

***Current through 2012 Regular Session and June 12 Special Session, pending certain technical changes from the
Legislative Commissioners' Office***

Title 4 Management of State Agencies
Chapter 55d Public-Private Partnerships

Conn. Gen. Stat. § 4-255 (2013)

Sec. 4-255. Public-private partnerships. Definitions.

(a) As used in this section and *sections 4-256 to 4-263*, inclusive, unless the context indicates a different meaning:

(1) "State agency" or "agency" means any office, department, board, council, commission, institution or other agency in the executive branch of state government or a quasi-public agency as defined in *section 1-120*;

(2) "Private entity" means any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, nonprofit organization or other business entity;

(3) "Public-private partnership" means the relationship established between a state agency and a private entity by contracting for the performance of any combination of specified functions or responsibilities to design, develop, finance, construct, operate or maintain one or more state facilities where the agency has estimated that the revenue generated by such facility or facilities, in combination with other previously identified funding sources, including any appropriated funds, will be sufficient to fund the cost to develop, maintain and operate such facility or facilities, provided state support of a partnership agreement shall not exceed twenty-five per cent of the cost of the project;

(4) "Partnership agreement" means an agreement executed between a state agency and a private entity to establish a public-private partnership;

(5) "Project" means a project that an agency has submitted to the Governor for approval as a public-private partnership;

(6) "Contractor" means a private entity that has entered into a public-private partnership agreement with a state agency;

(7) "Facility" means any public works or transportation project used as public infrastructure that generates revenue as a function of its operation; and

(8) "Proposer" means a private entity submitting a competitive bid in response to solicitation or a proposal in response to a request for proposals for an approved project for consideration.

(b) Notwithstanding the provisions of *section 4b-51*, once the project is approved by the Governor in accordance with *section 4-256*, any state agency may establish one or more public-private partnerships and execute a partnership agreement for a project in accordance with this section and *sections 4-256 to 4-263*, inclusive. A partnership agreement may not be established for the operation or maintenance of a facility unless such agreement also provides for the financing and development of such facility.

(c) The design, development, operation or maintenance of the following new or existing project types are eligible for consideration as a public-private partnership if approved as a project in accordance with *section 4-256*:

(1) Early childcare, educational, health or housing facilities;

(2) Transportation systems, including ports, transit-oriented development and related infrastructure; and

(3) Any other kind of facility that may from time to time be designated as such by an act of the General Assembly.

HISTORY: Oct. Sp. Sess. P.A. 11-1, S. 80.

NOTES:

History:

Oct. Sp. Sess. P.A. 11-1 effective October 27, 2011.

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Conn. Gen. Stat. § 4-256 (2013)

Sec. 4-256. Approval of projects. Agency analysis. Submittal to committees. Report.

(a) On and after October 27, 2011, and prior to January 1, 2015, the Governor shall approve not more than five projects to be implemented as public-private partnership projects. The Governor shall not approve any such project unless the Governor finds that the project will result in job creation and economic growth. Any agency seeking to establish a public-private partnership shall, after consultation with the Commissioners of Economic and Community Development, Construction Services and Transportation, the State Treasurer and the Secretary of the Office of Policy and Management, submit one or more projects to the Governor for approval.

(b) In determining whether a project is suitable for a public-private partnership agreement, the agency shall conduct an analysis of the feasibility, desirability and the convenience to the public of the project and whether the project furthers the public policy goals of *section 4-255*, this section and *sections 4-257 to 4-263*, inclusive, taking into consideration the following, when applicable:

- (1) The essential characteristics of the proposed facility;
- (2) The projected demand for use of the facility and its economic and social impact on the community and the state;
- (3) The technical function and feasibility of the project and its conformity with the state plan of conservation and development adopted under chapter 297;
- (4) The benefit to clients of the agency and the public as a whole;
- (5) An analysis of the value provided for the cost of the project, that at a minimum includes a cost-benefit analysis, an assessment of opportunity costs and any nonfinancial benefits of the project;
- (6) Any operational or technological risk associated with the proposed project;
- (7) The cost of the investment to be made and the economic and financial feasibility of the project;
- (8) An analysis of public versus private financing on a present value basis, and the eligibility of the project for other public funds from local or federal government sources;
- (9) The impact to the state's finances of undertaking the project by the agency; and
- (10) The advantages and disadvantages of using a public-private partnership rather than having the state agency perform the function.

