

SB0766



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
SB0766

Introduced 2/18/2005, by Sen. Terry Link

SYNOPSIS AS INTRODUCED:

New Act

Creates the Design-Build Procurement Act. Authorizes the Capital Development Board to award construction contracts using a design build method that accepts and evaluates proposals from entities that encompass the designing and building of the project. Establishes criteria and proceedings for the use of the design-build method. Effective immediately.

LRB094 08758 RSP 38971 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning procurement.

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 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
25 that determination, the following factors shall be considered:

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

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

32 (3) The ability of the State construction agency to

1 define and provide comprehensive scope and performance
2 criteria for the project.

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

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

8 "State construction agency" means the Capital Development
9 Board.

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

12 "Design-bid-build" means the traditional delivery system
13 used on public projects in this State that incorporates the
14 Architectural, Engineering, and Land Surveying Qualification
15 Based Selection Act (30 ILCS 535/) and the principles of
16 competitive selection in the Illinois Procurement Code (30 ILCS
17 500/).

18 "Design-build" means a delivery system that provides
19 responsibility within a single contract for the furnishing of
20 architecture, engineering, land surveying and related services
21 as required, and the labor, materials, equipment, and other
22 construction services for the project.

23 "Design-build contract" means a contract for a public
24 project under this Act between the State construction agency
25 and a design-build entity to furnish architecture,
26 engineering, land surveying, and related services as required,
27 and to furnish the labor, materials, equipment, and other
28 construction services for the project. The design-build
29 contract may be conditioned upon subsequent refinements in
30 scope and price and may allow the State construction agency to
31 make modifications in the project scope without invalidating
32 the design-build contract.

33 "Design-build entity" means any individual, sole
34 proprietorship, firm, partnership, joint venture, corporation,
35 professional corporation, or other entity that proposes to

1 design and construct any public project under this Act. A
2 design-build entity and associated design-build professionals
3 shall conduct themselves in accordance with the laws of this
4 State and the related provisions of the Illinois Administrative
5 Code, as referenced by the licensed design professionals Acts
6 of this State.

7 "Design professional" means any individual, sole
8 proprietorship, firm, partnership, joint venture, corporation,
9 professional corporation, or other entity that offers services
10 under the Illinois Architecture Practice Act of 1989 (225 ILCS
11 305/), the Professional Engineering Practice Act of 1989 (225
12 ILCS 325/), the Structural Engineering Licensing Act of 1989
13 (225 ILCS 340/), or the Illinois Professional Land Surveyor Act
14 of 1989 (225 ILCS 330/).

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

23 "Proposal" means the offer to enter into a design-build
24 contract as submitted by a design-build entity in accordance
25 with this Act.

26 "Request for proposal" means the document used by the State
27 construction agency to solicit proposals for a design-build
28 contract.

29 "Scope and performance criteria" means the requirements
30 for the public project, including but not limited to, the
31 intended usage, capacity, size, scope, quality and performance
32 standards, life-cycle costs, and other programmatic criteria
33 that are expressed in performance-oriented and quantifiable
34 specifications and drawings that can be reasonably inferred and
35 are suited to allow a design-build entity to develop a
36 proposal.

1 Section 15. Solicitation of proposals.

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

14 (b) The request for proposal shall be prepared for each
15 project and must contain, without limitation, the following
16 information:

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

18 (2) A preliminary schedule for the completion of the
19 contract.

20 (3) The proposed budget for the project, the source of
21 funds, and the currently available funds at the time the
22 request for proposal is submitted.

23 (4) Prequalification criteria for design-build
24 entities wishing to submit proposals. The State
25 construction agency shall include, at a minimum, its normal
26 prequalification, licensing, registration, and other
27 requirements, but nothing contained herein precludes the
28 use of additional prequalification criteria by the State
29 construction agency.

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

34 (6) The performance criteria.

35 (7) The evaluation criteria for each phase of the

1 solicitation.

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

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

8 (d) The date that proposals are due must be at least 21
9 calendar days after the date of the issuance of the request for
10 proposal. In the event the cost of the project is estimated to
11 exceed \$10 million, then the proposal due date must be at least
12 28 calendar days after the date of the issuance of the request
13 for proposal. The State construction agency shall include in
14 the request for proposal a minimum of 30 days to develop the
15 Phase II submissions after the selection of entities from the
16 Phase I evaluation is completed.

17 Section 20. Development of scope and performance criteria.

18 (a) The State construction agency shall develop, with the
19 assistance of a licensed design professional, a request for
20 proposal, which shall include scope and performance criteria.
21 The scope and performance criteria must be in sufficient detail
22 and contain adequate information to reasonably apprise the
23 qualified design-build entities of the State construction
24 agency's overall programmatic needs and goals, including
25 criteria and preliminary design plans, general budget
26 parameters, schedule, and delivery requirements.

27 (b) Each request for proposal shall also include a
28 description of the level of design to be provided in the
29 proposals. This description must include the scope and type of
30 renderings, drawings, and specifications that, at a minimum,
31 will be required by the State construction agency to be
32 produced by the design-build entities.

33 (c) The scope and performance criteria shall be prepared by
34 a design professional who is an employee of the State
35 construction agency, or the State construction agency may

1 contract with an independent design professional selected
2 under the Architectural, Engineering and Land Surveying
3 Qualification Based Selection Act (30 ILCS 535/) to provide
4 these services.

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

8 Section 25. Selection Committee.

9 (a) When the State construction agency elects to use the
10 design-build delivery method, it shall establish a committee to
11 evaluate and select the design-build entity. The committee,
12 under the discretion of the State construction agency, shall
13 consist of 3, 5, or 7 members and shall include at least one
14 licensed design professional and one member of the public. The
15 public member may not be employed or associated with any firm
16 holding a contract with the State construction agency and shall
17 be nominated by design or construction industry associations.
18 The selection committee may be designated for a set term or for
19 the particular project subject to the request for proposal.

