

HB5479



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

HB5479

Introduced 2/9/2024, by Rep. Kevin John Olickal

SYNOPSIS AS INTRODUCED:

New Act

Creates the Progressive Design-Build Pilot Program Act. Provides that the Capital Development Board may elect to use the progressive design-build delivery method. Provides that "progressive design-build delivery method" means a project delivery process in which both the design and construction of a project are procured from a single entity that is selected through a qualifications-based selection at the earliest feasible stage of the project. Sets forth other provisions concerning procedures for selection and submission of qualifications, the award of contracts, pricing, and federal requirements.

LRB103 38397 MXP 68532 b

A BILL FOR

1 AN ACT concerning State government.

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 Progressive Design-Build Pilot Program Act.

6 Section 5. Legislative policy. It is the intent of the
7 General Assembly that the State construction agency shall
8 establish a Progressive Design-Build Pilot Program to use the
9 progressive design-build delivery method for up to 3 public
10 projects commencing prior to January 1, 2027 if it is shown to
11 be in the State's best interest for that particular project.
12 It shall be the policy of the State construction agency in the
13 procurement of progressive design-build services to publicly
14 announce all requirements for progressive design-build
15 services and to procure these services on the basis of
16 demonstrated competence and qualifications and with due regard
17 for the principles of competitive selection.

18 The State construction agency shall, prior to issuing
19 requests for qualifications, publish procedures for the
20 solicitation and award of contracts pursuant to this Act.

21 The State construction agency shall, for each public
22 project or projects permitted under this Act, make a written
23 determination, including a description as to the particular

1 advantages of the progressive design-build procurement method,
2 that it is in the best interests of this State to enter into a
3 progressive design-build contract for the project or projects.
4 In making that determination, the following factors shall be
5 considered:

6 (1) The probability that the progressive design-build
7 procurement method will be in the best interests of the
8 State by providing a material savings of time or cost over
9 the design-bid-build or other delivery system.

10 (2) The type and size of the project and its
11 suitability to the progressive design-build procurement
12 method.

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

16 No State construction agency may use the progressive
17 design-build procurement method unless the agency determines
18 in writing that the project will comply with the disadvantaged
19 business and equal employment practices of the State as
20 established in the Business Enterprise for Minorities, Women,
21 and Persons with Disabilities Act and Section 2-105 of the
22 Illinois Human Rights Act.

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

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

2 "Chief procurement office" means the offices to which the
3 chief procurement officers are appointed pursuant to Section
4 10-20 of the Illinois Procurement Code.

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

7 "Design-bid-build" means the traditional delivery system
8 used on public projects in this State that incorporates the
9 Architectural, Engineering, and Land Surveying Qualification
10 Based Selection Act and the principles of competitive
11 selection in the Illinois Procurement Code.

12 "Design professional" means any individual, sole
13 proprietorship, firm, partnership, joint venture, corporation,
14 professional corporation, or other entity that offers services
15 under the Illinois Architecture Practice Act of 1989, the
16 Professional Engineering Practice Act of 1989, the Structural
17 Engineering Licensing Act of 1989, or the Illinois
18 Professional Land Surveyor Act of 1989.

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

1 "Progressive design-build" means a project delivery
2 process in which both the design and construction of a project
3 are procured from a single entity that is selected through a
4 qualifications-based selection at the earliest feasible stage
5 of the project.

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

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

1 "Qualification" means a statement of qualifications
2 submitted by a proposer in response to a request for
3 qualifications.

4 "Request for qualifications" means a document issued by
5 the State construction agency to solicit qualifications from
6 proposers in accordance with the progressive design-build
7 project delivery method.

8 "Scope and performance criteria" means the requirements
9 for the public project, including but not limited to, the
10 intended usage, capacity, size, scope, quality and performance
11 standards, and other programmatic criteria that are expressed
12 in performance-oriented requirements that can be reasonably
13 inferred and are suited to allow a progressive design-build
14 entity to develop a proposal.

