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1 AMENDMENT TO HOUSE BILL 7019

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 7019 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Design-Build Procurement Act.

6 Section 5. Legislative policy. It is the intent of the  
7 General Assembly that State construction agencies be allowed to  
8 use the design-build delivery method for public projects if it  
9 is shown to be in the State's best interest for that particular  
10 project. It shall be the policy of State construction agencies  
11 in the procurement of design-build services to publicly  
12 announce all requirements for design-build services and to  
13 procure these services on the basis of demonstrated competence  
14 and qualifications and with due regard for the principles of  
15 competitive selection.

16 A State construction agency shall, prior to issuing  
17 requests for proposals, promulgate and publish procedures for  
18 the solicitation and award of contracts pursuant to this Act.

19 A State construction agency shall, for each public project  
20 or projects permitted under this Act, make a written  
21 determination, including a description as to the particular  
22 advantages of the design-build procurement method, that it is  
23 in the best interests of this State to enter into a  
24 design-build contract for the project or projects. In making

1 that determination, the following factors shall be considered:

2 (1) The probability that the design-build procurement  
3 method will be in the best interests of the State by  
4 providing a material savings of time or cost over the  
5 design-bid-build or other delivery system.

6 (2) The type and size of the project and its  
7 suitability to the design-build procurement method.

8 (3) The ability of the State construction agency to  
9 define and provide comprehensive scope and performance  
10 criteria for the project.

11 The State construction agency shall within 15 days after  
12 the initial determination provide an advisory copy to the  
13 Procurement Policy Board and maintain the full record of  
14 determination for 5 years.

15 Section 10. Definitions. As used in this Act:

16 "State construction agency" means and includes those  
17 agencies as defined in Section 1-15.25 of the Illinois  
18 Procurement Code, but does not mean State institutions of  
19 higher learning, the boards of trustees of State institutions  
20 of higher learning, community colleges and community college  
21 districts subject to the Public Community College Act, the  
22 boards of trustees of community college districts subject to  
23 the Public Community College Act, and the Illinois Community  
24 College Board.

25 "Delivery system" means the design and construction  
26 approach used to develop and construct a project.

27 "Design-bid-build" means the traditional delivery system  
28 used on public projects in this State that incorporates the  
29 Architectural, Engineering, and Land Surveying Qualification  
30 Based Selection Act (30 ILCS 535/) and the principles of  
31 competitive selection in the Illinois Procurement Code (30 ILCS  
32 500/).

33 "Design-build" means a delivery system that provides

1 responsibility within a single contract for the furnishing of  
2 architecture, engineering, land surveying and related services  
3 as required, and the labor, materials, equipment, and other  
4 construction services for the project.

5 "Design-build contract" means a contract for a public  
6 project under this Act between a State construction agency and  
7 a design-build entity to furnish architecture, engineering,  
8 land surveying, and related services as required, and to  
9 furnish the labor, materials, equipment, and other  
10 construction services for the project. The design-build  
11 contract may be conditioned upon subsequent refinements in  
12 scope and price and may allow the State construction agency to  
13 make modifications in the project scope without invalidating  
14 the design-build contract.

15 "Design-build entity" means any individual, sole  
16 proprietorship, firm, partnership, joint venture, corporation,  
17 professional corporation, or other entity that proposes to  
18 design and construct any public project under this Act. A  
19 design-build entity and associated design-build professionals  
20 shall conduct themselves in accordance with the laws of this  
21 State and the related provisions of the Illinois Administrative  
22 Code, as referenced by the licensed design professionals Acts  
23 of this State.

24 "Design professional" means any individual, sole  
25 proprietorship, firm, partnership, joint venture, corporation,  
26 professional corporation, or other entity that offers services  
27 under the Illinois Architecture Practice Act of 1989 (225 ILCS  
28 305/), the Professional Engineering Practice Act of 1989 (225  
29 ILCS 325/), the Structural Engineering Licensing Act of 1989  
30 (225 ILCS 340/), or the Illinois Professional Land Surveyor Act  
31 of 1989 (225 ILCS 330/).

