



102ND GENERAL ASSEMBLY

State of Illinois

2021 and 2022

SB3795

Introduced 1/21/2022, by Sen. Julie A. Morrison

SYNOPSIS AS INTRODUCED:

55 ILCS 5/Div. 5-45 heading new
55 ILCS 5/5-45001 new
55 ILCS 5/5-45005 new
55 ILCS 5/5-45010 new
55 ILCS 5/5-45015 new
55 ILCS 5/5-45020 new
55 ILCS 5/5-45025 new
55 ILCS 5/5-45030 new
55 ILCS 5/5-45035 new
55 ILCS 5/5-45040 new
55 ILCS 5/5-45045 new
55 ILCS 5/5-45050 new

Creates the County Design-Build Authorization Division in the Counties Code. Provides that a county may enter into design-build contracts. Includes scope and performance criteria for design-build contracts, a two-phase procedure for selection of contracts, requirements for submission of proposals, procedures for awarding contracts, and requirements of reports and evaluation of contracts. Provides that, if the total overall cost of a project is estimated to be less than \$12,000,000, the county may combine the two-phase procedure for selection into one phase. Effective January 1, 2023.

LRB102 23523 AWJ 32705 b

1 AN ACT concerning local government.

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

4 Section 5. The Counties Code is amended by adding Division
5 5-45 as follows:

6 (55 ILCS 5/Div. 5-45 heading new)

7 Division 5-45. County Design-Build Authorization

8 (55 ILCS 5/5-45001 new)

9 Sec. 5-45001. Short title. This Division may be cited as
10 the County Design-Build Authorization Act.

11 (55 ILCS 5/5-45005 new)

12 Sec. 5-45005. Purpose. This purpose of this Division is to
13 authorize counties to use design-build processes to increase
14 the efficiency and effectiveness of delivering public
15 projects.

16 (55 ILCS 5/5-45010 new)

17 Sec. 5-45010. Definitions. As used in this Division:

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

20 "Design-bid-build" means the traditional delivery system

1 used on public projects that incorporates the competitive
2 bidding process set forth in this Code.

3 "Design-build" means a delivery system that provides
4 responsibility within a single contract for the furnishing of
5 architecture, engineering, land surveying, and related
6 services as required and the labor, materials, equipment, and
7 other construction services for the project.

8 "Design-build contract" means a contract for a public
9 project under this Division between a county and a
10 design-build entity to furnish: architecture, engineering,
11 land surveying, public art or interpretive exhibits, and
12 related services, as required; and the labor, materials,
13 equipment, and other construction services for the project.

14 "Design-build entity" means an individual, sole
15 proprietorship, firm, partnership, joint venture, corporation,
16 professional corporation, or other entity that proposes to
17 design and construct any public project under this Division.

18 "Design professional" means an individual, sole
19 proprietorship, firm, partnership, joint venture, corporation,
20 professional corporation, or other entity that offers services
21 under the Illinois Architecture Practice Act of 1989, the
22 Professional Engineering Practice Act of 1989, the Structural
23 Engineering Practice Act of 1989, or the Illinois Professional
24 Land Surveyor Act of 1989.

25 "Evaluation criteria" means the requirements for the
26 separate phases of the selection process as defined in this

1 Division and may include the specialized experience, technical
2 qualifications and competence, capacity to perform, past
3 performance, experience with similar projects, assignment of
4 personnel to the project, and other appropriate factors.

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

8 "Public art designer" means an individual, sole
9 proprietorship, firm, partnership, joint venture, corporation,
10 professional corporation, or other entity that has
11 demonstrated experience with the design and fabrication of
12 public art including any media that has been planned and
13 executed with the intention of being staged in the physical
14 public domain outside and accessible to all or any art which is
15 exhibited in a public space including publicly accessible
16 buildings, or interpretive exhibits including communication
17 media that is designed to engage, excite, inform, relate, or
18 reveal the intrinsic nature or indispensable quality of a
19 topic or story being presented.

20 "Request for proposal" means the document used by the
21 county to solicit proposals for a design-build contract.

22 "Scope and performance criteria" means the requirements
23 for the public project, including, but not limited to, the
24 intended usage, capacity, size, scope, quality and performance
25 standards, life-cycle costs, and other programmatic criteria
26 that are expressed in performance-oriented and quantifiable

1 specifications and drawings that can be reasonably inferred
2 and are suited to allow a design-build entity to develop a
3 proposal.

4 (55 ILCS 5/5-45015 new)

5 Sec. 5-45015. Solicitation of proposals.

6 (a) A county may enter into design-build contracts. In
7 addition to the requirements set forth in its local
8 ordinances, when the county elects to use the design-build
9 delivery method, it must issue a notice of intent to receive
10 proposals for the project at least 14 days before issuing the
11 request for the proposal. The county must publish the advance
12 notice in the manner prescribed by ordinance, which shall
13 include posting the advance notice online on its website. The
14 county may publish the notice in construction industry
15 publications or post the notice on construction industry
16 websites. A brief description of the proposed procurement must
17 be included in the notice. The county must provide a copy of
18 the request for proposal to any party 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 name of the county.