15 "State construction agency" means the Capital Development
16 Board.

17 Section 15. Solicitation of qualifications.

18 (a) When the State construction agency elects to use the
19 progressive design-build delivery method, it must issue a
20 notice of intent to receive requests for qualifications for
21 the project at least 14 days before issuing the request for
22 qualifications. The State construction agency must publish the
23 advance notice in the official procurement bulletin of the
24 State or the professional services bulletin of the State
25 construction agency, if any. The agency is encouraged to use

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

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

9 (1) The name of the State construction agency.

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

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

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

22 (5) Material requirements of the contract, including
23 but not limited to, the proposed terms and conditions,
24 required performance and payment bonds, insurance, and the
25 entity's plan to comply with the utilization goals for
26 business enterprises established in the Business

1 Enterprise for Minorities, Women, and Persons with
2 Disabilities Act, and with Section 2-105 of the Illinois
3 Human Rights Act.

4 (6) The performance criteria.

5 (7) The evaluation criteria for the solicitation.

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

11 (d) The date that qualifications are due must be at least
12 21 calendar days after the date of the issuance of the request
13 for qualifications. In the event the cost of the project is
14 estimated to exceed \$10,000,000, then the qualifications due
15 date must be at least 28 calendar days after the date of the
16 issuance of the request for qualifications.

17 Section 20. Development of scope and performance criteria.
18 The State construction agency shall develop a request for
19 qualifications, which shall include preliminary scopes,
20 descriptions of the areas of technical expertise needed, and
21 requirements for experience. The request must be in sufficient
22 detail and contain adequate information to reasonably apprise
23 the qualified progressive design-build entities of the State
24 construction agency's overall programmatic needs and goals,
25 including criteria, general budget parameters, schedule, and

1 delivery requirements.

2 Section 25. Selection committee.

3 (a) When the State construction agency elects to use the
4 progressive design-build delivery method, it shall establish a
5 committee to evaluate and select the progressive design-build
6 entity. The committee, under the discretion of the State
7 construction agency, shall consist of at least 5 but no more
8 than 7 members and shall include at least one licensed design
9 professional and 2 members of the public. Public members may
10 not be employed or associated with any firm holding a contract
11 with the State construction agency. Within 30 days of
12 receiving notice, one public member shall be nominated by
13 associations representing the general design or construction
14 industry and one member shall be nominated by associations
15 that represent minority or woman-owned design or construction
16 industry businesses. If either group fails to nominate a
17 suitable candidate within the 30-day period, the State
18 construction agency shall nominate an appropriate public
19 member.

20 (b) The members of the selection committee must certify
21 for each request for qualifications that no conflict of
22 interest exists between the members and the progressive
23 design-build entities submitting qualifications.

24 If a conflict is discovered before qualifications are
25 reviewed, the member must be replaced before any review of

1 qualifications. If a conflict is discovered after
2 qualifications are reviewed, the member with the conflict
3 shall be removed and the committee may continue with only one
4 public member.

5 If at least 5 members remain, the remaining committee
6 members may complete the selection process.

7 Section 30. Procedures for selection.

8 (a) The State construction agency must use a 2-phase
9 procedure for the selection of the successful progressive
10 design-build entity. Phase I of the procedure will evaluate
11 and shortlist for interviews the progressive design-build
12 entities based on qualifications, and Phase II will evaluate
13 shortlisted teams based on scoring of specific criteria
14 addressed in their presentations and interviews.

15 (b) The State construction agency shall include in the
16 request for qualifications the evaluating factors to be used
17 in Phase I. These factors are in addition to any
18 prequalification requirements of progressive design-build
19 entities that the agency has set forth. Each request for
20 qualifications shall establish the relative importance
21 assigned to each evaluation factor and subfactor, including
22 any weighting of criteria to be employed by the State
23 construction agency. The State construction agency must
24 maintain a record of the evaluation scoring to be disclosed in
25 event of a protest regarding the solicitation.

