ASSEMBLY, No. 812

STATE OF NEW JERSEY
220th LEGISLATURE

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SYNOPSIS
Requires OIT to establish Statewide wireless network through public-private partnership agreement.

CURRENT VERSION OF TEXT
Introduced Pending Technical Review by Legislative Counsel.
AN ACT concerning a Statewide wireless network and supplementing Title 52 of the Revised Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. As used in P.L. , c. (C. ) (pending before the Legislature as this bill):
   “Broadband telecommunications infrastructure” shall have the same meaning as provided in section 1 of P.L.2007, c.191 (C.40:9D-1).
   “Broadband telecommunications service” shall have the same meaning as provided in section 1 of P.L.2007, c.191 (C.40:9D-1) but shall provide a minimum download speed of at least 1 megabit per second.
   “Department” means the Department of the Treasury.
   “Governing body” shall have the same meaning as provided in section 1 of P.L.2007, c.191 (C.40:9D-1).
   "Person" shall have the same meaning as provided in R.S.1:1-2 and includes “public utilities” as defined in R.S.48:2-13.
   “Public-private partnership agreement” means an agreement entered into by the Office of Information Technology and a private entity pursuant to P.L. , c. (C. ) (pending before the Legislature as this bill) for the purpose of permitting a private entity to assume full financial and administrative responsibility for the construction, reconstruction, repair, improvement, extension, operation, and maintenance of a revenue-producing Statewide wireless network project.
   “State government entity” means the State or any department, agency, commission, or authority thereof subject to the public contracting provisions of P.L.1954, c.48 (C.52:34-6 et seq.).
   "Statewide wireless network project" or “project” means the construction, reconstruction, repair, maintenance, improvement, or extension of any broadband telecommunications infrastructure for the provision broadband telecommunications service over of a Statewide wireless network.

2. a. Consistent with federal law, the Office of Information Technology shall enter into a contract with a private entity to be referred to as a public-private partnership agreement, that permits the private entity to assume full financial and administrative responsibility for the construction, reconstruction, repair, improvement, extension, operation, and maintenance of a Statewide wireless network project, provided that the Statewide wireless network project is financed in whole or in part by the private entity
and any owner of the land or property upon which the project is
located retains full ownership of their land or property.

b. A public-private partnership agreement may include an
agreement under which the office and a private entity enter into a
leaseback agreement of a revenue-producing Statewide wireless
network project in exchange for up-front or structured financing by
the private entity for the project. Under the leaseback agreement,
the private entity shall be responsible for the management,
operation, and maintenance of the Statewide wireless network
project. The private entity shall receive some or all, as per the
agreement, of the revenue generated by the Statewide wireless
network project, and shall operate the Statewide wireless network
project in accordance with standards established by the office. At
the end of the lease term, all subsequent revenue generated by the
Statewide wireless network project, along with management,
operation, and maintenance responsibility, shall revert to the office.
A leaseback agreement shall be subject to all applicable provisions
of current law governing leases by a State government entity not
consistent with the provisions of this section.
c. Notwithstanding any provision of law to the contrary, the
office shall be empowered to enter into contracts with a private
entity and its affiliates without being subject to the procurement and
contracting requirements, unless otherwise set forth herein, of any
law applicable to the office provided that the private entity has been
selected by the office pursuant to a solicitation of proposals or
qualifications from at least two private entities. The office shall be
the owner or lessee of any project financed by the State.

3. a. Prior to entering into a public-private partnership
agreement, the office shall determine:
   (1) the benefits to be realized by the project;
   (2) the cost of project if it is developed by a State government
       entity supported by comparisons to comparable projects;
   (3) the maximum public contribution that the office will allow
       under the public-private partnership agreement;
   (4) a comparison of the financial and non-financial benefits of
       the public-private partnership agreement compared to other options
       including the public sector option;
   (5) a list of risks, liabilities, and responsibilities to be
       transferred to the private entity and those to be retained by the
       office; and
   (6) if the project has a high, medium, or low level of project
delivery risk, how the public is protected from these risks.
b. Prior to entering into a public-private partnership agreement,
the office shall hold at least one public hearing in each of the north,
central, and southern regions of the State, as determined by the
office, at least 90 days prior to publishing the request for private
entity qualifications, pursuant to section 4 of P.L.    , c.  (C.  )
(pending before the Legislature as this bill), and shall present, with evidence, that the project is in the best interest of the public by showing that:

1. the project will cost less than the public sector option, or if the project costs more, there are factors that warrant the additional expense;
2. there is a public need for the project and the project is consistent with existing long-term plans;
3. there are specific significant benefits to the project;
4. there are specific significant benefits to using a public-private partnership instead of other options;
5. the project will result in timely and efficient development and operation of the Statewide wireless network project; and
6. the risks, liabilities and responsibilities transferred to the private entity provide sufficient benefits to warrant not using other means of procurement.

4. a. A private entity seeking to enter into a public-private partnership agreement with the office shall first be qualified by the office, in consultation with the Department of the Treasury, provided the qualification process ensures that the private entity, and its subcontractors and consultants, when relevant, are identified and meet at least the minimum office standards for qualification for professional services, telecommunications infrastructure contracting, and other qualifications applicable to the project, prior to submitting a request for proposals pursuant to subsection c. of this section.

b. The office shall advertise a request for qualifications for a public-private partnership agreement at least 45 days prior to the anticipated date of receipt. The advertisement of the request for qualifications shall be published on the official Internet website of the office and in at least one or more newspapers with Statewide circulation.

c. After the office determines the qualified respondents utilizing, at minimum, the qualification standards promulgated by the office, pursuant to subsection a. of this section, the office shall issue a request for proposals to each qualified respondent no less than 90 days prior to the date established for submission of the proposals. The request for proposals shall require qualified respondents to include, but not be limited to:

1. a design for at least two tiers of minimum and maximum download and upload speeds for the broadband telecommunications service provided by the Statewide wireless network, the slowest of which shall be offered to the public free of charge;
2. proposed rates not to exceed $10 per month that shall apply to any speed tier that is not the slowest speed tier;
3. a description and proof of effective application of all broadband telecommunications infrastructure the private entity is
capable of using in constructing and operating the Statewide wireless network;

(4) a commitment from the private entity to fully cooperate with the governing body of any local unit within which the private entity is to construct or install broadband telecommunications infrastructure in any public right-of-way, under terms and conditions as may be agreed upon by the governing body and the private entity;

(5) a commitment from the private entity to fully cooperate with any person owning or having the right to use any poles, street lights, posts, towers, or other structures erected along any public right-of-way, under terms and conditions as may be agreed upon by the person and the private entity; and

(6) relevant technical submissions, documents, and any other material as determined by the office.

d. In order for a proposal to be complete and considered by the office, the proposal from the qualified respondent shall include, but not be limited to:

(1) a full description of the proposed public-private partnership agreement between the office and the private entity, including all information obtained by, and findings of, the office pursuant to subsection c. of section 5 of P.L. , c. (C. ) (pending before the Legislature as this bill);

(2) a full description of the project, including a description of the leaseback agreement, if applicable;

(3) the estimated costs and financial documentation for the project showing the underlying financial models and assumptions that determined the estimated costs. The financial documentation shall include at least three different projected estimated costs showing scenarios in which materially different economic circumstances are assumed and an explanation for how the estimated costs were determined based on the three scenarios;

(4) a timetable for completion of the construction of the project;

(5) an analysis of all available funding options for the project, including an analysis of the financial viability and advisability of such project, along with evidence of the public benefit in advancing the project as a public-private partnership; and

(6) any other requirements that the office deems appropriate or necessary.

e. As part of the estimated costs and financial documentation for the project, the proposal shall contain a long-range maintenance plan and a long-range maintenance bond and shall specify the expenditures that qualify as an appropriate investment in maintenance. The long-range maintenance plan shall be approved by the office pursuant to regulations promulgated by the office that reflect appropriate maintenance benchmarks.

f. The office may, upon receipt of one or more proposals, require that the private entity assume responsibility for all costs
incurred by the office before execution of the public-private partnership agreement, including costs of retaining independent experts to review, analyze, and advise the office with respect to the proposal.

  g. Stipends may be paid in relation to Statewide wireless network projects when there is a substantial opportunity for innovation and the costs for developing a proposal are significant. The office may elect to pay unsuccessful proposers for the work product they submit with their proposal in response to a request for proposals. The use by the office of any design element contained in an unsuccessful proposal shall be at the sole risk and discretion of the office and shall not confer liability on the recipient of the stipulated stipend amount. After payment of the stipulated stipend amount, the office and the unsuccessful proposer shall 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. The use by the unsuccessful proposer of any part of the work product contained in the proposal shall be at the sole risk of the unsuccessful proposer and shall not confer liability on the office. The department, in consultation with the office, shall promulgate guidelines based upon which any stipends paid by the office may be based.