32 "Evaluation criteria" means the requirements for the  
33 separate phases of the selection process as defined in this Act  
34 and may include the specialized experience, technical

1 qualifications and competence, capacity to perform, past  
2 performance, experience with similar projects, assignment of  
3 personnel to the project, and other appropriate factors. Price  
4 may not be used as a factor in the evaluation of Phase I  
5 proposals.

6 "Proposal" means the offer to enter into a design-build  
7 contract as submitted by a design-build entity in accordance  
8 with this Act.

9 "Request for proposal" means the document used by a State  
10 construction agency to solicit proposals for a design-build  
11 contract.

12 "Scope and performance criteria" means the requirements  
13 for the public project, including but not limited to, the  
14 intended usage, capacity, size, scope, quality and performance  
15 standards, life-cycle costs, and other programmatic criteria  
16 that are expressed in performance-oriented and quantifiable  
17 specifications and drawings that can be reasonably inferred and  
18 are suited to allow a design-build entity to develop a  
19 proposal.

20 "State institutions of higher learning" means the  
21 University of Illinois, Southern Illinois University, Chicago  
22 State University, Eastern Illinois University, Governors State  
23 University, Illinois State University, Northeastern Illinois  
24 University, Northern Illinois University, and Western Illinois  
25 University.

26 Section 15. Solicitation of proposals.

27 (a) A State construction agency that elects to use the  
28 design-build delivery method must issue a notice of intent to  
29 receive requests for proposals for the project at least 14 days  
30 before issuing the request for the proposal. The State  
31 construction agency must publish the advance notice in the  
32 official procurement bulletin of the State or the professional  
33 services bulletin of the State construction agency, if any. The

1 agency is encouraged to use publication of the notice in  
2 related construction industry service publications. A brief  
3 description of the proposed procurement must be included in the  
4 notice. The State construction agency must provide a copy of  
5 the request for proposal to any party requesting a copy.

6 (b) The request for proposal shall be prepared for each  
7 project and must contain, without limitation, the following  
8 information:

9 (1) The State construction agency that will award the  
10 design-build contract.

11 (2) A preliminary schedule for the completion of the  
12 contract.

13 (3) The proposed budget for the project, the source of  
14 funds, and the currently available funds at the time the  
15 request for proposal is submitted.

16 (4) Prequalification criteria for design-build  
17 entities wishing to submit proposals. The State  
18 construction agency shall include, at a minimum, its normal  
19 prequalification, licensing, registration, and other  
20 requirements, but nothing contained herein precludes the  
21 use of additional prequalification criteria by the State  
22 construction agency.

23 (5) Material requirements of the contract, including  
24 but not limited to, the proposed terms and conditions,  
25 required performance and payment bonds, insurance,  
26 affirmative action, and workforce requirements, if any.

27 (6) The performance criteria.

28 (7) The evaluation criteria for each phase of the  
29 solicitation.

30 (8) The number of entities that will be considered for  
31 the technical and cost evaluation phase.

32 (c) The State construction agency may include any other  
33 relevant information that it chooses to supply. The  
34 design-build entity shall be entitled to rely upon the accuracy

1 of this documentation in the development of its proposal.

2 (d) The date that proposals are due must be at least 21  
3 calendar days after the date of the issuance of the request for  
4 proposal. In the event the cost of the project is estimated to  
5 exceed \$10 million, then the proposal due date must be at least  
6 28 calendar days after the date of the issuance of the request  
7 for proposal. The State construction agency shall include in  
8 the request for proposal a minimum of 30 days to develop the  
9 Phase II submissions after the selection of entities from the  
10 Phase I evaluation is completed.

