

**45A.551 Procedures for state agency privatization contracts.**

- (1) Upon approval of the Finance and Administration Cabinet, a state agency may enter into a privatization contract.
- (2) Before a state agency recommends to the Finance and Administration Cabinet that it enter into a privatization contract, the state agency shall determine and set forth in writing:
  - (a) The necessity for the service and the intended goals of the service;
  - (b) Problems and inefficiencies existing with the current governmental operation of the service; and
  - (c) Whether the service can efficiently be provided by the agency.
- (3) If the state agency determines that the service cannot efficiently be provided by the agency, the state agency shall be permitted to continue the normal contracting process for the service. However, if the state agency determines that the service can efficiently be provided by the agency and the state agency chooses to proceed with privatization, it shall set forth in writing to the Finance and Administration Cabinet:
  - (a) The tangible benefits of privatizing the service;
  - (b) Any state or federal legal restraints that may limit or prevent privatization of the government service;
  - (c) The availability of multiple qualified and competitive private vendors;
  - (d)
    1. A cost-benefit analysis comparison that shall include, but not be limited to, collection and analysis of the total assessable fixed and variable, direct and indirect, costs of:
      - a. The current governmental operation; and
      - b. The private vendor contract.
    2. The costs shall include, but not be limited to:
      - a. Facility and equipment maintenance;
      - b. Inflation-adjusted costs, where comparison to past years is being conducted;
      - c. Transition costs associated with shifting the service delivery from the government agency to a private vendor;
      - d. Costs of monitoring, evaluating, and enforcing the contract;
      - e. Personnel costs such as those providing for benefits, early retirements, retraining, and relocation in another position; and
      - f. A plan for resuming government operation of the service if the privatization effort fails.
  - (e) A plan of assistance for all state employees who will be adversely affected by privatizing the service. The plan shall include at least:
    1. Efforts to place affected employees in vacant positions in another state agency and to retrain employees for another position in state government;

2. Provisions in the contract, if feasible, for the hiring by the contractor of displaced employees at wages and benefits comparable to the wages and benefits paid to the state employees, subject to the provisions of KRS 11A.130; and
  3. Prior notification to affected state employees the day the contract is signed, or three (3) months before the day the adverse effect will occur, whichever is earlier.
- (f) A process for monitoring, evaluating, and enforcing a contract with a private vendor which shall include, but not be limited to:
1. Development of a method for ongoing, comprehensive performance evaluation of the private vendor; and
  2. Establishment of performance criteria and standards to evaluate the private vendor.
- (4) All information required by subsections (2) and (3) of this section shall be submitted to the Finance and Administration Cabinet for its review and approval prior to proceeding with the contracting provisions of KRS Chapter 45A.
- (5) The state agency shall retain responsibility for ensuring the quality and reliability of the services.
- (6) All records in the possession of a state agency in conjunction with the approval, evaluation, or enforcement of a privatization contract unless exempt under another statute shall be public records, access to which shall be governed by KRS 61.870 to 61.884.
- (7) Any other statute to the contrary notwithstanding, all records prepared, owned, used, in the possession of, or retained by a state agency in conjunction with the approval, evaluation, or enforcement of a privatization contract shall be public records, access to which shall be governed by KRS 61.870 to 61.884.

**Effective:** July 15, 1998

**History:** Created 1998 Ky. Acts ch. 492, sec. 2, effective July 15, 1998.