



Rep. Jay C. Hoffman

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1 AMENDMENT TO SENATE BILL 0943

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 0943 by replacing  
3 everything after the enacting clause with the following:

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 the Capital Development Board be allowed  
8 to use the design-build delivery method for public projects if  
9 it is shown to be in the State's best interest for that  
10 particular project. It shall be the policy of the Capital  
11 Development Board in the procurement of design-build services  
12 to publicly announce all requirements for design-build  
13 services and to procure these services on the basis of  
14 demonstrated competence and qualifications and with due regard  
15 for the principles of competitive selection.

16 The Capital Development Board 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 The Capital Development Board 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

1 that determination, the following factors shall be considered:

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

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

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

11 The Capital Development Board shall within 15 days after  
12 the initial determination provide an advisory copy to the  
13 Procurement Policy Board and maintain the full record of  
14 determination for 5 years.

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

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

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  
21 used on public projects in this State that incorporates the  
22 Architectural, Engineering, and Land Surveying Qualification  
23 Based Selection Act (30 ILCS 535/) and the principles of  
24 competitive selection in the Illinois Procurement Code (30 ILCS  
25 500/).

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

31 "Design-build contract" means a contract for a public  
32 project under this Act between the State construction agency  
33 and a design-build entity to furnish architecture,

1 engineering, land surveying, and related services as required,  
2 and to furnish the labor, materials, equipment, and other  
3 construction services for the project. The design-build  
4 contract may be conditioned upon subsequent refinements in  
5 scope and price and may allow the State construction agency to  
6 make modifications in the project scope without invalidating  
7 the design-build contract.

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

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

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

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

1 with this Act.

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

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

13 Section 15. Solicitation of proposals.

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

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

32 (3) The proposed budget for the project, the source of  
33 funds, and the currently available funds at the time the

1 request for proposal is submitted.

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

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,  
12 affirmative action, and workforce requirements, if any.

13 (6) The performance criteria.

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

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

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

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

31 Section 20. Development of scope and performance criteria.

32 (a) The State construction agency shall develop, with the  
33 assistance of a licensed design professional, a request for

1 proposal, which shall include scope and performance criteria.  
2 The scope and performance criteria must be in sufficient detail  
3 and contain adequate information to reasonably apprise the  
4 qualified design-build entities of the State construction  
5 agency's overall programmatic needs and goals, including  
6 criteria and preliminary design plans, general budget  
7 parameters, schedule, and delivery requirements.

8 (b) Each request for proposal shall also include a  
9 description of the level of design to be provided in the  
10 proposals. This description must include the scope and type of  
11 renderings, drawings, and specifications that, at a minimum,  
12 will be required by the State construction agency to be  
13 produced by the design-build entities.

14 (c) The scope and performance criteria shall be prepared by  
15 a design professional who is an employee of the State  
16 construction agency, or the State construction agency may  
17 contract with an independent design professional selected  
18 under the Architectural, Engineering and Land Surveying  
19 Qualification Based Selection Act (30 ILCS 535/) to provide  
20 these services.

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

24 Section 25. Selection Committee.

25 (a) When the State construction agency elects to use the  
26 design-build delivery method, it shall establish a committee to  
27 evaluate and select the design-build entity. The committee,  
28 under the discretion of the State construction agency, shall  
29 consist of 3, 5, or 7 members and shall include at least one  
30 licensed design professional and one member of the public. The  
31 public member may not be employed or associated with any firm  
32 holding a contract with the State construction agency and shall  
33 be nominated by design or construction industry associations.

1 The selection committee may be designated for a set term or for  
2 the particular project subject to the request for proposal.

3 (b) The members of the selection committee must certify for  
4 each request for proposal that no conflict of interest exists  
5 between the members and the design-build entities submitting  
6 proposals. If a conflict exists, the member must be replaced  
7 before any review of proposals.