1 The State construction agency shall include the following
2 criteria in every Phase I evaluation of progressive
3 design-build entities: (1) experience of personnel; (2)
4 successful experience with similar project types; (3)
5 financial capability; (4) timeliness of past performance; (5)
6 experience with similarly sized projects; (6) successful
7 reference checks of the firm; (7) commitment to assign
8 personnel for the duration of the project and qualifications
9 of the entity's consultants; and (8) ability or past
10 performance in meeting or exhausting good faith efforts to
11 meet the utilization goals for business enterprises
12 established in the Business Enterprise for Minorities, Women,
13 and Persons with Disabilities Act and with Section 2-105 of
14 the Illinois Human Rights Act. The State construction agency
15 may include any additional relevant criteria in Phase I that
16 it deems necessary for a proper qualification review.

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

1 impropriety. No proposal shall be considered that does not
2 include an entity's plan to comply with the requirements
3 established in the Business Enterprise for Minorities, Women,
4 and Persons with Disabilities Act, for both the design and
5 construction areas of performance, and with Section 2-105 of
6 the Illinois Human Rights Act.

7 Upon completion of the qualifications evaluation, the
8 State construction agency shall create a shortlist of the most
9 highly qualified progressive design-build entities. The State
10 construction agency, in its discretion, is not required to
11 shortlist the maximum number of entities as identified for
12 Phase II evaluation, provided however, no less than 2
13 progressive design-build entities nor more than 6 are selected
14 to present to the selection committee in an interview.

15 The State construction agency shall notify the entities
16 selected for the shortlist in writing. This notification shall
17 commence the period for the preparation for presentations and
18 interviews. The State construction agency must allow
19 sufficient time, no less than 28 calendar days, for the
20 shortlist entities to prepare their presentations.

21 (c) The State construction agency shall include in the
22 project advertisement the evaluating factors to be used in the
23 presentations and interviews. Each request for qualifications
24 shall establish the relative importance assigned to each
25 evaluation factor and subfactor, including any weighting of
26 criteria to be employed by the State construction agency. The

1 State construction agency must maintain a record of the
2 evaluation scoring to be disclosed in event of a protest
3 regarding the solicitation.

4 The State construction agency shall include the following
5 criteria in every Phase II evaluation of progressive
6 design-build entities: (1) experience with successful
7 completion of similar projects; (2) the design team's approach
8 to program analysis and schematic design; (3) record of budget
9 adherence on recently completed projects; (4) demonstration of
10 past innovation in meeting the scope and performance criteria
11 on past design-build projects; (5) completeness of the overall
12 project team; (6) collaborative experience of the team
13 members; and (7) their plan for achieving project goals for
14 participation. The State construction agency may include any
15 additional relevant technical evaluation factors it deems
16 necessary for proper selection.

17 Upon completion of the evaluation, the State construction
18 agency may award the progressive design-build contract to the
19 highest overall ranked entity. After qualifications have been
20 submitted, a progressive design-build entity shall not
21 replace, remove, or otherwise modify any firm identified as a
22 member of the proposer team unless authorized to do so by the
23 State construction agency.

24 Section 40. Submission of qualifications. Qualifications
25 must be properly identified and sealed. Qualifications may not

1 be reviewed until after the deadline for submission has passed
2 as set forth in the request for qualifications. All
3 progressive design-build entities submitting qualifications
4 shall be disclosed after the deadline for submission, and all
5 progressive design-build entities who are shortlisted for
6 interviews shall also be disclosed at the time of that
7 determination.

8 Qualifications shall include representative projects to
9 demonstrate past experience of the team members on similar
10 progressive design-build projects. Qualifications shall
11 include a list of all design professionals and other entities
12 as defined in Section 30-30 of the Illinois Procurement Code
13 to which any work may be subcontracted during the performance
14 of the contract. Any entity that will perform any of the 5
15 subdivisions of work defined in Section 30-30 of the Illinois
16 Procurement Code must meet prequalification standards of the
17 State construction agency.