11 Section 20. Development of scope and performance criteria.

12 (a) The State construction agency shall develop, with the  
13 assistance of a licensed design professional, a request for  
14 proposal, which shall include scope and performance criteria.  
15 The scope and performance criteria must be in sufficient detail  
16 and contain adequate information to reasonably apprise the  
17 qualified design-build entities of the State construction  
18 agency's overall programmatic needs and goals, including  
19 criteria and preliminary design plans, general budget  
20 parameters, schedule, and delivery requirements.

21 (b) Each request for proposal shall also include a  
22 description of the level of design to be provided in the  
23 proposals. This description must include the scope and type of  
24 renderings, drawings, and specifications that, at a minimum,  
25 will be required by the State construction agency to be  
26 produced by the design-build entities.

27 (c) The scope and performance criteria shall be prepared by  
28 a design professional who is an employee of the State  
29 construction agency, or the State construction agency may  
30 contract with an independent design professional selected  
31 under the Architectural, Engineering and Land Surveying  
32 Qualification Based Selection Act (30 ILCS 535/) to provide  
33 these services.

1           (d) The design professional that prepares the scope and  
2 performance criteria is prohibited from participating in any  
3 design-build entity proposal for the project.

4           Section 25. Selection Committee.

5           (a) Each State construction agency that elects to use the  
6 design-build delivery method shall establish a committee to  
7 evaluate and select the design-build entity. The committee,  
8 under the discretion of the State construction agency, shall  
9 consist of 3, 5, or 7 members and shall include at least one  
10 licensed design professional and one member of the public. The  
11 public member may not be employed or associated with any firm  
12 holding a contract with the State construction agency and shall  
13 be nominated by design or construction industry associations.  
14 The selection committee may be designated for a set term or for  
15 the particular project subject to the request for proposal.

16           (b) The members of the selection committee must certify for  
17 each request for proposal that no conflict of interest exists  
18 between the members and the design-build entities submitting  
19 proposals. If a conflict exists, the member must be replaced  
20 before any review of proposals.

21           Section 30. Procedures for Selection.

22           (a) The State construction agency must use a two-phase  
23 procedure for the selection of the successful design-build  
24 entity. Phase I of the procedure will evaluate and shortlist  
25 the design-build entities based on qualifications, and Phase II  
26 will evaluate the technical and cost proposals.

27           (b) The State construction agency shall include in the  
28 request for proposal the evaluating factors to be used in Phase  
29 I. These factors are in addition to any prequalification  
30 requirements of design-build entities that the agency has set  
31 forth. Each request for proposal shall establish the relative  
32 importance assigned to each evaluation factor and subfactor,

1 including any weighting of criteria to be employed by the State  
2 construction agency. The State construction agency must  
3 maintain a record of the evaluation scoring to be disclosed in  
4 event of a protest regarding the solicitation.

5 The State construction agency shall include the following  
6 criteria in every Phase I evaluation of design-build entities:  
7 (1) experience of personnel; (2) successful experience with  
8 similar project types; (3) financial capability; (4)  
9 timeliness of past performance; (5) experience with similarly  
10 sized projects; (6) successful reference checks of the firm;  
11 and (7) commitment to assign personnel for the duration of the  
12 project and qualifications of the entity's consultants. The  
13 State construction agency may include any additional relevant  
14 criteria in Phase I that it deems necessary for a proper  
15 qualification review.

16 The State construction agency may not consider any  
17 design-build entity for evaluation or award if the entity has  
18 any pecuniary interest in the project or has other  
19 relationships or circumstances, including but not limited to,  
20 long-term leasehold, mutual performance, or development  
21 contracts with the State construction agency, that may give the  
22 design-build entity a financial or tangible advantage over  
23 other design-build entities in the preparation, evaluation, or  
24 performance of the design-build contract or that create the  
25 appearance of impropriety.

