

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 Illinois Municipal Code is amended by
5 adding Division 39.2 to Article 11 as follows:

6 (65 ILCS 5/Art. 11 Div. 39.2 heading)

7 DIVISION 39.2. MUNICIPAL DESIGN-BUILD CONTRACTS

8 (65 ILCS 5/11-39.2-1 new)

9 Sec. 11-39.2-1. Short title. This Division may be cited as
10 the Municipal Design-Build Authorization Act.

11 (65 ILCS 5/11-39.2-5 new)

12 Sec. 11-39.2-5. Purpose. The purpose of this Division is
13 to authorize municipalities to use design-build processes to
14 increase the efficiency and effectiveness of delivering public
15 projects.

16 (65 ILCS 5/11-39.2-10 new)

17 Sec. 11-39.2-10. 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,
7 and other construction services for the project.

8 "Design-build contract" means a contract for a public
9 project under this Division between a municipality 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 municipality to solicit proposals for a design-build contract.

22 "Scope and performance criteria" means the requirements
23 for the public project, such as the intended usage, capacity,
24 size, scope, quality and performance standards, life-cycle
25 costs, and other programmatic criteria that are expressed in
26 performance-oriented and quantifiable specifications and

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

3 (65 ILCS 5/11-39.2-15 new)

4 Sec. 11-39.2-15. Solicitation of proposals.

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

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

22 (1) The name of the municipality.

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 municipality
5 must 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 municipality.

9 (5) Material requirements of the contract, such as the
10 proposed terms and conditions, required performance and
11 payment bonds, insurance, and the entity's plan to comply
12 with the utilization goals for business enterprises
13 established in the Business Enterprise for Minorities,
14 Women, and Persons with Disabilities Act and with Section
15 2-105 of the Illinois Human Rights Act.

16 (6) The performance criteria.

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

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

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

26 (d) The date that proposals are due must be at least 21

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

9 (65 ILCS 5/11-39.2-20 new)

10 Sec. 11-39.2-20. Development of scope and performance
11 criteria.

12 (a) The municipality must develop, with the assistance of
13 a licensed design professional or public art designer, a
14 request for proposal, which must include scope and performance
15 criteria. The scope and performance criteria must be in
16 sufficient detail and contain adequate information to
17 reasonably apprise the qualified design-build entities of the
18 municipality'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 must 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 municipality to be produced by the

1 design-build entities.

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

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

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

16 (65 ILCS 5/11-39.2-25 new)

17 Sec. 11-39.2-25. Procedures for Selection.

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

23 (b) The municipality must include in the request for
24 proposal the evaluating factors to be used in Phase I. These
25 factors are in addition to any prequalification requirements

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

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

24 The municipality may not consider any design-build entity
25 for evaluation or award if the entity has any pecuniary
26 interest in the project or has other relationships or

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

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

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

26 (c) The municipality must include in the request for

1 proposal the evaluating factors to be used in the technical
2 and cost submission components of Phase II. Each request for
3 proposal must establish, for both the technical and cost
4 submission components of Phase II, the relative importance
5 assigned to each evaluation factor and subfactor, including
6 any weighting of criteria to be employed by the municipality.
7 The municipality must maintain a record of the evaluation
8 scoring to be disclosed in event of a protest regarding the
9 solicitation.

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

20 The municipality must include the following criteria in
21 every Phase II cost evaluation: the total project cost, the
22 construction costs, and the time of completion. The
23 municipality may include any additional relevant technical
24 evaluation factors it deems necessary for proper selection.
25 The total project cost criteria weighting factor may not
26 exceed 30%.

1 The municipality must directly employ or retain a licensed
2 design professional or a public art designer to evaluate the
3 technical and cost submissions to determine if the technical
4 submissions are in accordance with generally accepted industry
5 standards. Upon completion of the technical submissions and
6 cost submissions evaluation, the municipality may award the
7 design-build contract to the highest overall ranked entity.

8 (65 ILCS 5/11-39.2-30 new)

9 Sec. 11-39.2-30. Small projects. In any case where the
10 total overall cost of the project is estimated to be less than
11 \$12,000,000, the municipality may combine the two-phase
12 procedure for selection described in Section 11-39.2-25 into
13 one combined step if all the requirements of evaluation are
14 performed in accordance with Section 11-39.2-25.

15 (65 ILCS 5/11-39.2-35 new)

16 Sec. 11-39.2-35. Submission of proposals. Proposals must
17 be properly identified and sealed. Proposals may not be
18 reviewed until after the deadline for submission has passed as
19 set forth in the request for proposals.

20 Proposals must include a bid bond in the form and security
21 as designated in the request for proposals. Proposals must
22 also contain a separate sealed envelope with the cost
23 information within the overall proposal submission. Proposals
24 must include a list of all design professionals, public art

1 designers, and other entities to which any work may be
2 subcontracted during the performance of the contract.

3 Proposals must meet all material requirements of the
4 request for proposal or they may be rejected as nonresponsive.
5 The municipality may reject any and all proposals.

6 The drawings and specifications of the proposal may remain
7 the property of the design-build entity.

8 The municipality must review the proposals for compliance
9 with the performance criteria and evaluation factors.

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

13 After a response to a request for qualifications or a
14 request for proposal has been submitted as provided in this
15 Section, a design-build entity may not replace, remove, or
16 otherwise modify any firm identified as a member of the
17 proposer's team unless authorized to do so by the
18 municipality.

19 (65 ILCS 5/11-39.2-40 new)

20 Sec. 11-39.2-40. Award; performance. The municipality may
21 award the contract to the highest overall ranked design-build
22 entity. Notice of award must be made in writing. Unsuccessful
23 design-build entities must also be notified in writing. The
24 municipality may not request a best and final offer after the
25 receipt of proposals of all qualified design-build entities.

1 The municipality may negotiate with the selected design-build
2 entity after award, but prior to contract execution, for the
3 purpose of securing better terms than originally proposed if
4 the salient features of the request for proposal are not
5 diminished.

6 A design-build entity and associated design professionals
7 must conduct themselves in accordance with the relevant laws
8 of this State and the related provisions of the Illinois
9 Administrative Code.

10 (65 ILCS 5/11-39.2-45 new)

11 Sec. 11-39.2-45. Reports and evaluation. At the end of
12 every 6-month period following the contract award, and again
13 prior to final contract payout and closure, a selected
14 design-build entity must detail, in a written report submitted
15 to the municipality, its efforts and success in implementing
16 the entity's plan to comply with the utilization goals for
17 business enterprises established in the Business Enterprise
18 for Minorities, Women, and Persons with Disabilities Act and
19 the provisions of Section 2-105 of the Illinois Human Rights
20 Act.

21 (65 ILCS 5/11-39.2-50 new)

22 Sec. 11-39.2-50. Exception. Nothing in this Division
23 prevents a municipality from using a qualification-based
24 selection process for design professionals or construction

1 managers for design-build projects.

2 (65 ILCS 5/11-39.2-55 new)

3 Sec. 11-39.2-55. Severability. The provisions of this

4 Division are severable under Section 1.31 of the Statute on

5 Statutes.