

IC 8-15.5-4

Chapter 4. Selection of Operator by Request for Proposals

IC 8-15.5-4-1

Request for proposals required

Sec. 1. Before entering into a public-private agreement under this article, the authority must issue a request for proposals as set forth in this chapter. A request for proposals for a toll road project may be issued by the authority in one (1) or more phases and may include a request for qualifications.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-1.5

Required studies; public hearing

Sec. 1.5. (a) The authority may not issue a request for proposals for a toll road project under this article unless the authority has received a preliminary feasibility study and an economic impact study for the project from the department, prepared in the same manner as required by IC 8-15.7-4-1.

(b) The economic impact study must, at a minimum, include an analysis of the following matters with respect to the proposed project:

- (1) Economic impacts on existing commercial and industrial development.
- (2) Potential impacts on employment.
- (3) Potential for future development near the project area, including consideration of locations for interchanges that will maximize opportunities for development.
- (4) Fiscal impacts on revenues to local units of government.
- (5) Demands on government services, such as public safety, public works, education, zoning and building, and local airports.

The authority shall post a copy of the economic impact study on the authority's Internet web site and shall also provide copies of the study to the governor and the legislative council (in an electronic format under IC 5-14-6).

(c) After completion of the economic impact study, the authority must conduct a public hearing on the results of the study in the county seat of the county in which the proposed project would be located. At least ten (10) days before each public hearing, the authority shall:

- (1) post notice of the public hearing on the authority's Internet web site;
- (2) publish notice of the public hearing one (1) time in accordance with IC 5-3-1 in two (2) newspapers of general circulation in the county; and
- (3) include in the notices under subdivisions (1) and (2):
 - (A) the date, time, and place of the hearing;
 - (B) the subject matter of the hearing;
 - (C) a description of the purpose of the economic impact study;

(D) a description of the proposed project and its location;
and

(E) a statement concerning the availability of the study on
the authority's Internet web site.

At the hearing, the authority shall allow the public to be heard on the
economic impact study and the proposed project.

As added by P.L.85-2010, SEC.7.

IC 8-15.5-4-2

Contents of request for proposals

Sec. 2. A request for proposals issued by the authority must
include the following:

(1) The factors or criteria that will be used in evaluating the
proposals.

(2) A statement that a proposal must be accompanied by
evidence of financial responsibility as considered appropriate
and satisfactory by the authority.

(3) A statement concerning whether discussions may be
conducted with the offerors for the purpose of clarification to
assure full understanding of and responsiveness to the
solicitation requirements.

(4) A statement concerning any other information that the
authority may consider in evaluating the proposals.

(5) A statement that, except as otherwise required by law or
under order from a court with jurisdiction, the authority may not
disclose the contents of proposals during:

(A) discussions; or

(B) negotiations;

with eligible offerors to other eligible offerors.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-3

Notice of request for proposals

Sec. 3. Notice of a request for proposals shall be given by
publication in accordance with IC 5-3-1.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-4

Discussions with offerors

Sec. 4. As provided in a request for proposals, discussions may be
conducted with the offerors for the purpose of clarification to assure
full understanding of and responsiveness to the solicitation
requirements.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-5

Fair and equal treatment of offerors

Sec. 5. Eligible offerors must be accorded fair and equal treatment
with respect to any opportunity for discussion and revision of
proposals.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-6

Access to contents of proposals

Sec. 6. (a) The authority may not disclose the contents of proposals during discussions or negotiations with eligible offerors.

(b) The authority may, in its discretion in accordance with IC 5-14-3, treat as confidential all records relating to discussions or negotiations between the authority and eligible offerors if those records are created while discussions or negotiations are in progress.

(c) Notwithstanding subsections (a) and (b), and with the exception of parts that are confidential under IC 5-14-3, the terms of the selected offer negotiated under this article shall be available for inspection and copying under IC 5-14-3 after negotiations with the offerors have been completed.

(d) When disclosing the terms of the selected offer under subsection (c), the authority shall certify that the information being disclosed accurately and completely represents the terms of the selected offer.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-7

Negotiations with offerors

Sec. 7. (a) The authority shall negotiate with one (1) or more responsible offerors who submit proposals that are determined to be reasonably capable of being selected for a public-private agreement and may seek to obtain a final offer from one (1) or more responsible offerors.

(b) In determining whether one (1) or more responsible offerors are reasonably capable of being selected for a public-private agreement, the authority must consider all the following:

(1) The responsible offeror's expertise, qualifications, competence, skills, and know-how to perform its obligations under the proposed public-private agreement in accordance with the public-private agreement.

(2) The financial strength of the responsible offeror, including its capitalization.

(3) The experience of the responsible offeror in operating toll roads and highways and other similar projects and the quality of the responsible offeror's past or present performance on other similar or equivalent projects.

