

Establishing a Public-Private Partnership (P3) Authority Act

Summary

This Act establishes a state Partnership Committee and an Office of Public-Private Partnerships to identify and establish public-private partnerships and approve qualified bidders, requests for proposals, and template contracts. The Act is designed to improve public operational efficiency and environmental performance, promote public safety, attract private investment in the state, and minimize governmental liabilities.

Model Policy

{Title, enacting clause, etc.}

Section 1. {Title}

This Act may be cited as the “Establishing a Public-Private Partnership (P3) Authority Act.”

Section 2. {Definitions} The following definitions apply in this section:

(A) “Contract” means any purchase and sale agreement, lease, service agreement, franchise agreement, concession agreement, or other written agreement entered into under sections [insert sections here] of the Revised Code with respect to the provision of a public service and any project related thereto.

(B) “Improvement” means any construction, reconstruction, rehabilitation, renovation, installation, improvement, enlargement, or extension of property or improvements to property.

(C) “Partnership Committee” means a committee consisting of two members nominated by the President of the Senate, two members nominated by the Speaker of the House, two representatives of the responsible governmental agency, and two representatives of the Office of Budget and Management [or budget agency]. All members of the Committee will be appointed by the Governor. Five members of the Partnership Committee shall constitute a quorum. The Partnership Committee shall act only upon a decision of a majority.

(D) “Private sector entity” means any corporation, whether for profit or not for profit, limited liability company, partnership, limited liability partnership, sole proprietorship, business trust, joint venture or other entity, but shall not mean the state, a political subdivision of the state, or a public or governmental entity, agency, or instrumentality of the state.

(E) “Project” means real or personal property, or both, and improvements thereto or in support thereof, including undivided and other interests therein, used for or in the provision of a public service.

(F) “Proposer” means a private sector entity, a local or regional public entity or agency, or any group or combination thereof, submitting qualifications or a proposal for a public-private partnership contract.

(G) “Public service” means a service provided for a public purpose of the responsible state agency and identified in an invitation for qualifications or proposals under section [insert section here] of the Revised Code.

(H) “Responsible state agency” means the agency, department, commission, authority, or other instrumentality of the state responsible for the provision of the public service which is or is proposed to be the subject of a contract.

Section 3. {Public-Private Partnership}

(A) The Partnership Committee shall have the authority to identify potential public-private partnerships, to approve a short-list of qualified bidders, to approve requests for proposals, and to approve template contracts

before they are sent to bidders. The Partnership Committee shall operate with the assistance of the Office of Public-Private Partnerships.

(B) There shall be established within the Office of Budget and Management an Office of Public-Private Partnerships, which shall have the authority to charge fees for services it shall render as part of the procedures to establish Partnerships in accordance with Revised Code sections [insert sections here] and to receive money on loan to cover its operating expenses and to accomplish the purposes of Revised Code sections [insert sections here].

(C) The director of budget and management [or budget agency] and the authorized representative of a responsible state agency may jointly take any action and execute any contract for the provision of a public service in order to more efficiently and effectively provide public services, including by generating additional resources in support of those public services and related projects.

Section 4. {Project Selection}

(A) Selection of Projects. Any proposer or responsible state agency may submit to the Partnership Committee one or more proposals for partnership projects in connection with any public service. The Partnership Committee shall identify potential projects and public services for which a public-private partnership may be appropriate from those received from a proposer, a responsible state agency, or those identified by the Partnership Committee itself. The Partnership Committee shall select such projects based on the partnership's potential to improve public operational efficiencies, improve environmental performance, promote public safety, attract private investment in the state, and minimize governmental liabilities.

(B) Public-Sector Comparators. After the Partnership Committee identifies a potential partnership for a public project or public service, the Office of Public-Private Partnerships shall conduct a public-sector comparator study of the potential partnership. The Partnership Committee shall determine the scope of each public sector comparator, which scope shall depend on the type of proposed partnership and the nature of the public service under consideration for the partnership. The following issues shall be considered as components of a public sector comparator:

(1) The definition of the need served by the proposed partnership;

(2) The cost required to meet the public need served by the public service under traditional procurements or traditional state agency operations;

(3) An analysis of alternative methods for providing the public services under consideration, including but not limited to design-build, design-build-finance, design-build-finance-operate-maintain, service contracts, or leases, and how the alternative method(s) would meet the need served by the public service; and,

(4) An evaluation of the cost/benefit of using an alternative method or public-private partnership to render a public service, which cost/benefit analysis shall include:

(a) The potential cost of utilizing an alternative method;

(b) The operational and technological risks involved in utilizing an alternative method;

(c) A comparative analysis of rendering the public service by allowing the responsible state agency to utilize traditional methods;

(d) The financial impact the partnership will have on the responsible state agency; and

(e) The impact a partnership would have on job formation, economic growth, and the community in which the public service is to be rendered.

(C) The Partnership Committee shall use the results of the public sector comparator to determine which public services and projects are appropriate for partnership. The Office of Public-Private Partnerships shall publish on

its website the public sector comparator for each project to provide a public service for which a request for qualifications is initiated.

(D) The Office of Public-Private Partnerships shall publish notice of the intent to enter into a contract for a partnership for public service or related project and shall prepare a request for qualifications for private sector entities interested in serving as proposers for the partnership. The notice shall notify interested parties of the opportunity to submit their qualifications for consideration and shall be published at least thirty days prior to the deadline for submitting those qualifications. The Office also may advertise the information contained in the notice in appropriate trade journals and otherwise notify parties believed to be interested in providing the public service and in any related project.