20 (b) The members of the selection committee must certify for
21 each request for proposal that no conflict of interest exists
22 between the members and the design-build entities submitting
23 proposals. If a conflict exists, the member must be replaced
24 before any review of proposals.

25 Section 30. Procedures for Selection.

26 (a) The State construction agency must use a two-phase
27 procedure for the selection of the successful design-build
28 entity. Phase I of the procedure will evaluate and shortlist
29 the design-build entities based on qualifications, and Phase II
30 will evaluate the technical and cost proposals.

31 (b) The State construction agency shall include in the
32 request for proposal the evaluating factors to be used in Phase
33 I. These factors are in addition to any prequalification
34 requirements of design-build entities that the agency has set

1 forth. Each request for proposal shall establish the relative
2 importance assigned to each evaluation factor and subfactor,
3 including any weighting of criteria to be employed by the State
4 construction agency. The State construction agency must
5 maintain a record of the evaluation scoring to be disclosed in
6 event of a protest regarding the solicitation.

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

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

28 Upon completion of the qualifications evaluation, the
29 State construction agency shall create a shortlist of the most
30 highly qualified design-build entities. The State construction
31 agency, in its discretion, is not required to shortlist the
32 maximum number of entities as identified for Phase II
33 evaluation, provided however, no less than 2 design-build
34 entities nor more than 6 are selected to submit Phase II
35 proposals.

36 The State construction agency shall notify the entities

1 selected for the shortlist in writing. This notification shall
2 commence the period for the preparation of the Phase II
3 technical and cost evaluations. The State construction agency
4 must allow sufficient time for the shortlist entities to
5 prepare their Phase II submittals considering the scope and
6 detail requested by the State agency.

7 (c) The State construction agency shall include in the
8 request for proposal the evaluating factors to be used in the
9 technical and cost submission components of Phase II. Each
10 request for proposal shall establish, for both the technical
11 and cost submission components of Phase II, the relative
12 importance assigned to each evaluation factor and subfactor,
13 including any weighting of criteria to be employed by the State
14 construction agency. The State construction agency must
15 maintain a record of the evaluation scoring to be disclosed in
16 event of a protest regarding the solicitation.

17 The State construction agency shall include the following
18 criteria in every Phase II technical evaluation of design-build
19 entities: (1) compliance with objectives of the project; (2)
20 compliance of proposed services to the request for proposal
21 requirements; (3) quality of products or materials proposed;
22 (4) quality of design parameters; (5) design concepts; (6)
23 innovation in meeting the scope and performance criteria; and
24 (7) constructability of the proposed project. The State
25 construction agency may include any additional relevant
26 technical evaluation factors it deems necessary for proper
27 selection.

28 The State construction agency shall include the following
29 criteria in every Phase II cost evaluation: the total project
30 cost, the construction costs, and the time of completion. The
31 State construction agency may include any additional relevant
32 technical evaluation factors it deems necessary for proper
33 selection. The total project cost criteria weighing factor
34 shall be 25%.

35 The State construction agency shall directly employ or
36 retain a licensed design professional to evaluate the technical

1 and cost submissions to determine if the technical submissions
2 are in accordance with generally accepted industry standards.

3 Upon completion of the technical submissions and cost
4 submissions evaluation, the State construction agency may
5 award the design-build contract to the highest overall ranked
6 entity.

7 Section 35. Small projects. In any case where the total
8 overall cost of the project is estimated to be less than \$10
9 million, the State construction agency may combine the
10 two-phase procedure for selection described in Section 30 into
11 one combined step, provided that all the requirements of
12 evaluation are performed in accordance with Section 30.

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

21 Proposals shall include a bid bond in the form and security
22 as designated in the request for proposals. Proposals shall
23 also contain a separate sealed envelope with the cost
24 information within the overall proposal submission. Proposals
25 shall include a list of all design professionals and other
26 entities as defined in Section 30-30 of the Illinois
27 Procurement Code to which any work may be subcontracted during
28 the performance of the contract. Any entity that will perform
29 any of the 5 subdivisions of work defined in Section 30-30 of
30 the Illinois Procurement Code must meet prequalification
31 standards of the State construction agency.

32 Proposals must meet all material requirements of the
33 request for proposal or they may be rejected as non-responsive.
34 The State construction agency shall have the right to reject

1 any and all proposals.

2 The drawings and specifications of the proposal shall
3 remain the property of the design-build entity.

4 The State construction agency shall review the proposals
5 for compliance with the performance criteria and evaluation
6 factors.

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

11 Section 45. Award. The State construction agency may award
12 the contract to the highest overall ranked entity. Notice of
13 award shall be made in writing. Unsuccessful entities shall
14 also be notified in writing. The State construction agency may
15 not request a best and final offer after the receipt of
16 proposals. The State construction agency may negotiate with the
17 selected design-build entity after award but prior to contract
18 execution for the purpose of securing better terms than
19 originally proposed, provided that the salient features of the
20 request for proposal are not diminished.

21 Section 50. Administrative Procedure Act. The Illinois
22 Administrative Procedure Act (5 ILCS 100/) applies to all
23 administrative rules and procedures of the State construction
24 agency under this Act except that nothing herein shall be
25 construed to render any prequalification or other
26 responsibility criteria as a "license" or "licensing" under
27 that Act.

28 Section 53. Federal requirements. In the procurement of
29 design-build contracts, the State construction agency shall
30 comply with federal law and regulations and take all necessary
31 steps to adapt their rules, policies, and procedures to remain
32 eligible for federal aid.

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

3 Section 99. Effective date. This Act takes effect upon
4 becoming law.