

1 AN ACT relating to public-private partnerships for capital projects with an
2 aggregate value of \$25,000,000 or more.

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

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

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

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

- 1 (7) A request for proposal or other solicitation may be canceled, or all proposals may be
2 rejected, if it is determined in writing that the action is taken in the best interest of
3 the Commonwealth and approved by the purchasing officer.
- 4 (8) (a) Beginning July 1, 2024~~[July 1, 2022]~~, in the case of any public-private
5 partnership for a capital project with an aggregate value of twenty-five million
6 dollars (\$25,000,000) or more, the project shall be authorized by the General
7 Assembly, by inclusion in the branch budget bill or by any other means
8 specified by the General Assembly, explicitly identifying and authorizing the
9 utilization of a public-private partnership delivery method for the applicable
10 capital project. The authorization of a capital project required by this
11 subsection is in addition to any other statutorily required authorization for a
12 capital project.
- 13 (b) The provisions of this subsection shall not apply to any public-private
14 partnership project made public through a request for proposal or a public
15 notice of an unsolicited proposal issued prior to July 1, 2024~~[July 1, 2022]~~.
- 16 (9) Any corporation as described by KRS 45.750(2)(c), or as created under the
17 Kentucky Revised Statutes as a governmental agency and instrumentality of the
18 Commonwealth, that manages its capital construction program shall:
- 19 (a) Adhere to the administrative regulations promulgated under this section when
20 utilizing a public-private partnership for financing capital projects;
- 21 (b) Report to legislative committees as specified in this section; and
- 22 (c) Submit public-private partnership agreements issued by it to the General
23 Assembly for authorization as provided in subsection (8) of this section.
- 24 (10) (a) The governing body of a postsecondary institution that manages its capital
25 construction program under KRS 164A.580 shall report to the Capital Projects
26 and Bond Oversight Committee staff as specified in this section.
- 27 (b) Any provision of a public-private partnership agreement issued by a

1 postsecondary institution which provides for a lease by or to the
2 postsecondary institution shall be valid and enforceable if approved by the
3 governing board of the institution.

4 (11) (a) A person or business may submit an unsolicited proposal to a governmental
5 body, which may receive the unsolicited proposal.

6 (b) Within ninety (90) days of receiving an unsolicited proposal, a governmental
7 body may elect to consider further action on the proposal, at which point the
8 governmental body shall provide public notice of the proposal. Discussion of
9 the project shall not be deemed a solicitation of the project or its concepts
10 after public notice is given. The public notice shall:

11 1. Provide specific information regarding the proposed nature, timing, and
12 scope of the unsolicited proposal, except that trade secrets, financial
13 records, or other records of the person or business making the proposal
14 shall not be posted unless otherwise agreed to by the governmental body
15 and the person or business; and

16 2. Provide for a notice period for the submission of competing proposals as
17 follows:

18 a. Unsolicited proposals valued below five million dollars
19 (\$5,000,000) shall be posted for thirty (30) days;

20 b. Unsolicited proposals valued between five million dollars
21 (\$5,000,000) and twenty-five million dollars (\$25,000,000) shall
22 be posted for sixty (60) days; and

23 c. Unsolicited proposals valued over twenty-five million dollars
24 (\$25,000,000) shall be posted for ninety (90) days.

25 (c) Upon the end of the notice period provided under paragraph (b)2. of this
26 subsection, the governmental body may consider the unsolicited proposal and
27 any competing proposals received. If the governmental body determines it is

1 in the best interest of the Commonwealth to implement some or all of the
2 concepts contained within the unsolicited proposal or competing proposals
3 received by it, the governmental body may begin an open, competitive
4 procurement process to do so pursuant to this chapter.

5 (d) An unsolicited proposal shall be deemed rejected if no written response is
6 received from the governmental body within ninety (90) days of submission,
7 during which time the governmental body has not taken any action on the
8 proposal under paragraph (b) of this subsection.