18 Qualifications must meet all material requirements of the
19 request for qualifications, or they may be rejected as
20 nonresponsive. The State construction agency shall have the
21 right to reject any and all qualifications.

22 The State construction agency shall review the
23 qualifications for compliance with the performance criteria
24 and evaluation factors.

25 Qualifications may be withdrawn prior to evaluation for
26 any cause. After evaluation begins by the State construction

1 agency, clear and convincing evidence of error is required for
2 withdrawal.

3 Section 45. Award. The State construction agency may
4 award the contract to the highest overall ranked entity.
5 Notice of award shall be made in writing. Unsuccessful
6 entities shall also be notified in writing. The State
7 construction agency may not request a best and final offer
8 after the receipt of qualifications. The State construction
9 agency may negotiate with the selected progressive
10 design-build entity after award but prior to contract
11 execution for the purpose of securing better terms than
12 originally proposed, provided that the salient features of the
13 request for qualifications are not diminished.

14 Section 50. Labor.

15 (a) A contract or agreement under this Act shall require
16 the progressive design-build entity, or the construction
17 manager or general contractor of the progressive design-build
18 entity, and all subcontractors of the progressive design-build
19 entity to comply with Section 30-22 of the Illinois
20 Procurement Code as it applies to responsible bidders and to
21 present satisfactory evidence of that compliance to the State
22 construction agency.

23 (b) A contract or agreement under this Act shall require
24 the progressive design-build entity or the construction

1 manager or general contractor of the progressive design-build
2 entity to enter into a project labor agreement used by the
3 State construction agency.

4 (c) This Section does not apply to construction-related
5 professional services. As used in this Section, "professional
6 services" means those services within the scope of the
7 practice of architecture, professional engineering, structural
8 engineering, or registered land surveying, as defined by the
9 laws of this State.

10 Section 55. Transition to design-bid-build. At the
11 completion of design development, the progressive design-build
12 entity must provide a firm fixed price. The State construction
13 agency reserves the right to transition the project to the
14 design-bid-build method if the fixed price exceeds the project
15 budget, the progressive design-build entity's proposed
16 schedule is unreasonable, or if transitioning to the
17 design-bid-build method is in the best interests of the State.
18 The State construction agency will retain ownership of any
19 design documents completed by the progressive design-build
20 entity.

21 Section 60. Reports and evaluation. At the end of every 6
22 month period following the contract award, and again prior to
23 final contract payout and closure, a selected progressive
24 design-build entity shall detail, in a written report

1 submitted to the State agency, its efforts and success in
2 implementing the entity's plan to comply with the utilization
3 goals for business enterprises established in the Business
4 Enterprise for Minorities, Women, and Persons with
5 Disabilities Act and the provisions of Section 2-105 of the
6 Illinois Human Rights Act. If the entity's performance in
7 implementing the plan falls short of the performance measures
8 and outcomes set forth in the plans submitted by the entity
9 during the qualifications process, the entity shall, in a
10 detailed written report, inform the General Assembly and the
11 Governor whether and to what degree each progressive
12 design-build contract authorized under this Act promoted the
13 utilization goals for business enterprises established in the
14 Business Enterprise for Minorities, Women, and Persons with
15 Disabilities Act and the provisions of Section 2-105 of the
16 Illinois Human Rights Act.

17 Section 65. Federal requirements. In the procurement of
18 progressive design-build contracts, the State construction
19 agency shall comply with federal law and regulations and take
20 all necessary steps to adapt their rules, policies, and
21 procedures to remain eligible for federal aid.

22 Section 70. Capital Development Board consultation. The
23 Capital Development Board shall consult with the applicable
24 chief procurement office to determine which procedures to

1 adopt and apply to the progressive design-build project
2 delivery method in order to ensure an open, transparent, and
3 efficient process that accomplishes the purposes of this Act.

4 Section 75. Repeal. This Act is repealed on January 1,
5 2027.