

1 AN ACT concerning procurement.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

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
8 to use the design-build delivery method for public projects
9 if it is shown to be in the State's best interest for that
10 particular project. It shall be the policy of State
11 construction agencies in the procurement of design-build
12 services to publicly announce all requirements for
13 design-build services and to procure these services on the
14 basis of demonstrated competence and qualifications and with
15 due regard for the principles of 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
20 project 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
25 that determination, the following factors shall be
26 considered:

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

31 (2) The type and size of the project and its

1 suitability to the design-build procurement method.

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

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

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

10 "State construction agency" means and includes those
11 agencies as defined in Section 1-15.25 of the Illinois
12 Procurement Code, as amended, but does not mean the Illinois
13 Department of Transportation and the Illinois State Toll
14 Highway Authority.

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

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

23 "Design-build" means a delivery system that provides
24 responsibility within a single contract for the furnishing of
25 architecture, engineering, land surveying and related
26 services as required, and the labor, materials, equipment,
27 and other construction services for the project.

28 "Design-build contract" means a contract for a public
29 project under this Act between a State construction agency
30 and a design-build entity to furnish architecture,
31 engineering, land surveying, and related services as
32 required, and to furnish the labor, materials, equipment, and
33 other construction services for the project. The design-build

1 contract may be conditioned upon subsequent refinements in
2 scope and price and may allow the State construction agency
3 to make modifications in the project scope without
4 invalidating the design-build contract.

5 "Design-build entity" means any individual, sole
6 proprietorship, firm, partnership, joint venture,
7 corporation, professional corporation, or other entity that
8 proposes to design and construct any public project under
9 this Act. A design-build entity and associated design-build
10 professionals shall conduct themselves in accordance with the
11 laws of this State and the related provisions of the Illinois
12 Administrative Code, as referenced by the licensed design
13 professional Acts of this State, with respect to the
14 solicitation and contracting of design-build services.

15 "Design professional" means any individual, sole
16 proprietorship, firm, partnership, joint venture,
17 corporation, professional corporation, or other entity that
18 offers services under the Illinois Architecture Practice Act
19 of 1989 (225 ILCS 305/), the Professional Engineering
20 Practice Act of 1989 (225 ILCS 325/), the Structural
21 Engineering Licensing Act of 1989 (225 ILCS 340/), or the
22 Illinois Professional Land Surveyor Act of 1989 (225 ILCS
23 330/).

24 "Evaluation criteria" means the requirements for the
25 separate phases of the selection process as defined in this
26 Act and may include the specialized experience, technical
27 qualifications and competence, capacity to perform, past
28 performance, experience with similar projects, assignment of
29 personnel to the project, and other appropriate factors.
30 Price may not be used as a factor in the evaluation of Phase
31 I proposals.

32 "Proposal" means the offer to enter into a design-build
33 contract as submitted by a design-build entity in accordance
34 with this Act.

1 "Request for proposal" means the document used by a State
2 construction agency to solicit proposals for a design-build
3 contract.

4 "Scope and performance criteria" means the requirements
5 for the public project, including but not limited to, the
6 intended usage, capacity, size, scope, quality and
7 performance standards, life-cycle costs, and other
8 programmatic criteria that are expressed in
9 performance-oriented and quantifiable specifications and
10 drawings that can be reasonably inferred and are suited to
11 allow a design-build entity to develop a proposal.

12 Section 15. Solicitation of proposals.

13 (a) A State construction agency that elects to use the
14 design-build delivery method must issue a notice of intent to
15 receive requests for proposals for the project at least 14
16 days before issuing the request for the proposal. The State
17 construction agency must publish the advance notice in the
18 official procurement bulletin of the State or the
19 professional services bulletin of the State construction
20 agency, if any. The agency is encouraged to use publication
21 of the notice in related construction industry service
22 publications. A brief description of the proposed procurement
23 must be included in the notice. The State construction agency
24 must provide a copy of the request for proposal to any party
25 requesting a copy.

26 (b) The request for proposal shall be prepared for each
27 project and must contain, without limitation, the following
28 information:

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

31 (2) A preliminary schedule for the completion of
32 the contract.

33 (3) The proposed budget for the project, the source

1 of funds, and the currently available funds.

2 (4) Prequalification criteria for design-build
3 entities wishing to submit proposals. The State
4 construction agency shall include, at a minimum, its
5 normal prequalification, licensing, registration, and
6 other requirements, but nothing contained herein
7 precludes the use of additional prequalification criteria
8 by the State construction agency.

