

202 KAR 10:010. Unsolicited proposals.

RELATES TO: KRS Chapter 45A, 175B.005, 175B.010, 175B.015(12)(d), 175B.020(5)-(9), 175B.030, 175B.035, 175B.037, 175B.040, 175B.095

STATUTORY AUTHORITY: KRS 175B.015(12)(d), 175B.020(5)-(9)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.015(12)(d) authorizes the state authority to promulgate administrative regulations to fulfill any requirements of KRS Chapter 175B. KRS 175B.020(5) authorizes the state authority to receive unsolicited proposals if certain criteria are met. This administrative regulation establishes the process by which the state authority may receive, evaluate, approve, and reject unsolicited proposals.

Section 1. Definitions. (1) "Best interest of the commonwealth" means the unsolicited proposal meets goals of the state authority and the cabinet on safety, economic growth, enhancing the state transportation system, and technical and economic feasibility.

(2) "Cabinet" is defined by KRS 175B.010(3).

(3) "Project" is defined by KRS 175B.010(11).

(4) "Public-private partnership" is defined by KRS 175B.010(14).

(5) "State authority" is defined by KRS 175B.010(16).

(6) "Unsolicited proposal" means a proposal submitted pursuant to KRS 175B.020(5) to (9).

(7) "Unsolicited proposer" means a person, business, or entity submitting an unsolicited proposal.

Section 2. Submission of Unsolicited Proposals. (1) To submit an unsolicited proposal, an unsolicited proposer shall file with the state authority three (3) hard copies in a sealed envelope marked "unsolicited proposal" and one (1) electronic copy to kyptia@ky.gov.

(2) The following information shall be included in the unsolicited proposal:

(a) The information required by KRS 175B.020(5);

(b) A cover letter for the executive summary with the following specifications:

1. The cover letter of the executive summary shall be marked "Executive Summary of Unsolicited Proposal for KPTIA" in twelve (12) point type;

2. The cover letter shall notify the state authority if exempt information is contained in the unsolicited proposal; and

3. If the unsolicited proposal contains a trade secret, a financial record, or other information that is exempt from public disclosure pursuant to KRS 61.878, the unsolicited proposer submitting the unsolicited proposal shall:

a. Mark all portions of the proposal that contain exempt information as "confidential" or "proprietary";

b. Submit a second copy of the unsolicited proposal from which the trade secret, financial record, or other information that is exempt from public disclosure pursuant to KRS 61.878 have been redacted; and

c. Indicate in the title of the electronically filed unsolicited proposal which version is a complete version and which version is the redacted version;

(c) A brief description and justification of the proposed project or concept;

(d) Details for the proposed project or concept regarding:

1. The revenue source;

2. The amount of revenue expected to be generated; and

3. The project costs;

(e) Information supporting the unsolicited proposer's position that the unsolicited proposal is in the best interest of the commonwealth; and

(f) Contact information for the unsolicited proposer, including name, address, telephone number, and e-mail address.

(3) The hard copies of the unsolicited proposal shall be sent via certified mail with return receipt requested or hand delivered to the head of the state authority.

Section 3. Unsolicited Proposal Fees. (1) In accordance with KRS 175B.020(5)(c) and (8), an unsolicited proposer shall pay all costs incurred by the state authority and the cabinet for evaluating the unsolicited proposal, including any legal and investigative costs, and the costs of other necessary outside professionals and consultants.

(2)(a) As an initial payment for these costs, the applicant shall submit, along with the executive summary, a cashier's check or certified check payable to the state authority in the amount of \$400 for the initial filing fee.

(b) The initial filing fee shall be nonrefundable.

Section 4. Initial Decision by State Authority. After reviewing an unsolicited proposal, the state authority shall make a determination if continuing to review and evaluate the unsolicited proposal is in the best interest of the commonwealth and based on that decision shall:

(1) Approve the unsolicited proposal for further review; or

(2) Reject the unsolicited proposal.

Section 5. Notification to Unsolicited Proposer. After the state authority has made the determination to reject or approve the unsolicited proposal for further review, the state authority shall send a letter to the unsolicited proposer with the state authority's determination.

Section 6. Agreement between the State Authority and Unsolicited Proposer. (1) If the state authority determines it is in the best interest of the commonwealth to continue reviewing and evaluating the concept set forth in the unsolicited proposal, the state authority and the unsolicited proposer shall negotiate the terms of the next phase of the review.

(2) If an agreement is reached between the state authority and the unsolicited proposer on the terms of the next phase, the agreement shall be memorialized and shall contain:

(a) A commitment by the unsolicited proposer to pay in full the costs to be incurred by the state authority and the cabinet in connection with the review and evaluation of the unsolicited proposal;

(b) An estimate of the amount of costs to be incurred in the review and evaluation process;

(c) The payment schedule for the costs;

(d) The agreement by the unsolicited proposer that the costs are nonrefundable even if the unsolicited proposal is rejected;

(e) Provisions for the state authority or the cabinet to pay an agreed amount in exchange for the use of any design, idea, or intellectual property contained in the proposal; and

(f) Other agreed to terms and conditions that may facilitate the evaluation and review process.

Section 7. Additional Information. The state authority and the cabinet may request additional information from an unsolicited proposer, ask for clarification of information, or ask questions, if the additional information may assist the state authority and the cabinet in deciding to approve or reject the unsolicited proposal.

Section 8. Competitive Procurement Process. If a determination has been made by the state authority and the cabinet that the unsolicited proposal is in the best interest of the common-

wealth, the state authority, with the assistance of the cabinet, shall begin the competitive procurement process to implement some or all of the concepts contained in the unsolicited proposal. The procurement process established in 603 KAR Chapter 2 shall be utilized.

Section 9. Professional Assistance. The state authority and the cabinet shall retain any professional services necessary to enable an adequate review and evaluation of the unsolicited proposal, if the expertise to perform a review or evaluation within the state authority or the cabinet is inadequate or unavailable. Any procurement shall follow the processes established in KRS Chapter 45A.

Section 10. Public Inspection. Except for each portion of an unsolicited proposal that contains a trade secret, financial record, or other information that is exempt from public disclosure pursuant to KRS 61.878, each unsolicited proposal shall be available for public inspection after the latest of:

- (1) The date of the written notification sent by the state authority that the state authority has rejected the unsolicited proposal;
- (2) Sixty (60) days after the end of the notice period provided under KRS Chapter 175B; or
- (3) The date a contract has been awarded, if the state authority elects to undertake an open, competitive procurement process pursuant to KRS Chapter 175B. (43 Ky.R. 844, 1199; eff. 3-31-2017.)