

1 AN ACT relating to public-private partnership projects.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 45A.077 is amended to read as follows:

- 4 (1) A public-private partnership delivery method may be utilized as provided in this
5 section and administrative regulations promulgated thereunder. State contracts
6 using this method shall be awarded by competitive negotiation.
- 7 (2) A contracting body utilizing a public-private partnership shall continue to be
8 responsible for oversight of any function that is delegated to or otherwise performed
9 by a private partner.
- 10 (3) On or before December 31, 2016, the secretary of the Finance and Administration
11 Cabinet shall promulgate administrative regulations setting forth criteria to be used
12 in determining when a public-private partnership is to be used for a particular
13 project. The administrative regulations shall reflect the intent of the General
14 Assembly to promote and encourage the use of public-private partnerships in the
15 Commonwealth. The secretary shall consult with design-builders, construction
16 managers, contractors, design professionals including engineers and architects, and
17 other appropriate professionals during the development of these administrative
18 regulations.
- 19 (4) A request for proposal for a project utilizing a public-private partnership shall
20 include at a minimum:
- 21 (a) The parameters of the proposed public-private partnership agreement;
- 22 (b) The duties and responsibilities to be performed by the private partner or
23 partners;
- 24 (c) The methods of oversight to be employed by the contracting body;
- 25 (d) The duties and responsibilities that are to be performed by the contracting
26 body and any other partners to the contract;
- 27 (e) The evaluation factors and the relative weight of each to be used in the scoring

- 1 of awards;
- 2 (f) Plans for financing and operating the qualifying project and the revenues,
3 service payments, bond financings, and appropriations of public funds needed
4 for the qualifying project;
- 5 (g) Comprehensive documentation of the experience, capabilities, capitalization
6 and financial condition, and other relevant qualifications of the private entity;
- 7 (h) The ability of a private partner or partners to quickly respond to the needs
8 presented in the request for proposal, and the importance of economic
9 development opportunities represented by the qualifying project. In evaluating
10 proposals, preference shall be given to a plan that includes the involvement of
11 small businesses as subcontractors, to the extent that small businesses can
12 provide services in a competitive manner, unless any preference interferes
13 with the qualification for federal or other funds; and
- 14 (i) Other information required by the contracting body or the cabinet to evaluate
15 the proposals submitted by respondents and the overall proposed public-
16 private partnership.
- 17 (5) A private entity desiring to be a private partner shall demonstrate to the satisfaction
18 of the contracting body or the cabinet that it is capable of performing any duty,
19 responsibility, or function it may be authorized or directed to perform as part of the
20 public-private partnership agreement.
- 21 (6) When a request for proposal for a project utilizing a public-private partnership is
22 issued for a capital project, the contracting body shall transmit a copy of the request
23 for proposal to the Capital Projects and Bond Oversight Committee staff, clearly
24 identifying to the staff that a public-private partnership is being utilized. **Discussion**
25 **of the project shall be allowed after the issuance of the request for proposal. The**
26 **contracting body shall submit the final contract to the Capital Projects and Bond**
27 **Oversight Committee under KRS 45.763 before work may be begun on the**

1 **project.**

2 (7) A request for proposal or other solicitation may be canceled, or all proposals may be
3 rejected, if it is determined in writing that the action is taken in the best interest of
4 the Commonwealth and approved by the purchasing officer.

5 (8) **(a) Beginning July 1, 2020,** in the case of any public-private partnership for a
6 capital project with an aggregate value of twenty-five million dollars
7 (\$25,000,000) or more, the project shall be authorized by the General
8 Assembly, by inclusion in the branch budget bill or by any other means
9 **specified by the General Assembly,** explicitly identifying and authorizing the
10 utilization of a public-private partnership delivery method for the applicable
11 capital project. The authorization of a capital project required by this
12 subsection is in addition to any other statutorily required authorization for a
13 capital project.