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

25 (3) The proposed budget for the project, the source of

1 funds, and the currently available funds at the time the
2 request for proposal is submitted.

3 (4) Prequalification criteria for design-build
4 entities wishing to submit proposals. The county shall
5 include, at a minimum, its normal qualifications,
6 licensing, registration, and other requirements; however,
7 nothing precludes the use of additional prequalification
8 criteria by the county.

9 (5) Material requirements of the contract, including,
10 but not limited to, the proposed terms and conditions,
11 required performance and payment bonds, insurance, and the
12 entity's plan to comply with the utilization goals for
13 business enterprises established in the Business
14 Enterprise for Minorities, Women, and Persons with
15 Disabilities Act and with Section 2-105 of the Illinois
16 Human Rights Act.

17 (6) The performance criteria.

18 (7) The evaluation criteria for each phase of the
19 solicitation. Price may not be used as a factor in the
20 evaluation of Phase I proposals.

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

23 (c) The county may include any other relevant information
24 that it chooses to supply. The design-build entity shall be
25 entitled to rely upon the accuracy of this documentation in
26 the development of its proposal.

1 (d) The date that proposals are due must be at least 21
2 calendar days after the date of the issuance of the request for
3 proposal. If the cost of the project is estimated to exceed
4 \$12,000,000, then the proposal due date must be at least 28
5 calendar days after the date of the issuance of the request for
6 proposal. The county shall include in the request for proposal
7 a minimum of 30 days to develop the Phase II submissions after
8 the selection of entities from the Phase I evaluation is
9 completed.

10 (55 ILCS 5/5-45020 new)

11 Sec. 5-45020. Development of scope and performance
12 criteria.

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

22 (b) Each request for proposal shall also include a
23 description of the level of design to be provided in the
24 proposals. This description must include the scope and type of
25 renderings, drawings, and specifications that, at a minimum,

1 will be required by the county to be produced by the
2 design-build entities.

3 (c) The scope and performance criteria shall be prepared
4 by a design professional or public art designer who is an
5 employee of the county, or the county may contract with an
6 independent design professional or public art designer
7 selected under the Local Government Professional Services
8 Selection Act to provide these services.

9 (d) The design professional or public art designer that
10 prepares the scope and performance criteria is prohibited from
11 participating in any design-build entity proposal for the
12 project.

13 (e) The design-build contract may be conditioned upon
14 subsequent refinements in scope and price and may allow the
15 county to make modifications in the project scope without
16 invalidating the design-build contract.

17 (55 ILCS 5/5-45025 new)

18 Sec. 5-45025. Procedures for Selection.

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

24 (b) The county shall include in the request for proposal
25 the evaluating factors to be used in Phase I. These factors are

1 in addition to any prequalification requirements of
2 design-build entities that the county has set forth. Each
3 request for proposal shall establish the relative importance
4 assigned to each evaluation factor and subfactor, including
5 any weighting of criteria to be employed by the county. The
6 county must maintain a record of the evaluation scoring to be
7 disclosed in event of a protest regarding the solicitation.

8 The county shall include the following criteria in every
9 Phase I evaluation of design-build entities: (i) experience of
10 personnel; (ii) successful experience with similar project
11 types; (iii) financial capability; (iv) timeliness of past
12 performance; (v) experience with similarly sized projects;
13 (vi) successful reference checks of the firm; (vii) commitment
14 to assign personnel for the duration of the project and
15 qualifications of the entity's consultants; and (viii) ability
16 or past performance in meeting or exhausting good faith
17 efforts to meet the utilization goals for business enterprises
18 established in the Business Enterprise for Minorities, Women,
19 and Persons with Disabilities Act and with Section 2-105 of
20 the Illinois Human Rights Act. The county may include any
21 additional relevant criteria in Phase I that it deems
22 necessary for a proper qualification review.

23 The county may not consider any design-build entity for
24 evaluation or award if the entity has any pecuniary interest
25 in the project or has other relationships or circumstances,
26 including, but not limited to, long-term leasehold, mutual

1 performance, or development contracts with the county, that
2 may give the design-build entity a financial or tangible
3 advantage over other design-build entities in the preparation,
4 evaluation, or performance of the design-build contract or
5 that create the appearance of impropriety. No proposal shall
6 be considered that does not include an entity's plan to comply
7 with the requirements established in the Business Enterprise
8 for Minorities, Women, and Persons with Disabilities Act, for
9 both the design and construction areas of performance, and
10 with Section 2-105 of the Illinois Human Rights Act.

11 Upon completion of the qualifications evaluation, the
12 county shall create a shortlist of the most highly qualified
13 design-build entities. The county, in its discretion, is not
14 required to shortlist the maximum number of entities as
15 identified for Phase II evaluation, provided that no less than
16 2 design-build entities nor more than 6 are selected to submit
17 Phase II proposals.