(c) An agency shall not include a project solely based upon the amount of potential revenue generated by such project.

(d) Any agency submitting a project in accordance with subsection (a) of this section shall at the same time transmit, in accordance with the provisions of *section 11-4a*, a copy of its submission to the joint standing committees of the General Assembly having cognizance of matters relating to finance, revenue and bonding and appropriations and the budgets of state agencies. Said committees shall hold public hearings on any such submission.

(e) The Governor shall notify the agency when a project has been approved as a public-private partnership project.

(f) On or before January 15, 2013, and annually thereafter, the Governor shall report, in accordance with the provisions of *section 11-4a*, to the General Assembly concerning the status of the public-private partnerships established under this section.

HISTORY: Oct. Sp. Sess. P.A. 11-1, S. 81.

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Conn. Gen. Stat. § 4-257 (2013)

Sec. 4-257. Prequalification and requirements for private entities.

(a) Notwithstanding the provisions of *section 4b-91* and chapter 242, the agency shall, when it determines appropriate, provide for a process of prequalification for private entities. Any such process shall include public notice of the prequalification process and the requirements and the criteria the agency will use in determining whether the private entity qualifies for prequalification. Any agency that has determined that such a prequalification process is appropriate for the project shall allow only prequalified private entities to be a proposer. The agency may charge a reasonable application fee for prequalification.

(b) In addition to any requirements set forth in the request for proposals, request for qualifications or bid solicitation for a public-private partnership project, in order to be prequalified, a private entity shall:

(1) Have available such lawful sources of funding, capital, securities or other financial resources that, in the judgment of the agency in consultation with the Department of Economic and Community Development, are necessary to carry out the public-private partnership project if such private entity is selected as the contractor;

(2) Possess either through its staff, subcontractors, a consortium or joint venture agreement the managerial, organizational, technical capacity and experience in the type of project for which the proposer is submitting a bid proposal;

(3) Be qualified to lawfully conduct business in this state; and

(4) Certify that no director, officer, partner, owner or other individual with direct and significant control over the policy of the private entity has been convicted of corruption or fraud in any jurisdiction of the United States.

HISTORY: Oct. Sp. Sess. P.A. 11-1, S. 82.

NOTES:

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Conn. Gen. Stat. § 4-258 (2013)

Sec. 4-258. Competitive procurement process; requirements. Stipend for unsuccessful proposer. Agency authority to retain consultants.

(a) Any agency seeking to enter into a public-private partnership shall conduct a competitive procurement process for the selection of a contractor. The agency shall use, where appropriate, in accordance with the nature and scope of the project, (1) competitive bidding, as defined in *section 4e-1*, or (2) competitive negotiation, as defined in *section 4a-250*.

(b) Prior to beginning a competitive procurement process in accordance with subsection (a) of this section, an agency may issue a request for information to obtain information regarding potential public-private partnership projects.

(c) In conducting the competitive procurement process, the agency shall meet the following requirements in addition to the requirements set forth in subsection (a) of this section:

(1) Contain, within the bid specifications, a detailed description of the scope of the proposed public-private partnership project;

(2) Contain the material terms and conditions of the terms applicable to the procurement and any contract that results;

(3) Provide public notice of the invitation to bid, request for proposal or request for information not less than thirty days prior to the due date, unless the agency head makes a written determination that a lesser time period is appropriate and will preserve the competitive nature of the procurement; and

(4) Publish the evaluation and selection criteria and shall include a determination which proposals best serve the public purpose of *sections 4-255 to 4-263*, inclusive.