8 Section 30. Procedures for Selection.

9 (a) The State construction agency must use a two-phase  
10 procedure for the selection of the successful design-build  
11 entity. Phase I of the procedure will evaluate and shortlist  
12 the design-build entities based on qualifications, and Phase II  
13 will evaluate the technical and cost proposals.

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

24 The State construction agency shall include the following  
25 criteria in every Phase I evaluation of design-build entities:  
26 (1) experience of personnel; (2) successful experience with  
27 similar project types; (3) financial capability; (4)  
28 timeliness of past performance; (5) experience with similarly  
29 sized projects; (6) successful reference checks of the firm;  
30 and (7) commitment to assign personnel for the duration of the  
31 project and qualifications of the entity's consultants. The  
32 State construction agency may include any additional relevant  
33 criteria in Phase I that it deems necessary for a proper

1 qualification review.

2 The State construction agency may not consider any  
3 design-build entity for evaluation or award if the entity has  
4 any pecuniary interest in the project or has other  
5 relationships or circumstances, including but not limited to,  
6 long-term leasehold, mutual performance, or development  
7 contracts with the State construction agency, that may give the  
8 design-build entity a financial or tangible advantage over  
9 other design-build entities in the preparation, evaluation, or  
10 performance of the design-build contract or that create the  
11 appearance of impropriety.

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

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

27 (c) The State construction agency shall include in the  
28 request for proposal the evaluating factors to be used in the  
29 technical and cost submission components of Phase II. Each  
30 request for proposal shall establish, for both the technical  
31 and cost submission components of Phase II, the relative  
32 importance assigned to each evaluation factor and subfactor,  
33 including any weighting of criteria to be employed by the State  
34 construction agency. The State construction agency must



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

3 The State construction agency shall include the following  
4 criteria in every Phase II technical evaluation of design-build  
5 entities: (1) compliance with objectives of the project; (2)  
6 compliance of proposed services to the request for proposal  
7 requirements; (3) quality of products or materials proposed;  
8 (4) quality of design parameters; (5) design concepts; (6)  
9 innovation in meeting the scope and performance criteria; and  
10 (7) constructability of the proposed project. The State  
11 construction agency may include any additional relevant  
12 technical evaluation factors it deems necessary for proper  
13 selection.

14 The State construction agency shall include the following  
15 criteria in every Phase II cost evaluation: the total project  
16 cost, the construction costs, and the time of completion. The  
17 State construction agency may include any additional relevant  
18 technical evaluation factors it deems necessary for proper  
19 selection. The total project cost criteria weighing factor  
20 shall be 25%.

21 The State construction agency shall directly employ or  
22 retain a licensed design professional to evaluate the technical  
23 and cost submissions to determine if the technical submissions  
24 are in accordance with generally accepted industry standards.

25 Upon completion of the technical submissions and cost  
26 submissions evaluation, the State construction agency may  
27 award the design-build contract to the highest overall ranked  
28 entity.

29 Section 35. Small projects. In any case where the total  
30 overall cost of the project is estimated to be less than \$10  
31 million, the State construction agency may combine the  
32 two-phase procedure for selection described in Section 30 into  
33 one combined step, provided that all the requirements of

1 evaluation are performed in accordance with Section 30.

2 Section 40. Submission of proposals. Proposals must be  
3 properly identified and sealed. Proposals may not be reviewed  
4 until after the deadline for submission has passed as set forth  
5 in the request for proposals. All design-build entities  
6 submitting proposals shall be disclosed after the deadline for  
7 submission, and all design-build entities who are selected for  
8 Phase II evaluation shall also be disclosed at the time of that  
9 determination.

10 Proposals shall include a bid bond in the form and security  
11 as designated in the request for proposals. Proposals shall  
12 also contain a separate sealed envelope with the cost  
13 information within the overall proposal submission. Proposals  
14 shall include a list of all design professionals and other  
15 entities as defined in Section 30-30 of the Illinois  
16 Procurement Code to which any work may be subcontracted during  
17 the performance of the contract. Any entity that will perform  
18 any of the 5 subdivisions of work defined in Section 30-30 of  
19 the Illinois Procurement Code must meet prequalification  
20 standards of the State construction agency.

