202 KAR 10:020. Public-private partnerships.

RELATES TO: KRS 45A.085, 154.1-750, 175B.005, 175B.010, 175B.020, 175B.030, 175B.035, 175B.037, 175B.040, 175B.095, 49 C.F.R. Part 26

STATUTORY AUTHORITY: KRS 175B.015(12)(d), 175B.020(1)(c)

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(1)(c) authorizes the state authority to request the establishment of a public-private partnership as well as bi-state authorities and project authorities. This administrative regulation establishes the criteria by which the state authority shall determine if the public-private partnership procurement method is appropriate for a project.

Section 1. Definitions.

(1) "Cabinet" is defined by KRS 175B.010(3).
(2) "Private partner" is defined by KRS 175B.010(10).
(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).

Section 2. Use of a Public-Private Partnership.

(1) A public-private partnership may be used for construction or financing of a project or the procurement of services if the head of the state authority issues a written determination that due to the nature or circumstances of the project or services, a public-private partnership is the most advantageous method of awarding and administering a project.

(2) In determining if the use of a public-private partnership is the most advantageous method of awarding and administering a project, the head of the state authority, or a person authorized in writing as his or her designee, shall undertake an analysis of the proposed project using the criteria established in paragraphs (a) and (b) of this subsection.

(a) Qualitative considerations shall include:

1. The ability of the state authority to allocate and control risks, cost sharing, responsibilities, and rewards between the state authority and a private partner in a way that ultimately benefits the state authority, the cabinet, and the commonwealth;
2. The timeliness of completion, efficiency of delivery, and cost effectiveness of a project via a public-private partnership as compared with other project delivery methods;
3. A determination that the tangible and intangible benefits to be gained by using a public-private partnership equals or exceeds the cost of developing and maintaining a public-private partnership;
4. The ability and expertise of the state authority to measure and monitor performance and operational controls;
5. The ability of the state authority to capture and use incentives, efficiencies, and expertise derived from the involvement of a private partner;
6. If the project or other services are likely to be developed or entered into in the absence of private sector involvement;
7. If a means of financing or innovative approach is likely to be available that is not otherwise available with other project delivery methods;
8. If the project or other service promotes and encourages the use of local labor and resources, as well as disadvantaged, minority, or small business enterprises, consistent with 49 C.F.R. Part 26, KRS 154.1-750, 600 KAR 4:010, and other applicable law, including requiring a private partner who has been awarded a project

for a public-private partnership to establish a local office within the Commonwealth of Kentucky;

9. If the public interest is best served through the use of a public-private partnership;

10. The impact of the development structure and financing plan on the long term level of project toll rates and the use of any excess toll revenue;

11. The urgency of need for the project or service by the state authority;

12. The allocation of risks and contingencies between the state authority and the private partner;

13. If a public-private partnership is likely to impact the ability to achieve investment grade credit ratings and successfully raise construction funding;

14. An analysis of the impact on procuring financing; and

15. If similar public-private partnership projects have been undertaken successfully.

(b) Quantitative criteria shall include:

1. Net present value of the cost of the project over its entire useful life, including if applicable:

a. Financing, design, and construction costs;

b. Operation and management costs;

c. If the state authority is required to make payments to the private partner or receive payments from the private partner; and

d. Maintenance costs;

2. Operating cash flows expected to provide a return on investment to a private partner;

3. A detailed breakdown of all cash flow on all payments and expenditures, including interest cost associated with utilizing a public-private partnership; and

4. The anticipated value of the project deliverables at the end of the term of the agreement if any.

Section 3. Other Considerations. The state authority may ascribe relative weight to the criteria established in Section 2 of this administrative regulation, based on the size and nature of the project as well as the previous experience of the state authority, if any, in using public-private partnerships under similar circumstances.

(43 Ky.R. 847, 1553; eff. 3-31-2017; Cert eff. 3-22-2024.)