(4) The integrity, background, and reputation of the responsible offeror, including the absence of criminal, civil, or regulatory claims or actions against the responsible offeror.

(c) The requirements set forth in subsection (b) also apply to the approval by the authority of any successor or replacement operator under the public-private agreement after the execution of the public-private agreement under section 11 of this chapter.

(d) In making its determination under subsection (b) or (c), the authority shall consider the offeror or operator as well as any private

entity that controls the actions of the offeror or operator.
As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-8

Preliminary selection of offeror or termination of process

Sec. 8. After the final offers from responsible offerors have been negotiated under section 7 of this chapter, the authority shall:

- (1) make a preliminary selection of an offeror as the operator for the related toll road project, whose final offer is referred to in this article as the "selected offer"; or
- (2) terminate the request for proposal process.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-9

Public hearing on preliminary selection and agreement

Sec. 9. (a) If the authority makes a preliminary selection of an operator under section 8 of this chapter, the authority shall schedule a public hearing on the preliminary selection and the terms of the public-private agreement for the project. The hearing shall be conducted in the county seat of the county in which the proposed project is to be located.

(b) At least ten (10) days before the public hearing, the authority shall post on its Internet web site:

- (1) the proposal submitted by the offeror that has been preliminarily selected as the operator for the project, except for those parts of the proposal that are confidential under this article; and
- (2) the proposed public-private agreement for the project.

(c) At least ten (10) days before the public hearing, the authority shall:

- (1) post notice of the public hearing on the authority's Internet web site; and
- (2) publish notice of the hearing one (1) time in accordance with IC 5-3-1 in two (2) newspapers of general circulation in the county in which the proposed project is to be located.

(d) The notices required by subsection (c) must include the following:

- (1) The date, time, and place of the hearing.
- (2) The subject matter of the hearing.
- (3) A description of the related toll road project and of the public-private agreement to be awarded.
- (4) The identity of the offeror that has been preliminarily selected as the operator for the project.
- (5) The address and telephone number of the authority.
- (6) A statement indicating that, subject to section 6 of this chapter, and except for those portions that are confidential under this chapter, the following are available on the authority's Internet web site and are also available for public inspection and copying at the principal office of the authority during regular business hours:

(A) The selected offer.

(B) An explanation of the basis upon which the preliminary selection was made.

(C) The proposed public-private agreement for the project.

(e) At the hearing, the authority shall allow the public to be heard on the preliminary selection of the operator for the proposed project and the terms of the public-private agreement for the proposed project.

As added by P.L.47-2006, SEC.39. Amended by P.L.85-2010, SEC.8.

IC 8-15.5-4-10

Access to selected offer

Sec. 10. (a) Subject to section 6 of this chapter, and except for those parts that are confidential under IC 5-14-3, the selected offer and a written explanation of the basis upon which the preliminary selection was made shall be made available for inspection and copying in accordance with IC 5-14-3 at least seven (7) days before the hearing scheduled under section 9 of this chapter.

(b) At the hearing, the authority shall allow the public to be heard on the preliminary selection.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-11

Designation of operator; publication of notice; execution of public-private agreement

Sec. 11. (a) After the procedures required in this chapter have been completed, the authority shall make a determination as to whether the offeror that submitted the selected offer should be designated as the operator for the related toll road project and shall submit the authority's determination to the governor and the budget committee.

(b) After review of the authority's determination by the budget committee, the governor may accept or reject the determination of the authority. If the governor accepts the determination of the authority, the governor shall designate the offeror who submitted the selected offer as the operator for the related toll road project. The authority shall publish notice of the designation of the operator for the related toll road project one (1) time, in accordance with IC 5-3-1.

(c) After the designation of the operator for the related toll road project, the authority may execute the public-private agreement with that operator.

(d) The budget committee shall hold a meeting and conduct a review of the determination not later than ninety (90) days after the date the authority's determination is submitted for review.

As added by P.L.47-2006, SEC.39. Amended by P.L.163-2011, SEC.5.

IC 8-15.5-4-12

Action to contest validity of public-private agreement

Sec. 12. Any action to contest the validity of a public-private agreement entered into under this chapter may not be brought after the fifteenth day following the publication of the notice of the designation of an operator under the public-private agreement as provided in section 11 of this chapter.

As added by P.L.47-2006, SEC.39.

IC 8-15.5-4-13

Disclosure of contents of proposals

Sec. 13. The authority shall disclose the contents of all proposals, except the parts of the proposals that may be treated as confidential in accordance with IC 5-14-3, when either:

- (1) the request for proposal process is terminated under section 8 of this chapter; or
- (2) the public-private agreement has been executed and the closing for each financing transaction required to provide funding to carry out the agreement has been conducted.

As added by P.L.47-2006, SEC.39.