  5. a. (1) After the office has received one or more proposals from qualified respondents, and any public notification period has expired, the office shall evaluate the proposals using criteria promulgated by the office, in consultation with the department and rank the proposals in order of preference. The office may request additional information from a qualified respondent, as is needed, to make a complete assessment of the project.

  (2) In ranking the proposals, the office may consider factors that include, but may not be limited to, professional qualifications, general business terms, innovative engineering, provision of telecommunications services, or cost-reduction terms, finance plans, and the need for State funds to deliver the project and discharge the agreement and shall rely upon, at a minimum, the evaluation criteria promulgated by the office, in consultation with the department. The office may negotiate the final terms with the private entities submitting proposals, including price, term, and any other term or condition so as to make the project well-suited to the needs of the office and the State and commercially viable for the private entity. The office shall select a proposal that meets the standards required pursuant to this section and that best meet the needs, price, and other factors considered by the office. The private entity selected shall comply with all laws and regulations required by the State government entity, including but not limited to section 1 of P.L.2001, c.134 (C.52:32-44), sections 2 through 8 of
(3) If only one proposal is received, the office shall negotiate in good faith and, if not satisfied with the results of the negotiations, the office may, at its sole discretion, terminate negotiations.

(4) A public-private partnership agreement shall not be executed until approval has been granted by the office and the department. Prior to a final decision by the office on the application, the department shall be afforded the opportunity to provide comments on the application that it deems appropriate, and the office shall consider any comments submitted by the department or relevant State government entity with respect to the application.

b. In approving a proposal for the public-private partnership, the office shall find that:

(1) the office's assumptions regarding the project's scope, its benefits, its risks and the cost of the public sector option were fully and reasonably developed;

(2) the design of the project is feasible;

(3) the experience and qualifications of the private entity are adequate;

(4) the financial plan is sound;

(5) the long-range maintenance plan is adequate to protect the investment;

(6) the project is in the best interest of the public; and

(7) the term sheet for any proposed procurement contains all necessary elements.

c. The criteria for assessing the project shall include, but may not be limited to the:

(1) feasibility and design of the project;

(2) experience and qualifications of the private entity;

(3) soundness of the financial plan;

(4) adequacy of the required exhibits;

(5) adequacy of the long-range maintenance plan; and

(6) existence of a clear public benefit.

d. The office shall retain the right to revoke its approval of the project if the project has substantially deviated from the proposal submitted pursuant to section 4 of P.L. , c. (C. ) (pending before the Legislature as this bill).

e. The office may promulgate any rules and regulations necessary to implement the provisions of this section, including, but not limited to, provisions for fees to cover administrative costs and for the determination of minimum office standards for the operation of the project, and for the qualification for professional services,
telecommunications infrastructure contracting, and other relevant qualifications.

6. Any public-private partnership agreement, if appropriate, shall include provisions affirming that the agreement and any work performed under the agreement are subject to the provisions of the "Construction Industry Independent Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.). Any public-private partnership agreement shall also include, at a minimum:
   a. the term of the agreement;
   b. the total project cost;
   c. a completion date guarantee;
   d. a provision for damages if the private entity fails to meet the completion date; and
   e. a maximum rate of return to the private entity and a provision for the distribution of excess earnings to the office or to the private entity for debt reduction.

