

**IC 8-15.7-4**

Chapter 4. Procurement Process

**IC 8-15.7-4-1**

**Request for proposals; required studies; public hearing**

Sec. 1. (a) The department may request proposals from private entities for all or part of the development, financing, and operation of one (1) or more projects.

(b) If all or part of the project will consist of a tollway, the department shall take the following steps before the commencement of the procurement process under this chapter:

(1) Except as provided by subsection (c), the department shall cause to be prepared a preliminary feasibility study and an economic impact study on that part of the project consisting of a tollway by a firm or firms internationally recognized in the preparation of studies or reports on the financial feasibility and economic impact of proposed toll road projects. Before the preparation of the preliminary feasibility study and the economic impact study, the department must conduct a public hearing on the proposed studies 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:

(A) post notice of the public hearing on the department's Internet web site;

(B) 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 in which the proposed project would be located; and

(C) include in the notices under clauses (A) and (B):

(i) the date, time, and place of the hearing;

(ii) the subject matter of the hearing;

(iii) a description of the purpose of the proposed preliminary feasibility study and economic impact study; and

(iv) a description of the proposed project and its location.

At the hearing, the department shall allow the public to be heard on the proposed studies and the proposed project.

(2) The preliminary feasibility study must be based upon a public-private financial and project delivery structure. The economic impact study must, at a minimum, include an analysis of the following matters with respect to the proposed project:

(A) Economic impacts on existing commercial and industrial development.

(B) Potential impacts on employment.

(C) Potential for future development near the project area, including consideration of locations for interchanges that will maximize opportunities for development.

(D) Fiscal impacts on revenues to local units of government.

(E) Demands on government services, such as public safety, public works, education, zoning and building, and local

airports.

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

(3) After the completion of the preliminary feasibility study and the economic impact statement, the department shall schedule a public hearing on the proposed project and the studies in the county seat of the county that would be an affected jurisdiction for purposes of the proposed project. At least ten (10) days before the public hearing, the department shall:

(A) post notice of the public hearing on the department's Internet web site;

(B) 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; and

(C) include the following in the notices under clauses (A) and (B):

(i) The date, time, and place of the hearing.

(ii) The subject matter of the hearing.

(iii) A description of the proposed project, its location, the part of the project consisting of a tollway, and, consistent with the assessments reached in the preliminary feasibility study, the estimated total cost of the acquisition, construction, installation, equipping, and improving of the proposed project, as well as the part of the project consisting of a tollway.

(iv) The address and telephone number of the department.

(v) A statement concerning the availability of the preliminary feasibility study and the economic impact study on the department's Internet web site.

(4) At the hearing, the department shall allow the public to be heard on the proposed project, the preliminary feasibility study, and the economic impact study.

(5) After the completion of the public hearings described in subdivision (3), the department shall submit the preliminary feasibility study and the economic impact study to the budget committee for its review before the commencement of the procurement process under this chapter. If the preliminary feasibility study or the economic impact study submitted for review provides for any tolls, the budget committee shall hold a meeting and conduct a review of the preliminary feasibility study and the economic impact study not later than ninety (90) days after the date the preliminary feasibility study and the economic impact study are submitted for review.

(c) The following provisions apply if the department determines that a feasibility study for the Illiana Expressway that was prepared before March 15, 2010, meets the requirements of subsection (b) concerning the preparation of a preliminary feasibility study:

(1) The department is not required to prepare an additional preliminary feasibility study.

(2) The requirement under subsection (b)(1) for a public hearing before preparation of a preliminary feasibility study does not apply. However, the requirement under subsection (b)(1) for a public hearing on the economic impact study does apply.

(3) The feasibility study prepared before March 15, 2010, is considered to be the preliminary feasibility study for purposes of subsection (b)(3) through (b)(5).

*As added by P.L.47-2006, SEC.40. Amended by P.L.85-2010, SEC.16; P.L.163-2011, SEC.11.*

#### **IC 8-15.7-4-2**

##### **Competitive proposal procedure; request for qualifications; public hearing on preliminary selection and agreement**

Sec. 2. (a) This section establishes the competitive proposal procedure that the department shall use to enter into a public-private agreement with an operator under this article.