26 Upon completion of the qualifications evaluation, the  
27 State construction agency shall create a shortlist of the most  
28 highly qualified design-build entities. The State construction  
29 agency, in its discretion, is not required to shortlist the  
30 maximum number of entities as identified for Phase II  
31 evaluation, provided however, no less than 2 design-build  
32 entities nor more than 6 are selected to submit Phase II  
33 proposals.

34 The State construction agency shall notify the entities



1 selected for the shortlist in writing. This notification shall  
2 commence the period for the preparation of the Phase II  
3 technical and cost evaluations. The State construction agency  
4 must allow sufficient time for the shortlist entities to  
5 prepare their Phase II submittals considering the scope and  
6 detail requested by the State agency.

7 (c) The State construction agency shall include in the  
8 request for proposal the evaluating factors to be used in the  
9 technical and cost submission components of Phase II. Each  
10 request for proposal shall establish, for both the technical  
11 and cost submission components of Phase II, the relative  
12 importance assigned to each evaluation factor and subfactor,  
13 including any weighting of criteria to be employed by the State  
14 construction agency. The State construction agency must  
15 maintain a record of the evaluation scoring to be disclosed in  
16 event of a protest regarding the solicitation.

17 The State construction agency shall include the following  
18 criteria in every Phase II technical evaluation of design-build  
19 entities: (1) compliance with objectives of the project; (2)  
20 compliance of proposed services to the request for proposal  
21 requirements; (3) quality of products or materials proposed;  
22 (4) quality of design parameters; (5) design concepts; (6)  
23 innovation in meeting the scope and performance criteria; and  
24 (7) constructability of the proposed project. The State  
25 construction agency may include any additional relevant  
26 technical evaluation factors it deems necessary for proper  
27 selection.

28 The State construction agency shall include the following  
29 criteria in every Phase II cost evaluation: the total project  
30 cost, the construction costs, and the time of completion. The  
31 State construction agency may include any additional relevant  
32 technical evaluation factors it deems necessary for proper  
33 selection. The total project cost criteria weighing factor (i)  
34 shall be set forth in the request for proposal for the Illinois

1 Department of Transportation and the Illinois State Toll  
2 Highway Authority and (ii) shall be at least 25% for all other  
3 State construction agencies.

4 The State construction agency shall directly employ or  
5 retain a licensed design professional to evaluate the technical  
6 and cost submissions to determine if the technical submissions  
7 are in accordance with generally accepted industry standards.

8 Upon completion of the technical submissions and cost  
9 submissions evaluation, the State construction agency may  
10 award the design-build contract to the highest overall ranked  
11 entity.

12 Section 35. Small projects. In any case where the total  
13 overall cost of the project is estimated to be less than \$10  
14 million, the State construction agency may combine the  
15 two-phase procedure for selection described in Section 30 into  
16 one combined step, provided that all the requirements of  
17 evaluation are performed in accordance with Section 30.

18 Section 40. Submission of proposals. Proposals must be  
19 properly identified and sealed. Proposals may not be reviewed  
20 until after the deadline for submission has passed as set forth  
21 in the request for proposals. All design-build entities  
22 submitting proposals shall be disclosed after the deadline for  
23 submission, and all design-build entities who are selected for  
24 Phase II evaluation shall also be disclosed at the time of that  
25 determination.

26 Proposals shall include a bid bond in the form and security  
27 as designated in the request for proposals. Proposals shall  
28 also contain a separate sealed envelope with the cost  
29 information within the overall proposal submission. Proposals  
30 shall include a list of all design professionals and other  
31 entities as defined in Section 30-30 of the Illinois  
32 Procurement Code to which any work may be subcontracted during

1 the performance of the contract. Any entity that will perform  
2 any of the 5 subdivisions of work defined in Section 30-30 of  
3 the Illinois Procurement Code must meet prequalification  
4 standards of the State construction agency.

5 Proposals must meet all material requirements of the  
6 request for proposal or they may be rejected as non-responsive.  
7 The State construction agency shall have the right to reject  
8 any and all proposals.