9 (5) Material requirements of the contract,
10 including but not limited to, the proposed terms and
11 conditions, required performance and payment bonds,
12 insurance, affirmative action, and workforce
13 requirements, if any.

14 (6) The performance criteria.

15 (7) The evaluation criteria for each phase of the
16 solicitation.

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

19 (c) The State construction agency may include any other
20 relevant information that it chooses to supply. The
21 design-build entity shall be entitled to rely upon the
22 accuracy of this documentation in the development of its
23 proposal.

24 (d) The date that proposals are due must be at least 21
25 calendar days after the date of the issuance of the request
26 for proposal. In the event the cost of the project is
27 estimated to exceed \$10 million, then the proposal due date
28 must be at least 28 calendar days after the date of the
29 issuance of the request for proposal. The State construction
30 agency shall include in the request for proposal a minimum of
31 30 days to develop the Phase II submissions after the
32 selection of entities from the Phase I evaluation is
33 completed.

34 (e) Each design-build entity whose proposal proceeds to

1 the technical and cost evaluation phase may be reimbursed by
2 the State construction agency to defray costs associated with
3 the proposal preparation. If the State construction agency
4 elects to provide reimbursement, it shall specify in the
5 request for proposal the basis or overall reimbursement to be
6 provided.

7 Section 20. Development of scope and performance
8 criteria.

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

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

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

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

1 Section 25. Selection Committee.

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

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

19 Section 30. Procedures for Selection.

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

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

1 scoring to be disclosed in event of a protest regarding the
2 solicitation.

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

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

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

32 The State construction agency shall notify the entities
33 selected for the shortlist in writing. This notification
34 shall commence the period for the preparation of the Phase II

1 technical and cost evaluations. The State construction agency
2 must allow sufficient time for the shortlist entities to
3 prepare their Phase II submittals considering the scope and
4 detail requested by the State agency.

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

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

26 The State construction agency shall include the following
27 criteria in every Phase II cost evaluation: the total project
28 cost, the construction costs, and the time of completion. The
29 State construction agency may include any additional relevant
30 technical evaluation factors it deems necessary for proper
31 selection. In no event shall the total project cost criteria
32 in this subsection exceed a weighting factor greater than
33 25%.

34 The State construction agency shall directly employ or

1 retain a licensed design professional to evaluate the
2 technical and cost submissions to determine if the technical
3 submissions are in accordance with generally accepted
4 industry standards.

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

9 Section 35. Small projects. In any case where the total
10 overall cost of the project is estimated to be less than \$5
11 million, the State construction agency may combine the
12 two-phase procedure for selection described in Section 30
13 into one combined step, provided that all the requirements of
14 evaluation are performed in accordance with Section 30.

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

23 Proposals shall include a bid bond in the form and
24 security as designated in the request for proposals.
25 Proposals shall also contain a separate sealed envelope with
26 the cost information within the overall proposal submission.
27 Proposals shall include a list of all design professionals
28 and other entities to which any work may be subcontracted
29 during the performance of the contract. In the event the
30 request for proposal so designates, these entities must meet
31 prequalification standards of the State construction agency.

32 Proposals must meet all material requirements of the

1 request for proposal or they may be rejected as
2 non-responsive. The State construction agency shall have the
3 right to reject any and all proposals.

4 The drawings and specifications of the proposal shall
5 remain the property of the design-build entity.

6 The State construction agency shall review the proposals
7 for compliance with the performance criteria and evaluation
8 factors.

9 Proposals may be withdrawn prior to evaluation for any
10 cause. After evaluation begins by the State construction
11 agency, clear and convincing evidence of error is required
12 for withdrawal.

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

24 Section 50. Administrative Procedure Act. The Illinois
25 Administrative Procedure Act (5 ILCS 100/) applies to all
26 administrative rules and procedures of the State construction
27 agency under this Act.

28 Section 53. Federal requirements. In the procurement of
29 design-build contracts, State construction agencies shall
30 comply with federal law and regulations and take all
31 necessary steps to adapt their rules, policies, and

1 procedures to remain eligible for federal aid.

2 Section 55. Severability. The provisions of this Act are
3 severable under Section 1.31 of the Statute on Statutes.

4 Section 99. Effective date. This Act takes effect upon
5 becoming law.