(b) The department may pursue a competitive proposal procedure using a request for qualifications and a request for proposals process or proceed directly to a request for proposals.

(c) If the department elects to use a request for qualifications phase, it must provide a public notice of the request for qualifications, for the period considered appropriate by the department, before the date set for receipt of submittals in response to the solicitation. The department shall provide the notice by posting in a designated public area and publication in a newspaper of general circulation, in the manner provided by IC 5-3-1. In addition, submittals in response to the solicitation may be solicited directly from potential offerors.

(d) The department shall evaluate qualification submittals based on the requirements and evaluation criteria set forth in the request for qualifications.

(e) If the department has undertaken a request for qualifications phase resulting in one (1) or more prequalified or shortlisted offerors, the request for proposals shall be limited to those offerors that have been prequalified or shortlisted.

(f) If the department has not issued a request for qualifications and intends to use only a one (1) phase request for proposals procurement, the department must provide a public notice of the request for proposals for the period considered appropriate by the department, before the date set for receipt of proposals. The department shall provide the notice by posting in a designated public area and publication in a newspaper of general circulation, in the manner provided by IC 5-3-1. In addition, proposals may be solicited directly from potential offerors.

(g) The department shall submit a draft of the request for proposals to the budget committee for its review before the issuance by the department of the request for proposals to potential offerors.

The request for proposals must:

- (1) indicate in general terms the scope of work, goods, and services sought to be procured;
- (2) contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement and the qualifying project;
- (3) specify the factors, criteria, and other information that will be used in evaluating the proposals;
- (4) specify any requirements or goals for use of:
  - (A) minority business enterprises and women's business enterprises certified under IC 4-13-16.5;
  - (B) disadvantaged business enterprises under federal or state law;
  - (C) businesses defined under IC 5-22-15-20.5 as Indiana businesses, to the extent permitted by applicable federal and state law and regulations; and
  - (D) businesses that qualify for a small business set-aside under IC 4-13.6-2-11;
- (5) if all or part of the project will consist of a tollway, require any offeror to submit a proposal based upon that part of the project that will consist of a tollway, as set forth in the request for proposals, and permit any offeror to submit one (1) or more alternative proposals based upon the assumption that a different part or none of the project will consist of a tollway;
- (6) contain or incorporate by reference the other applicable contractual terms and conditions; and
- (7) contain or incorporate by reference any other provisions, materials, or documents that the department considers appropriate.

If the draft of the request for proposals submitted for review provides for any tolls, the budget committee shall hold a meeting and conduct a review of the draft of the request for proposals not later than ninety (90) days after the date the draft request for proposals is submitted for review.

(h) The department shall determine the evaluation criteria that are appropriate for each project and shall set those criteria forth in the request for proposals. The department may use a selection process that results in selection of the proposal offering the best value to the public, a selection process that results in selection of the proposal offering the lowest price or cost or the highest payment to, or revenue sharing with, the department, or any other selection process that the department determines is in the best interests of the state and the public.

(i) The department shall evaluate proposals based on the requirements and evaluation criteria set forth in the request for proposals.

(j) The department may select one (1) or more offerors for negotiations based on the evaluation criteria set forth in the request for proposals. If the department believes that negotiations with the selected offeror or offerors are not likely to result in a public-private

agreement, or, in the case of a best value selection process, no longer reflect the best value to the state and the public, the department may commence negotiations with other responsive offerors, if any, and may suspend, terminate, or continue negotiations with the original offeror or offerors. If negotiations are unsuccessful, the department shall terminate the procurement, may not award the public-private agreement, and may commence a new procurement for a public-private agreement. If the department determines that negotiations with an offeror have been successfully completed, the department shall, subject to the other requirements of this article, award the public-private agreement to the offeror.

