utilization of a public-private partnership delivery method for the applicable capital project. The authorization of a capital project required by this subsection is in addition to any other statutorily required authorization for a capital project.
- (9) Upon issuance of a public-private partnership agreement, the contracting body shall submit the contract to the Government Contract Review Committee for review in accordance with KRS 45A.690 to 45A.725. The contracting body shall ensure that the contract clearly identifies to the committee that a public-private partnership is being utilized. Upon disapproval of or objection to the contract by the committee, the secretary of the Finance and Administration Cabinet in consultation with the contracting body shall determine whether the contract shall be revised to comply with the objections of the committee, be canceled, or remain in effect pursuant to KRS 45A.705(6).
- (10) Any corporation as described by KRS 45.750(2)(c), or as created under the Kentucky Revised Statutes as a governmental agency and instrumentality of the Commonwealth, that manages its capital construction program shall:
  - (a) Adhere to the administrative regulations promulgated under this section when utilizing a public-private partnership for financing capital projects;
  - (b) Report to legislative committees as specified in this section; and
  - (c) Submit public-private partnership agreements issued by it to the General Assembly for authorization as provided in subsection (8) of this section.
- (11) (a) The governing body of a postsecondary institution that manages its capital construction program under KRS 164A.580 shall:
  1. Report to the Capital Projects and Bond Oversight Committee staff as specified in this section; and
  2. Not be required to comply with the provisions of subsection (9) of this section.
  - (b) Any provision of a public-private partnership agreement issued by a postsecondary institution which provides for a lease by or to the postsecondary institution shall be valid and enforceable if approved by the governing board of the institution.
- (12) (a) A person or business may submit an unsolicited proposal to a

governmental body, which may receive the unsolicited proposal.

- (b) Within ninety (90) days of receiving an unsolicited proposal, a governmental body may elect to consider further action on the proposal, at which point the governmental body shall provide public notice of the proposal, and shall:
  - 1. Provide specific information regarding the proposed nature, timing, and scope of the unsolicited proposal, except that trade secrets, financial records, or other records of the person or business making the proposal shall not be posted unless otherwise agreed to by the governmental body and the person or business; and
  - 2. Provide for a notice period for the submission of competing proposals as follows:
    - a. Unsolicited proposals valued below five million dollars (\$5,000,000) shall be posted for thirty (30) days;
    - b. Unsolicited proposals valued between five million dollars (\$5,000,000) and twenty-five million dollars (\$25,000,000) shall be posted for sixty (60) days; and
    - c. Unsolicited proposals valued over twenty-five million dollars (\$25,000,000) shall be posted for ninety (90) days.
- (c) Upon the end of the notice period provided under paragraph (b)2. of this subsection, the governmental body may consider the unsolicited proposal and any competing proposals received. If the governmental body determines it is in the best interest of the Commonwealth to implement some or all of the concepts contained within the unsolicited proposal or competing proposals received by it, the governmental body may begin an open, competitive procurement process to do so pursuant to this chapter.
- (d) An unsolicited proposal shall be deemed rejected if no written response is received from the governmental body within ninety (90) days of submission, during which time the governmental body has not taken any action on the proposal under paragraph (b) of this subsection.

**Effective:** March 27, 2017

**History:** Amended 2017 Ky. Acts ch. 132, sec. 5, effective March 27, 2017. -- Created 2016 Ky. Acts ch. 67, sec. 3, effective April 8, 2016.

**Legislative Research Commission Note** (4/8/2016). 2016 Ky. Acts ch. 67, sec. 16 provided that the amendments made to KRS 45A.030 and 45A.075 and the creation of this statute in that Act shall apply only to a project for which the procurement process is initiated on or after the effective date of that Act, which was April 8, 2016, either through the initial invitation for bids, request for proposals, or otherwise.