(E) After inviting qualifications, the Partnership Committee shall evaluate the qualifications submitted and may hold discussions with proposers to further explore their qualifications. Following this evaluation, the Partnership Committee may determine a list of qualified proposers based on criteria in the invitation, and invite only those proposers to submit a proposal.

(F) The Office of Public-Private Partnerships shall prepare a request for proposal and the proposed partnership contract, both of which shall be approved by the Partnership Committee. After the Partnership Committee's approval of the request for proposal and the partnership contract, the project shall be deemed an Approved Partnership Procurement.

(1) Partnership contracts may contain the terms and conditions to carry out and effect the purposes of sections [insert sections here] of the Revised Code, including the duration of the contract, which shall not exceed seventy-five years, rates or fees for the public services to be provided or methods or procedures for the determination of such rates or fees, standards for the public services to be provided, responsibilities and standards for operation and maintenance of any related project, required financial assurances, financial and other data reporting requirements, bases and procedures for termination of the contract and retaking of possession or title to the project, and events of default and remedies upon default, including mandamus, a suit in equity, an action at law, or any combination of those remedial actions.

(G) After proposals are received, the Office of Public-Private Partnerships, using the criteria established in the request for proposal by the Partnership Committee, shall evaluate the proposals submitted and may hold discussions with proposers to further explore their proposals, the scope and nature of the public service(s) they would provide, and the various technical approaches they may take regarding the public service and any related project. Following this evaluation, the Partnership Committee shall select and rank no fewer than three proposers that the Partnership Committee considers to be the most qualified to enter into the contract, except when the Partnership Committee determines that fewer than three qualified proposers are available, in which case the Partnership Committee shall select and rank them.

(H) After the proposers have been ranked by the Partnership Committee, the director of budget and management and the authorized representative of the responsible state agency shall negotiate the contract with the proposer ranked most qualified to provide the public service at a compensation determined in writing to be fair and reasonable, and to purchase, lease or otherwise take a legal interest in the project.

(1) Upon failure to negotiate a contract with the proposer ranked most qualified, the director of budget and management shall inform the proposer in writing of the termination of negotiations and may enter, with the responsible state agency, into negotiations with the proposer ranked next most qualified. If negotiations again fail, the same procedure may be followed with each next most qualified proposer selected and ranked, in order of ranking, until a contract is negotiated and executed.

(2) If the director of budget and management and the authorized representative of the responsible state agency fail to negotiate a contract with any of the ranked proposers, the director of budget and management, in consultation with the responsible state agency, may terminate the process or select and rank additional proposers, based on their qualifications or proposals, and negotiations shall continue as with the proposers selected and ranked initially until a contract is negotiated.

(3) The director and the authorized representative of the responsible state agency may jointly reject any and all submissions of qualifications or proposals, and may jointly terminate the procurement process at any point.

(4) The director of budget and management and the authorized representative of the responsible state agency shall have the authority to make commercially reasonable changes to the partnership contract approved by the Partnership Committee. Any such contract may contain the terms and conditions to carry out and affect the purposes of sections [insert sections here] of the Revised Code.

Section 5. {Partnership Contracts}

(A) Partnership contracts shall be signed by both the director of budget and management and the authorized representative of the responsible state agency for which the public service at issue in the contract relates.

(B) The director of budget and management is authorized to receive and deposit any money received under the contract. Any such contract shall be sufficient to effect its purpose notwithstanding any provision of the Revised Code to the contrary, including other laws governing the sale, lease or other disposition of property or interests therein, service contracts, or financial transactions by or for the state.

(C) The Office of Public-Private Partnerships shall provide a report to the Speaker of the House and the President of the Senate explaining the value of the contract to the state and describing the procurement process by which the contract was reached.

Section 6. {Ownership}

(A) The exercise of the powers granted by sections [insert sections here] of the Revised Code will be for the benefit of the people of the state and shall be liberally construed to effect the purposes thereof. As the performance of public services will constitute the performance of essential government functions, any project or part thereof owned by the state and used for performing any public service pursuant to a contract entered into under sections [insert sections here] of the Revised Code that would be exempt from taxation or assessments in the absence of such contract shall remain exempt from taxation and assessments levied by the state and its subdivisions to the same extent as if not subject to that contract. The gross receipts and income of a successful proposer derived from providing public services under a contract through a project owned by the state shall be exempt from taxation levied by the state and its subdivisions. Any transfer or lease between a proposer and the state of a project or part thereof, or item included or to be included in the project, shall be exempt from the taxes levied pursuant to Chapters [insert chapters here] of the Revised Code if the state is retaining ownership of the project or part thereof that is being transferred or leased.

Section 7. {Director's Responsibilities}

(A) The director of budget and management, in consultation with the responsible state agency, may retain or contract for the services of commercial appraisers, engineers, investment bankers, financial advisers, accounting experts, and other consultants, independent contractors or providers of professional services as are necessary in the judgment of the director to carry out the director's powers and duties under sections [insert sections here] of the Revised Code, including the identification of public services and any related projects to be subject to invitations for qualifications or proposals under sections [insert sections here] of the Revised Code, the development of those invitations and related evaluation criteria, the evaluation of those invitations, and negotiation of any contract under sections [insert sections here] of the Revised Code.

Section 8. {Severability Clause}

Section 9. {Repealer Clause}

Section 10. {Effective Date}

Approved by the ALEC Board of Directors on October 13, 2011.