

1 AMENDMENT TO SENATE BILL 1497

2 AMENDMENT NO. _____. Amend Senate Bill 1497, on page 1,
3 immediately below line 5, by inserting the following:

4 "Section 5. Legislative policy. It is the intent of the
5 General Assembly that State agencies be allowed to use the
6 design-build delivery method for public projects. It shall be
7 the policy of State agencies in the procurement of
8 design-build services to publicly announce all requirements
9 for design-build services and to procure these services on
10 the basis of demonstrated competence and qualifications and
11 with due regard for the principles of competitive selection.

12 The State agency shall, prior to issuing requests for
13 proposals, promulgate and publish procedures for the
14 solicitation and award of contracts pursuant to this Act.

15 The State agency shall, for each public project or
16 projects permitted under this Act, make a written
17 determination, including a description as to the particular
18 advantages of the design-build procurement method, that it is
19 in the best interests of this State to enter into a
20 design-build contract for the project or projects. In making
21 that determination, the following factors shall be
22 considered:

- 23 (1) The probability that the design-build

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

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

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

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

10 "State agency" means and includes all officers,
11 departments, boards, commissions, councils, bureaus,
12 committees, institutions, agencies, universities, government
13 corporations or bodies politic, authorities, administrative
14 units, or other establishment or official of this State.

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 agency and a
30 design-build firm to furnish architecture, engineering, land
31 surveying, and related services as required, and to furnish
32 the labor, materials, equipment, and other construction
33 services for the project. The design-build contract may be

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

4 "Design-build firm" means any individual, sole
5 proprietorship, firm, partnership, joint venture,
6 corporation, professional corporation, or other entity that
7 proposes to design and construct any public project under
8 this Act. A design-build firm must conduct itself in
9 accordance with the laws of this State with respect to the
10 solicitation and contracting of design-build services.

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

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

27 "Proposal" means the offer to enter into a design-build
28 contract as submitted by a design-build firm in accordance
29 with this Act.

30 "Request for proposal" means the document used by a State
31 agency to solicit proposals for a design-build contract.

32 "Scope and performance criteria" means the requirements
33 for the public project, including but not limited to, the
34 intended usage, capacity, size, scope, quality and

1 performance standards, life-cycle costs, and other
2 programmatic criteria that are expressed in
3 performance-oriented and quantifiable specifications and
4 drawings that can be reasonably inferred and are suited to
5 allow a design-build firm to develop a proposal.

6 Section 15. Solicitation of proposals.

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

19 (b) The request for proposal shall be prepared for each
20 project and must contain, without limitation, the following
21 information:

22 (1) The State agency that will award the
23 design-build contract.

24 (2) A preliminary schedule for the completion of
25 the contract.

26 (3) The proposed budget for the project, the source
27 of funds and the currently available funds.

28 (4) Prequalification criteria for design-build
29 firms wishing to submit proposals.

30 (5) Material requirements of the contract,
31 including but not limited to, the proposed terms and
32 conditions, required performance and payment bonds,
33 insurance, affirmative action, and workforce

1 requirements, if any.

2 (6) The performance criteria.

3 (7) The evaluation criteria for each phase of the
4 solicitation.

5 (8) The number of firms that will be considered for
6 the technical and cost evaluation phase.

7 (c) The State agency may include any other relevant
8 information that it chooses to supply. The design-build firm
9 shall be entitled to rely upon the accuracy of this
10 documentation in the development of its proposal.

11 (d) The date that proposals are due must be at least 21
12 calendar days after the date of the issuance of the request
13 for proposal. In the event the cost of the project is
14 estimated to exceed \$10 million, then the proposal due date
15 must be at least 28 calendar days after the date of the
16 issuance of the request for proposal. The State agency shall
17 include in the request for proposal the amount of time to be
18 provided to develop the Phase II submissions after the
19 selection of firms from the Phase I evaluation is completed.

20 (e) Each design-build firm whose proposal proceeds to
21 the technical and cost evaluation phase may be reimbursed by
22 the State agency to defray costs associated with the proposal
23 preparation. If the State agency elects to provide
24 reimbursement, it shall specify in the request for proposal
25 the basis or overall reimbursement to be provided.

26 Section 20. Development of scope and performance
27 criteria.

28 (a) Each request for proposal shall include scope and
29 performance criteria. The scope and performance criteria must
30 be in sufficient detail and contain adequate information to
31 reasonably apprise the qualified design-build firms of the
32 State agency's overall programmatic needs and goals.

33 (b) Each request for proposal shall also include a

1 description of the level of design to be provided in the
2 proposals. This description must include the scope and type
3 of renderings, drawings, and specifications that, at a
4 minimum, will be required by the State agency to be produced
5 by the design-build firms.

6 (c) The scope and performance criteria shall be prepared
7 by a design professional who is an employee of the State
8 agency, or the State agency may contract with an independent
9 design professional selected under the Architectural,
10 Engineering and Land Surveying Qualification Based Selection
11 Act (30 ILCS 535/) to provide these services.