(k) Before awarding a public-private agreement to an operator, the department shall schedule a public hearing on the preliminary selection of the operator and the terms of the proposed public-private agreement. The hearing shall be conducted in the county seat of the county that would be an affected jurisdiction for purposes of the proposed project. The department shall do the following:

(1) At least ten (10) days before the public hearing, post on the department's Internet web site:

(A) 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

(B) the proposed public-private agreement for the project.

(2) At least ten (10) days before the public hearing:

(A) post notice of the public hearing on the department's Internet web site; and

(B) 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 that would be an affected jurisdiction for purposes of the proposed project.

(3) Include the following in the notices required by subdivision (2):

(A) The date, time, and place of the hearing.

(B) The subject matter of the hearing.

(C) A description of the agreement to be awarded.

(D) The recommendation that has been made to award the agreement to an identified offeror or offerors.

(E) The address and telephone number of the department.

(F) A statement indicating that, subject to section 6 of this chapter, and except for those portions that are confidential under IC 5-14-3, the following are available on the department's Internet web site and are also available for public inspection and copying at the principal office of the department during regular business hours:

(i) The selected offer.

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

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

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

(m) When the terms and conditions of multiple awards are specified in the request for proposals, awards may be made to more than one (1) offeror.

*As added by P.L.47-2006, SEC.40. Amended by P.L.85-2010, SEC.17; P.L.163-2011, SEC.12.*

### **IC 8-15.7-4-3**

#### **Designation of operator; publication of notice; execution of public-private agreement; action to contest validity**

Sec. 3. (a) After the procedures required in this chapter have been completed, the department shall make a determination as to whether the successful offeror should be designated as the operator for the project and shall submit its decision to the governor and the budget committee.

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

(c) After the designation of the successful offeror as the operator for the project, the department may execute the public-private agreement.

(d) An 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 the operator under the public-private agreement under subsection (b).

(e) If the department's determination submitted for review provides for any tolls, the budget committee shall hold a meeting and conduct a review of the determination not later than ninety (90) days after the date the determination is submitted for review.

*As added by P.L.47-2006, SEC.40. Amended by P.L.163-2011, SEC.13.*

### **IC 8-15.7-4-4**

#### **Use of work product from unsuccessful proposal**

Sec. 4. The department may pay a stipulated amount to an unsuccessful offeror that submits a responsive proposal in response to a request for proposals under this chapter, in exchange for the work product contained in that proposal. The use by the department of any design element contained in an unsuccessful proposal is at the sole risk and discretion of the department and does not confer liability on the recipient of the stipulated amount under this section. After payment of the stipulated amount:

(1) the department and the unsuccessful offeror jointly own the rights to, and may make use of any work product contained in, the proposal, including the technologies, techniques, methods,

processes, ideas, and information contained in the proposal, project design, and project financial plan; and

(2) the use by the unsuccessful offeror of any part of the work product contained in the proposal is at the sole risk of the unsuccessful offeror and does not confer liability on the department.

*As added by P.L.47-2006, SEC.40.*

#### **IC 8-15.7-4-5**

##### **Power to withdraw or modify request, seek revised proposals, or decline to award a public-private agreement**

Sec. 5. In addition to any other rights under this article, in connection with any procurement under this chapter, the department may:

(1) withdraw a request for qualifications or a request for proposals at any time and, in its discretion, publish a new request for qualifications or request for proposals;

(2) decline to award a public-private agreement for any reason;

(3) request clarifications to any qualification submittal or request for proposals or seek one (1) or more revised proposals or one (1) or more best and final offers;

(4) modify the terms, provisions, and conditions of a request for qualification, request for proposals, technical specifications, or form of public-private agreement during the pendency of a procurement; and

(5) interview offerors.

*As added by P.L.47-2006, SEC.40.*

#### **IC 8-15.7-4-6**

##### **Disclosure of contents of proposals**

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

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

(c) Notwithstanding subsections (a) and (b), and with the exception of portions 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 department shall certify that the information being disclosed accurately and completely represents the terms of the selected offer.

(e) The department 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 5 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.40.*