14 **(b) The provisions of this subsection shall not apply to any public-private**
15 **partnership project made public through a request for proposal or a public**
16 **notice of an unsolicited proposal issued prior to July 1, 2020.**

17 ~~(9) Upon issuance of a public-private partnership agreement, the contracting body shall~~
18 ~~submit the contract to the Government Contract Review Committee for review in~~
19 ~~accordance with KRS 45A.690 to 45A.725. The contracting body shall ensure that~~
20 ~~the contract clearly identifies to the committee that a public-private partnership is~~
21 ~~being utilized. Upon disapproval of or objection to the contract by the committee,~~
22 ~~the secretary of the Finance and Administration Cabinet in consultation with the~~
23 ~~contracting body shall determine whether the contract shall be revised to comply~~
24 ~~with the objections of the committee, be canceled, or remain in effect pursuant to~~
25 ~~KRS 45A.705(6).~~

26 ~~(10)~~ Any corporation as described by KRS 45.750(2)(c), or as created under the
27 Kentucky Revised Statutes as a governmental agency and instrumentality of the

1 Commonwealth, that manages its capital construction program shall:

- 2 (a) Adhere to the administrative regulations promulgated under this section when
 3 utilizing a public-private partnership for financing capital projects;
- 4 (b) Report to legislative committees as specified in this section; and
- 5 (c) Submit public-private partnership agreements issued by it to the General
 6 Assembly for authorization as provided in subsection (8) of this section.

7 ~~(10)~~~~(11)~~ (a) The governing body of a postsecondary institution that manages its
 8 capital construction program under KRS 164A.580 shall:
 9 1.—] report to the Capital Projects and Bond Oversight Committee staff as
 10 specified in this section~~]; and~~
 11 2.—] ~~Not be required to comply with the provisions of subsection (9) of this~~
 12 ~~section].~~

13 (b) Any provision of a public-private partnership agreement issued by a
 14 postsecondary institution which provides for a lease by or to the
 15 postsecondary institution shall be valid and enforceable if approved by the
 16 governing board of the institution.

17 ~~(11)~~~~(12)~~ (a) A person or business may submit an unsolicited proposal to a
 18 governmental body, which may receive the unsolicited proposal.

19 (b) Within ninety (90) days of receiving an unsolicited proposal, a governmental
 20 body may elect to consider further action on the proposal, at which point the
 21 governmental body shall provide public notice of the proposal. ~~];~~ **Discussion**
 22 **of the project shall not be deemed a solicitation of the project or its concepts**
 23 **after public notice is given. The public notice**~~—and]~~ shall:

24 1. Provide specific information regarding the proposed nature, timing, and
 25 scope of the unsolicited proposal, except that trade secrets, financial
 26 records, or other records of the person or business making the proposal
 27 shall not be posted unless otherwise agreed to by the governmental body

- 1 and the person or business; and
- 2 2. Provide for a notice period for the submission of competing proposals as
- 3 follows:
- 4 a. Unsolicited proposals valued below five million dollars
- 5 (\$5,000,000) shall be posted for thirty (30) days;
- 6 b. Unsolicited proposals valued between five million dollars
- 7 (\$5,000,000) and twenty-five million dollars (\$25,000,000) shall
- 8 be posted for sixty (60) days; and
- 9 c. Unsolicited proposals valued over twenty-five million dollars
- 10 (\$25,000,000) shall be posted for ninety (90) days.
- 11 (c) Upon the end of the notice period provided under paragraph (b)2. of this
- 12 subsection, the governmental body may consider the unsolicited proposal and
- 13 any competing proposals received. If the governmental body determines it is
- 14 in the best interest of the Commonwealth to implement some or all of the
- 15 concepts contained within the unsolicited proposal or competing proposals
- 16 received by it, the governmental body may begin an open, competitive
- 17 procurement process to do so pursuant to this chapter.
- 18 (d) An unsolicited proposal shall be deemed rejected if no written response is
- 19 received from the governmental body within ninety (90) days of submission,
- 20 during which time the governmental body has not taken any action on the
- 21 proposal under paragraph (b) of this subsection.