(d) The agency may pay a stipend to an unsuccessful proposer, in an amount and on the terms and conditions determined by the agency as reasonable, if (1) the agency cancels the procurement process less than thirty days prior to the date the bid or proposal is due, or (2) the unsuccessful proposer submits a proposal that is responsive and meets all the requirements established by the agency for the public-private partnership project. The agency may require the proposer to grant the agency the right to use any work product contained in any unsuccessful proposal, or in the event of a cancelled procurement as set forth in this section, any work product developed prior to cancellation, including designs, processes, technologies and information. All conditions for a stipend shall be clearly set forth in the request for information, bid solicitation, request for proposal or request for qualifications.

(e) The agency may retain financial, legal and other consultants and experts to assist in the procurement, evaluation and negotiation of public-private partnerships and for the development of eligible facilities in accordance with *sections 4-255 to 4-263*, inclusive. Such services may be procured through a contract with a private entity or with another state agency.

HISTORY: Oct. Sp. Sess. P.A. 11-1, S. 83.

NOTES:

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Conn. Gen. Stat. § 4-259 (2013)

Sec. 4-259. Terms and conditions of partnership agreement. Prohibitions. Liability of contractor.

(a) Any partnership agreement executed in accordance with the provisions of *sections 4-255 to 4-263*, inclusive, shall include, but not be limited to, the following terms and conditions:

(1) The term of the agreement, which shall be for a period not to exceed fifty years from the date of the full execution of the partnership agreement;

(2) A complete description of the facility to be developed and the functions to be performed;

(3) The terms of the financing, development, design, improvement, maintenance, operation and administration of the facility;

(4) The rights the state, the contractor, or both, have, if any, in revenue from the financing, development, design, improvement, maintenance, operation or administration of the facility;

(5) The minimum quality standards applicable to the project for development, design, improvement, maintenance, operation or administration of the facility, including performance criteria, incentives and disincentives;

(6) The compensation of the contractor, including the extent to which and the terms upon which a contractor may charge fees to individuals and entities for the use of the facility, but in no event shall such fee extend to the imposition of tolls on the highways of this state unless such tolls are specifically approved by the General Assembly;

(7) The furnishing of an annual independent audit report to the agency covering all aspects of the partnership agreement;

(8) Performance and payment bonds or other security deemed suitable by the agency;

(9) One or more policies of public liability insurance in such amounts determined by the agency to ensure coverage of tort liability for the public and employees of the contractor and to provide for the continued operation of the partnership project;

(10) A reverter of the project to the state upon the conclusion or termination of the partnership agreement;

(11) The rights and remedies available to the agency for a material breach of the partnership agreement by the contractor or private entity or if there is a material default;

(12) Identification of funding sources to be used to fully fund the capital, operation, maintenance or other expenses under the agreement; and

(13) Any other provision determined to be appropriate by the agency.

(b) No partnership agreement shall contain any noncompete provisions limiting the ability of the state to perform its functions.

(c) No user fees may be imposed by the contractor except as set forth in a partnership agreement.

(d) The partnership agreement shall not be construed as waiving the sovereign immunity of the state or as a grant of sovereign immunity to the contractor or any private entity.

(e) No contractor shall be liable for the debts or obligations of the state or the agency, unless the partnership agreement provides that such contractor is liable under such agreement.

HISTORY: Oct. Sp. Sess. P.A. 11-1, S. 84.

NOTES:

History:

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Conn. Gen. Stat. § 4-260 (2013)

Sec. 4-260. Funding of public-private partnerships.

The state agency or the state may apply for and accept funds from local or federal government and other sources of financial aid to further the purposes of *sections 4-255 to 4-263*, inclusive, and to fund public-private partnerships entered into in accordance with said sections.

HISTORY: Oct. Sp. Sess. P.A. 11-1, S. 85.

NOTES:

History:

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