



Ohio Revised Code

Section 5501.71 Authority for department of transportation to enter public-private initiative; solicitation and selection.

Effective: September 11, 2014

Legislation: House Bill 533 - 130th General Assembly

- (A) The department of transportation may solicit, receive, consider, evaluate, and accept a proposal for a public-private initiative.
- (B) In soliciting and selecting a private entity with which to enter into a public-private initiative, the department shall use one or both of the following:
- (1) Sealed bidding;
 - (2) Selection of proposals, with or without negotiations, based on qualifications, best value, or both.
- (C) The department shall consider the following factors in evaluating and selecting a bid or proposal to enter into a public-private initiative:
- (1) The ability of the transportation facility to improve safety, reduce congestion, increase capacity, and promote economic growth;
 - (2) The extent that the private entity's proposal addresses the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, or enhancing economic efficiency and the private entity's proposal is on the transportation improvement program for the affected metropolitan planning organization or the state transportation improvement program;
 - (3) The proposed cost of and financial plan for the transportation facility;
 - (4) The general reputation, qualifications, industry experience, and financial capacity of the private entity;



- (5) The proposed design, operation, and feasibility of the transportation facility;
 - (6) Comments from local citizens and affected jurisdictions;
 - (7) Benefits to the public and the affected transportation facility;
 - (8) The safety record of the private entity;
 - (9) The inclusion of a teaming agreement in the bid or proposal that identifies the primary designer of record or design firm representing not less than thirty per cent of the estimated design fee, the primary construction contractor representing not less than thirty per cent of the estimated construction dollar value amount, and the primary financier representing not less than fifty per cent of the total project cost.
 - (10) Any other criteria that the department considers appropriate.
- (D) The department may select multiple private entities with which to enter a public-private agreement for a transportation facility if it is in the public interest to do so.
- (E) The department shall select a private entity or entities for a public-private initiative on a competitive basis.
- (F) Any materials or data submitted to, made available to, or received by the director of transportation, to the extent that the material or data consist of trade secrets, as defined in section 1333.61 of the Revised Code, are confidential and are not public records for the purposes of section 149.43 of the Revised Code. Financial information received by the director that is related to a proposal is confidential and not a public record for purposes of section 149.43 of the Revised Code until such time as a proposal is selected. Prior to submission of a solicited proposal, a private entity may request a review by the department of information that the private entity has identified as confidential, to determine whether such information would be subject to disclosure under section 149.43 of the Revised Code.
- (G)(1) The department may reimburse one or more private entities for a portion of the actual costs



each entity incurred in submitting a proposal for a public-private initiative that was solicited by the department under this section. When considering the reimbursement of such costs, the director shall describe in the request for proposals for a specific public-private initiative the specific terms and conditions for reimbursing one or more private entities. The director may include in the terms and conditions a requirement that each private entity execute an agreement to transfer to the department the rights to the use of the work product contained in the proposal in exchange for receiving the reimbursement.

(2) The director shall make all decisions related to the reimbursement of a specific private entity and related to the maximum amount of the reimbursement. However, the department shall not reimburse a private entity if that entity enters into the public-private agreement that is the subject of the solicited proposal, except as set forth in the request for proposals or in the public-private agreement. The reimbursement of costs under division (G) of this section is exempt from the requirements of Chapter 125. of the Revised Code and sections 127.16 and 127.162 of the Revised Code.

(3) If the department, pursuant to division (G)(1) of this section, includes a reimbursement provision in a request for proposals and the department subsequently terminates the solicitation prior to the solicitation expiration date, the department shall prorate the amount of the reimbursement that is to be paid to each private entity participating in the solicitation on the date the department terminates the solicitation. The department shall calculate the proration percentage by determining the number of days from the date the solicitation first was offered until the date the department terminated the solicitation and dividing that number by the number of days of the original solicitation period.

(4) Except as otherwise provided in writing by the department, if, pursuant to division (G)(1) of this section, the department includes a reimbursement provision in a request for proposals and subsequently enters into negotiations based on the selection of a desired proposal and the department elects to terminate those negotiations for the convenience of the department and through no fault of the proposer, the proposer is entitled to the full reimbursement amount.