

603 KAR 2:020. Public-private partnerships.

RELATES TO: KRS 45A.070, 45A.077, 45A.085, 45A.494, 175B.005, 175B.010, 175B.020, 175B.030, 175B.035, 175B.037, 176.080, 176.140

STATUTORY AUTHORITY: KRS 175B.037(7)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 175B.037(7) requires the Transportation Cabinet to promulgate administrative regulations establishing the procurement and proposal review processes for a public-private partnership related to a project undertaken by the state authority. This administrative regulation establishes the requirements for a private business or entity to submit a proposal to the Transportation Cabinet and the review processes for the proposal.

Section 1. Definitions.

- (1) "Best value" is defined by KRS 45A.070.
- (2) "Cabinet" is defined by KRS 175B.010(3).
- (3) "Director" means the director of the Division of Construction Procurement.
- (4) "Evaluation committee" means a committee designated by the secretary of the Transportation Cabinet to review and evaluate proposals.
- (5) "Financial plan" means a plan submitted to, or proposed by, the state authority pursuant to KRS 175B.030 or KRS 175B.035.
- (6) "Project" is defined by KRS 175B.010(11).
- (7) "Public-private partnership" is defined by KRS 175B.010(14).
- (8) "Request for proposals" is defined by KRS 45A.070(5).
- (9) "State authority" is defined by KRS 175B.010(16).

Section 2. Procurement Process.

- (1) If a public-private partnership is included in an approved or recommended financial plan, and the project is contained in the Enacted Biennial Highway Plan and the State Transportation Improvement Program, the cabinet, the state authority, and another state if involved in the project shall undertake a competitive, best value procurement to obtain a private partner.
- (2) A request for proposals shall be issued by the cabinet pursuant to KRS 45A.085.
- (3) A proposal submitted in response to the cabinet's request for proposals shall include:
 - (a) The name, address, telephone number, and electronic mail address of the contact person for the proposing entity;
 - (b) A demonstration of financial responsibility for the proposing entity or, if the proposing entity is made up of more than one (1) legal entity, a demonstration of financial responsibility for each member of the proposing team;
 - (c) A copy of a current insurance policy indicating all coverage including Kentucky workers' compensation for the type of work described in the request for proposals;
 - (d) Information indicating work on similar projects and resumes of principal officers and key personnel; and
 - (e) Evidence by the response due date that the proposing entity, or that each member of the proposing team, is registered as a business and in good standing with the Kentucky Secretary of State, and is prequalified with the cabinet pursuant to KRS 176.140.
- (4) A bond or check shall accompany each bid pursuant to KRS 176.080(1) and (3).
- (5) A proposal shall be forwarded to the Kentucky Transportation Cabinet, Division of Construction Procurement. A proposal shall be addressed to the attention of the director.
- (6) A proposal received outside of the time designated in the request for proposal shall be rejected.

Section 3. Proposal Review.

- (1) The secretary of the cabinet shall designate a committee of engineers and cabinet professionals to review and evaluate proposals based on a qualification basis selection, on specifications that are unique to the proposal, or on a combination of both.
 - (2) The director and the evaluation committee may conduct meetings or accept written questions from a potential proposing entity to ask for clarification.
 - (3) A written confirmation of the questions from the proposing entity and the answers of the director and evaluation committee shall become an official addendum to the request for proposals and shall be provided to potential proposing entities.
 - (4) Written proposals received in response to a request for proposal shall be kept secure and unopened until the date and hour established for opening proposals. If a proposal is not clearly marked, it shall be deemed nonresponsive.
 - (5) At the close of the proposal submission deadline, a proposal received by the director shall be examined for general conformity with the terms of the procurement.
 - (6) If acceptable proposals are not submitted:
 - (a) New proposals may be requested based on the same or revised terms; or
 - (b) The procurement may be canceled.
 - (7)
 - (a) If, after a request for proposals to enter into competitive negotiations, only one (1) proposal responsive to the request for proposal solicitation is received, the director may commence negotiations with the single offeror and a contract entered into with that offeror shall be valid.
 - (b) The terms and conditions of the contract with a single offeror shall not deviate from the terms and conditions established in the request for proposals.
 - (c) Subject to the requirements and conditions of the request for proposal, if a non-selected submitted response to a request for proposal is retained by the cabinet, a stipend shall be paid to an unsuccessful bidder. The amount of the stipend shall be based upon:
 1. Project complexity;
 2. Estimated proposal costs; and
 3. The anticipated degree of competition.
 - (8) The pricing information and financing terms and conditions shall be kept separate and secure until they are combined with the evaluation committee aggregate qualitative scoring to achieve the final score for the procurement process as established in the request for proposals.
 - (9) A contract shall be awarded to the highest scoring entity submitting a responsive proposal based upon the pricing and qualitative evaluation factors established in the request for proposals.
 - (10)
 - (a) Discussions with proposing entities by a member of the evaluation committee regarding the procurement shall be prohibited except during the selection committee interview process. The evaluation committee may meet with proposers to discuss the technical aspects of the project in greater detail prior to submission by the proposers.
 - (b) If an ex parte communication occurs, the proposing entity shall be disqualified if the ex parte communication creates an unfair advantage or an appearance of impropriety.
 - (c) Each ex parte communication shall be documented with a written summary that shall become part of the procurement file. The documentation shall include the date and general substance of the communication.
- (43 Ky.R. 856, 1418, 1561; eff. 3-31-2017; Cert eff. 3-22-2024.)