18 The county shall notify the entities selected for the
19 shortlist in writing. This notification shall commence the
20 period for the preparation of the Phase II technical and cost
21 evaluations. The county must allow sufficient time for the
22 shortlist entities to prepare their Phase II submittals
23 considering the scope and detail requested by the county.

24 (c) The county shall include in the request for proposal
25 the evaluating factors to be used in the technical and cost
26 submission components of Phase II. Each request for proposal

1 shall establish, for both the technical and cost submission
2 components of Phase II, the relative importance assigned to
3 each evaluation factor and subfactor, including any weighting
4 of criteria to be employed by the county. The county must
5 maintain a record of the evaluation scoring to be disclosed in
6 event of a protest regarding the solicitation.

7 The county shall include the following criteria in every
8 Phase II technical evaluation of design-build entities: (i)
9 compliance with objectives of the project; (ii) compliance of
10 proposed services to the request for proposal requirements;
11 (iii) quality of products or materials proposed; (iv) quality
12 of design parameters; (v) design concepts; (vi) innovation in
13 meeting the scope and performance criteria; and (vii)
14 constructability of the proposed project. The county may
15 include any additional relevant technical evaluation factors
16 it deems necessary for proper selection.

17 The county shall include the following criteria in every
18 Phase II cost evaluation: the total project cost, the
19 construction costs, and the time of completion. The county may
20 include any additional relevant technical evaluation factors
21 it deems necessary for proper selection. The total project
22 cost criteria weighing factor shall not exceed 30%.

23 The county shall directly employ or retain a licensed
24 design professional or a public art designer to evaluate the
25 technical and cost submissions to determine if the technical
26 submissions are in accordance with generally accepted industry

1 standards. Upon completion of the technical submissions and
2 cost submissions evaluation, the county may award the
3 design-build contract to the highest overall ranked entity.

4 (55 ILCS 5/5-45030 new)

5 Sec. 5-45030. Small projects. In any case where the total
6 overall cost of the project is estimated to be less than
7 \$12,000,000, the county may combine the two-phase procedure
8 for selection described in Section 5-45025 into one combined
9 step, provided that all the requirements of evaluation are
10 performed in accordance with Section 5-45025.

11 (55 ILCS 5/5-45035 new)

12 Sec. 5-45035. Submission of proposals. Proposals must be
13 properly identified and sealed. Proposals may not be reviewed
14 until after the deadline for submission has passed as set
15 forth in the request for proposals.

16 Proposals shall include a bid bond in the form and
17 security as designated in the request for proposals. Proposals
18 shall also contain a separate sealed envelope with the cost
19 information within the overall proposal submission. Proposals
20 shall include a list of all design professionals, public art
21 designers, and other entities to which any work may be
22 subcontracted during the performance of the contract.

23 Proposals must meet all material requirements of the
24 request for proposal or they may be rejected as

1 non-responsive. The county shall have the right to reject any
2 and all proposals.

3 The drawings and specifications of the proposal may remain
4 the property of the design-build entity.

5 The county shall review the proposals for compliance with
6 the performance criteria and evaluation factors.

7 Proposals may be withdrawn prior to evaluation for any
8 cause. After evaluation begins by the county, clear and
9 convincing evidence of error is required for withdrawal.

10 (55 ILCS 5/5-45040 new)

11 Sec. 5-45040. Award; performance. The county may award the
12 contract to the highest overall ranked design-build entity.
13 Notice of award shall be made in writing. Unsuccessful
14 design-build entities shall also be notified in writing. The
15 county may request a best and final offer after the receipt of
16 proposals of all qualified design-build entities. The county
17 may negotiate with the selected design-build entity after
18 award but prior to contract execution for the purpose of
19 securing better terms than originally proposed, provided that
20 the salient features of the request for proposal are not
21 diminished.

22 A design-build entity and associated design professionals
23 shall conduct themselves in accordance with the relevant laws
24 of this State and the related provisions of the Illinois
25 Administrative Code.

1 (55 ILCS 5/5-45045 new)

2 Sec. 5-45045. Reports and evaluation. At the end of every
3 6-month period following the contract award, and again prior
4 to final contract payout and closure, a selected design-build
5 entity shall detail, in a written report submitted to the
6 county, its efforts and success in implementing the entity's
7 plan to comply with the utilization goals for business
8 enterprises established in the Business Enterprise for
9 Minorities, Women, and Persons with Disabilities Act and the
10 provisions of Section 2-105 of the Illinois Human Rights Act.

11 (55 ILCS 5/5-45050 new)

12 Sec. 5-45050. Severability. The provisions of this
13 Division are severable under Section 1.31 of the Statute on
14 Statutes.

15 Section 999. Effective date. This Act takes effect January
16 1, 2023.