21 Proposals must meet all material requirements of the  
22 request for proposal or they may be rejected as non-responsive.  
23 The State construction agency shall have the right to reject  
24 any and all proposals.

25 The drawings and specifications of the proposal shall  
26 remain the property of the design-build entity.

27 The State construction agency shall review the proposals  
28 for compliance with the performance criteria and evaluation  
29 factors.

30 Proposals may be withdrawn prior to evaluation for any  
31 cause. After evaluation begins by the State construction  
32 agency, clear and convincing evidence of error is required for  
33 withdrawal.

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

11           Section 50. Administrative Procedure Act. The Illinois  
12 Administrative Procedure Act (5 ILCS 100/) applies to all  
13 administrative rules and procedures of the State construction  
14 agency under this Act except that nothing herein shall be  
15 construed to render any prequalification or other  
16 responsibility criteria as a "license" or "licensing" under  
17 that Act.

18           Section 53. Federal requirements. In the procurement of  
19 design-build contracts, the State construction agency shall  
20 comply with federal law and regulations and take all necessary  
21 steps to adapt their rules, policies, and procedures to remain  
22 eligible for federal aid.

23           Section 90. The Illinois Procurement Code is amended by  
24 changing Section 30-30 as follows:

25           (30 ILCS 500/30-30)

26           Sec. 30-30. Contracts in excess of \$250,000. For building  
27 construction contracts in excess of \$250,000, separate  
28 specifications shall be prepared for all equipment, labor, and  
29 materials in connection with the following 5 subdivisions of

1 the work to be performed:

2 (1) plumbing;

3 (2) heating, piping, refrigeration, and automatic  
4 temperature control systems, including the testing and  
5 balancing of those systems;

6 (3) ventilating and distribution systems for  
7 conditioned air, including the testing and balancing of  
8 those systems;

9 (4) electric wiring; and

10 (5) general contract work.

11 The specifications must be so drawn as to permit separate  
12 and independent bidding upon each of the 5 subdivisions of  
13 work. All contracts awarded for any part thereof shall award  
14 the 5 subdivisions of work separately to responsible and  
15 reliable persons, firms, or corporations engaged in these  
16 classes of work. The contracts, at the discretion of the  
17 construction agency, may be assigned to the successful bidder  
18 on the general contract work or to the successful bidder on the  
19 subdivision of work designated by the construction agency  
20 before the bidding as the prime subdivision of work, provided  
21 that all payments will be made directly to the contractors for  
22 the 5 subdivisions of work upon compliance with the conditions  
23 of the contract. A contract may be let for one or more  
24 buildings in any project to the same contractor. The  
25 specifications shall require, however, that unless the  
26 buildings are identical, a separate price shall be submitted  
27 for each building. The contract may be awarded to the lowest  
28 responsible bidder for each or all of the buildings included in  
29 the specifications.

30 Until a date 2 years after the effective date of this  
31 amendatory Act of the 93rd General Assembly, the requirements  
32 of this Section do not apply to the construction of an  
33 Emergency Operations Center for the Illinois Emergency  
34 Management Agency if (i) the majority of the funding for the

1 project is from federal funds, (ii) the bid of the successful  
2 bidder identifies the name of the subcontractor, if any, and  
3 the bid proposal costs for each of the 5 subdivisions of work  
4 set forth in this Section, and (iii) the contract entered into  
5 with the successful bidder provides that no identified  
6 subcontractor may be terminated without the written consent of  
7 the Capital Development Board.

8 (Source: P.A. 90-572, eff. date - See Sec. 99-5.)

9 Section 95. Severability. The provisions of this Act are  
10 severable under Section 1.31 of the Statute on Statutes.

11 Section 99. Effective date. This Act takes effect upon  
12 becoming law.".