7. a. Prior to the commencement of work on a project, the private entity shall establish a Statewide wireless network project account and appoint a third-party financial institution, who shall be prequalified by the department, to act as a collateral agent, and manage the Statewide wireless network project account. The Statewide wireless network project account shall include the funding, financial instruments, or both, that shall be used to fully capitalize and fund the project, and the collateral agent shall maintain a full accounting of the funds and instruments in the account. The funds and instruments in the Statewide wireless network project account shall be held in trust for the benefit of the contractor, construction manager, and design-build team involved in the project. The funds and instruments in the Statewide wireless network project account shall not be the property of the private entity unless all amounts due to the Statewide wireless network project account beneficiaries are paid in full. The Statewide wireless network project account shall only be designated for the project.
   b. The private entity shall be required to post a performance bond to ensure the completion of the project and a payment bond guaranteeing prompt payment of monies due in accordance with and conforming to the requirements of N.J.S.2A:44-143 et seq.

8. Each worker employed in the construction, operation, or maintenance services of the Statewide wireless network project by a private entity that has entered into a public-private partnership agreement with the office pursuant to P.L. , c. (pending before the Legislature as this bill) shall be paid not less than the prevailing wage rate for the worker's craft or trade as determined by the Commissioner of Labor and Workforce Development pursuant...
to the “New Jersey Prevailing Wage Act,” P.L.1963, c.150
(C.34:11-56.25 et seq.) and P.L.2005, c.379 (C.34:11-56.58 et seq.).

9. The power of eminent domain shall not be delegated to any
private entity under the provisions of P.L.2018, c.90 (C.40A:11-52
et al.); however, the office may dedicate any property interest,
including improvements, and tangible personal property of the State
for public use in a Statewide wireless network project if the office
finds that so doing will serve the public purpose of the project by
minimizing the cost of the project to the office or reducing the
delivery time of a project.

10. Nothing in P.L. , c. (C. ) (pending before the
Legislature as this bill) shall be construed as or deemed a waiver of
the sovereign immunity of the State, an affected political
subdivision, or public entity or any officer or employee thereof with
respect to the participation in or approval of all or any part of a
Statewide wireless network project.

11. This act shall take effect immediately but shall be
inoperative for 90 days following the date of enactment.

STATEMENT

This bill requires the Office of Information Technology (OIT) in
the Department of the Treasury (department) to establish a
Statewide wireless network (network) through a public-private
partnership agreement with a private entity that is to assume full
financial and administrative responsibility for the construction,
reconstruction, repair, improvement, extension, operation, and
maintenance of the network, provided that the network project is
financed in whole or in part by the private entity and any owner of
the land or property upon which the project is located retains full
ownership of their land or property. The public-private partnership
may include a leaseback agreement.

The bill provides that, prior to entering into a public-private
partnership, the OIT is to determine:

1) the benefits to be realized by the project;
2) the cost of project if it is developed by a State government
entity supported by comparisons to comparable projects;
3) the maximum public contribution that the office will allow
under the public-private partnership agreement;
4) a comparison of the financial and non-financial benefits of
the public-private partnership agreement compared to other options
including the public sector option;
5) a list of risks, liabilities, and responsibilities to be transferred to the private entity and those to be retained by the office; and
6) if the project has a high, medium, or low level of project delivery risk, how the public is protected from these risks.

The OIT is to also hold a public hearing in the northern, central, and southern regions of the State to present information supporting the establishment and construction of the network.

The OIT is to require that the private entity include, but not be limited to, the following in the private entity’s proposal to construct the network:

1) at least two tiers of minimum and maximum download and upload speeds for the broadband telecommunications service provided by the network, the slowest of which is to be be offered to the public free of charge;
2) proposed rates not to exceed $10 per month that shall apply to any speed tier that is not the slowest speed tier;
3) a description and proof of effective application of all broadband telecommunications infrastructure the private entity is capable of using in constructing and operating the network;
4) a commitment from the private entity to fully cooperate with the governing body of any local unit within which the private entity is to construct or install broadband telecommunications infrastructure in any public right-of-way, under terms and conditions as may be agreed upon by the governing body and the private entity; and
5) a commitment from the private entity to fully cooperate with any person owning or having the right to use any poles, street lights, posts, towers, or other structures erected along any public right-of-way, under terms and conditions as may be agreed upon by the person and the private entity.

The bill provides that the OIT, in consultation with the department, is to review all submitted proposals, and request additional information as is needed to make a complete assessment of the project. A public-private partnership agreement is not to be executed until approval has been granted by the office and department. The OIT is to retain the right to revoke approval of a proposal if the project has substantially deviated from the proposal.