9 The drawings and specifications of the proposal shall  
10 remain the property of the design-build entity.

11 The State construction agency shall review the proposals  
12 for compliance with the performance criteria and evaluation  
13 factors.

14 Proposals may be withdrawn prior to evaluation for any  
15 cause. After evaluation begins by the State construction  
16 agency, clear and convincing evidence of error is required for  
17 withdrawal.

18 Section 45. Award. The State construction agency may award  
19 the contract to the highest overall ranked entity. Notice of  
20 award shall be made in writing. Unsuccessful entities shall  
21 also be notified in writing. The State construction agency may  
22 not request a best and final offer after the receipt of  
23 proposals. The State construction agency may negotiate with the  
24 selected design-build entity after award but prior to contract  
25 execution for the purpose of securing better terms than  
26 originally proposed, provided that the salient features of the  
27 request for proposal are not diminished.

28 Section 50. Administrative Procedure Act. The Illinois  
29 Administrative Procedure Act (5 ILCS 100/) applies to all  
30 administrative rules and procedures of the State construction  
31 agency under this Act except that nothing herein shall be  
32 construed to render any prequalification or other

1 responsibility criteria as a "license" or "licensing" under  
2 that Act.

3 Section 53. Federal requirements. In the procurement of  
4 design-build contracts, State construction agencies shall  
5 comply with federal law and regulations and take all necessary  
6 steps to adapt their rules, policies, and procedures to remain  
7 eligible for federal aid.

8 Section 900. The Illinois Procurement Code is amended by  
9 changing Section 30-30 as follows:

10 (30 ILCS 500/30-30)

11 Sec. 30-30. Contracts in excess of \$250,000. For building  
12 construction contracts in excess of \$250,000, separate  
13 specifications shall be prepared for all equipment, labor, and  
14 materials in connection with the following 5 subdivisions of  
15 the work to be performed:

16 (1) plumbing;

17 (2) heating, piping, refrigeration, and automatic  
18 temperature control systems, including the testing and  
19 balancing of those systems;

20 (3) ventilating and distribution systems for  
21 conditioned air, including the testing and balancing of  
22 those systems;

23 (4) electric wiring; and

24 (5) general contract work.

25 The specifications must be so drawn as to permit separate  
26 and independent bidding upon each of the 5 subdivisions of  
27 work. All contracts awarded for any part thereof shall award  
28 the 5 subdivisions of work separately to responsible and  
29 reliable persons, firms, or corporations engaged in these  
30 classes of work. The contracts, at the discretion of the  
31 construction agency, may be assigned to the successful bidder

1 on the general contract work or to the successful bidder on the  
2 subdivision of work designated by the construction agency  
3 before the bidding as the prime subdivision of work, provided  
4 that all payments will be made directly to the contractors for  
5 the 5 subdivisions of work upon compliance with the conditions  
6 of the contract. A contract may be let for one or more  
7 buildings in any project to the same contractor. The  
8 specifications shall require, however, that unless the  
9 buildings are identical, a separate price shall be submitted  
10 for each building. The contract may be awarded to the lowest  
11 responsible bidder for each or all of the buildings included in  
12 the specifications.

13 The requirements of this Section do not apply to the  
14 construction of an Emergency Operations Center for the Illinois  
15 Emergency Management Agency if (i) the majority of the funding  
16 for the project is from federal funds, (ii) the bid of the  
17 successful bidder identifies the name of the subcontractor, if  
18 any, and the bid proposal costs for each of the 5 subdivisions  
19 of work set forth in this Section, and (iii) the contract  
20 entered into with the successful bidder provides that no  
21 identified subcontractor may be terminated without the written  
22 consent of the Capital Development Board.

23 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

24 Section 995. Severability. The provisions of this Act are  
25 severable under Section 1.31 of the Statute on Statutes.

26 Section 999. Effective date. This Act takes effect upon  
27 becoming law."