12 (d) The design professional that prepares the scope and
13 performance criteria is prohibited from participating in any
14 design-build firm proposal for the project.

15 Section 25. Selection Committee.

16 (a) Each State agency that elects to use the
17 design-build delivery method shall establish a committee to
18 evaluate and select the design-build firm. The committee,
19 under the discretion of the State Agency, shall consist of 3,
20 5, or 7 members and shall include at least one member of the
21 public. The public member may not be employed or associated
22 with any firm holding a contract with the State agency. The
23 selection committee may be designated for a set term or for
24 the particular project subject to the request for proposal.

25 (b) The members of the selection committee must certify
26 for each request for proposal that no conflict of interest
27 exists between the members and the design-build firms
28 submitting proposals. If a conflict exists, the member must
29 be replaced before any review of proposals.

30 Section 30. Procedures for Selection.

31 (a) The State agency must use a two-phase procedure for
32 the selection of the successful design-build firm. Phase I of

1 the procedure will evaluate and shortlist the design-build
2 firms based on qualifications, and the Phase II will evaluate
3 the technical and cost proposals.

4 (b) The State agency shall include in the request for
5 proposal the evaluating factors to be used in Phase I. These
6 factors are in addition to any prequalification requirements
7 of design-build firms that the agency has set forth. Each
8 request for proposal shall establish the relative importance
9 assigned to each evaluation factor and subfactor, including
10 any weighting of criteria to be employed by the State agency.
11 The State agency must maintain a record of the evaluation
12 scoring to be disclosed in event of a protest regarding the
13 solicitation.

14 The State agency shall include the following criteria in
15 every Phase I evaluation of design-build firms: (1)
16 experience of personnel; (2) successful experience with
17 similar project types; (3) financial capability; (4)
18 timeliness of past performance; (5) experience with similarly
19 sized projects; (6) successful reference checks of the firm;
20 and (7) commitment to assign personnel for the duration of
21 the project and qualifications of the firm's consultants. The
22 State agency may include any additional relevant criteria in
23 Phase I that it deems necessary for a proper qualification
24 review.

25 The State agency may not consider any design-build firm
26 for evaluation or award if the firm has any pecuniary
27 interest in the project or has other relationships or
28 circumstances, including but not limited to, long term
29 leasehold, mutual performance, or development contracts with
30 the State agency, that may give the design-build firm a
31 financial or tangible advantage over other design-build firms
32 in the preparation, evaluation, or performance of the
33 design-build contract or that create the appearance of
34 impropriety.

1 Upon completion of the qualifications evaluation, the
2 State agency shall create a shortlist of the most highly
3 qualified design-build firms. The State agency, in its
4 discretion, is not required to shortlist the maximum number
5 of firms as identified for Phase II evaluation, provided
6 however, no less than 2 design-build firms are selected to
7 submit Phase II proposals.

8 The State agency shall notify the firms selected for the
9 shortlist in writing. This notification shall commence the
10 period for the preparation of the Phase II technical and cost
11 evaluations. The State agency must allow sufficient time for
12 the shortlist firms to prepare their Phase II submittals
13 considering the scope and detail requested by the State
14 agency.

15 (c) The State agency shall include in the request for
16 proposal the evaluating factors to be used in the technical
17 and cost submission components of Phase II. Each request for
18 proposal shall establish, for both the technical and cost
19 submission components of Phase II, the relative importance
20 assigned to each evaluation factor and subfactor, including
21 any weighting of criteria to be employed by the State agency.
22 The State agency must maintain a record of the evaluation
23 scoring to be disclosed in event of a protest regarding the
24 solicitation.

25 The State agency shall include the following criteria in
26 every Phase II technical evaluation of design-build firms:
27 (1) compliance with objectives of the project; (2) compliance
28 of proposed services to the request for proposal
29 requirements; (3) quality of products or materials proposed;
30 (4) quality of design parameters; (5) design concepts; (6)
31 innovation in meeting the scope and performance criteria; and
32 (7) constructability of the proposed project. The State
33 agency may include any additional relevant technical
34 evaluation factors it deems necessary for proper selection.

1 The State agency shall include the following criteria in
2 every Phase II cost evaluation the total project cost, the
3 construction costs, and the time of completion. The State
4 agency may include any additional relevant technical
5 evaluation factors it deems necessary for proper selection.
6 In no event may any criteria in this subsection be assigned a
7 higher importance or weighting than total cost.

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

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

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

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

1 prequalification standards of the State agency.

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

6 The drawings and specifications of the proposal shall
7 remain the property of the design-build firm.

8 The State agency shall review the proposals for
9 compliance with the performance criteria and evaluation
10 factors.

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

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

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

30 Section 99. Effective date. This Act takes effect upon

1 becoming law.".