



Sen. Terry Link

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09400SB0766sam002

LRB094 08758 RSP 44673 a

1 AMENDMENT TO SENATE BILL 766

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 766, AS AMENDED, by  
3 replacing everything after the enacting clause with the  
4 following:

5 "Section 1. Short title. This Act may be cited as the  
6 Design-Build Procurement Act.

7 Section 5. Legislative policy. It is the intent of the  
8 General Assembly that the Capital Development Board be allowed  
9 to use the design-build delivery method for public projects if  
10 it is shown to be in the State's best interest for that  
11 particular project. It shall be the policy of the Capital  
12 Development Board in the procurement of design-build services  
13 to publicly announce all requirements for design-build  
14 services and to procure these services on the basis of  
15 demonstrated competence and qualifications and with due regard  
16 for the principles of competitive selection.

17 The Capital Development Board shall, prior to issuing  
18 requests for proposals, promulgate and publish procedures for  
19 the solicitation and award of contracts pursuant to this Act.

20 The Capital Development Board shall, for each public  
21 project or projects permitted under this Act, make a written  
22 determination, including a description as to the particular  
23 advantages of the design-build procurement method, that it is  
24 in the best interests of this State to enter into a

1 design-build contract for the project or projects. In making  
2 that determination, the following factors shall be considered:

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

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

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

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

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

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

24 "State construction agency" means the Capital Development  
25 Board.

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

28 "Design-bid-build" means the traditional delivery system  
29 used on public projects in this State that incorporates the  
30 Architectural, Engineering, and Land Surveying Qualification  
31 Based Selection Act (30 ILCS 535/) and the principles of  
32 competitive selection in the Illinois Procurement Code (30 ILCS  
33 500/).

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

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

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

25 "Design professional" means any individual, sole  
26 proprietorship, firm, partnership, joint venture, corporation,  
27 professional corporation, or other entity that offers services  
28 under the Illinois Architecture Practice Act of 1989 (225 ILCS  
29 305/), the Professional Engineering Practice Act of 1989 (225  
30 ILCS 325/), the Structural Engineering Licensing Act of 1989  
31 (225 ILCS 340/), or the Illinois Professional Land Surveyor Act  
32 of 1989 (225 ILCS 330/).

33 "Evaluation criteria" means the requirements for the  
34 separate phases of the selection process as defined in this Act

1 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. Price  
5 may not be used as a factor in the evaluation of Phase I  
6 proposals.

7 "Proposal" means the offer to enter into a design-build  
8 contract as submitted by a design-build entity in accordance  
9 with this Act.

10 "Request for proposal" means the document used by the State  
11 construction agency to solicit proposals for a design-build  
12 contract.

13 "Scope and performance criteria" means the requirements  
14 for the public project, including but not limited to, the  
15 intended usage, capacity, size, scope, quality and performance  
16 standards, life-cycle costs, and other programmatic criteria  
17 that are expressed in performance-oriented and quantifiable  
18 specifications and drawings that can be reasonably inferred and  
19 are suited to allow a design-build entity to develop a  
20 proposal.

21 Section 15. Solicitation of proposals.

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

1 (b) The request for proposal shall be prepared for each  
2 project and must contain, without limitation, the following  
3 information:

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

5 (2) A preliminary schedule for the completion of the  
6 contract.

7 (3) The proposed budget for the project, the source of  
8 funds, and the currently available funds at the time the  
9 request for proposal is submitted.

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

17 (5) Material requirements of the contract, including  
18 but not limited to, the proposed terms and conditions,  
19 required performance and payment bonds, insurance, and the  
20 entity's plan to comply with the utilization goals for  
21 business enterprises established in the Business  
22 Enterprise for Minorities, Females, and Persons with  
23 Disabilities Act, and with Section 2-105 of the Illinois  
24 Human Rights Act.

25 (6) The performance criteria.

26 (7) The evaluation criteria for each phase of the  
27 solicitation.

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

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

34 (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. In the event the cost of the project is estimated to  
3 exceed \$10 million, then the proposal due date must be at least  
4 28 calendar days after the date of the issuance of the request  
5 for proposal. The State construction agency shall include in  
6 the request for proposal a minimum of 30 days to develop the  
7 Phase II submissions after the selection of entities from the  
8 Phase I evaluation is completed.

9 Section 20. Development of scope and performance criteria.

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

19 (b) Each request for proposal shall also include a  
20 description of the level of design to be provided in the  
21 proposals. This description must include the scope and type of  
22 renderings, drawings, and specifications that, at a minimum,  
23 will be required by the State construction agency to be  
24 produced by the design-build entities.

25 (c) The scope and performance criteria shall be prepared by  
26 a design professional who is an employee of the State  
27 construction agency, or the State construction agency may  
28 contract with an independent design professional selected  
29 under the Architectural, Engineering and Land Surveying  
30 Qualification Based Selection Act (30 ILCS 535/) to provide  
31 these services.

32 (d) The design professional that prepares the scope and  
33 performance criteria is prohibited from participating in any

1 design-build entity proposal for the project.

2 Section 25. Selection Committee.

3 (a) When the State construction agency elects to use the  
4 design-build delivery method, it shall establish a committee to  
5 evaluate and select the design-build entity. The committee,  
6 under the discretion of the State construction agency, shall  
7 consist of 5 or 7 members and shall include at least one  
8 licensed design professional and 2 members of the public.  
9 Public members may not be employed or associated with any firm  
10 holding a contract with the State construction agency. One  
11 public member shall be nominated by associations representing  
12 the general design or construction industry and one member  
13 shall be nominated by associations that represent minority or  
14 female-owned design or construction industry businesses. The  
15 selection committee may be designated for a set term or for the  
16 particular project subject to the request for proposal.

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

22 Section 30. Procedures for Selection.

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

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

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

6 The State construction agency shall include the following  
7 criteria in every Phase I evaluation of design-build entities:  
8 (1) experience of personnel; (2) successful experience with  
9 similar project types; (3) financial capability; (4)  
10 timeliness of past performance; (5) experience with similarly  
11 sized projects; (6) successful reference checks of the firm;  
12 (7) commitment to assign personnel for the duration of the  
13 project and qualifications of the entity's consultants; and (8)  
14 ability or past performance in meeting or exhausting good faith  
15 efforts to meet the utilization goals for business enterprises  
16 established in the Business Enterprise for Minorities,  
17 Females, and Persons with Disabilities Act and with Section  
18 2-105 of the Illinois Human Rights Act. The State construction  
19 agency may include any additional relevant criteria in Phase I  
20 that it deems necessary for a proper qualification review.

21 The State construction agency may not consider any  
22 design-build entity for evaluation or award if the entity has  
23 any pecuniary interest in the project or has other  
24 relationships or circumstances, including but not limited to,  
25 long-term leasehold, mutual performance, or development  
26 contracts with the State construction agency, that may give the  
27 design-build entity a financial or tangible advantage over  
28 other design-build entities in the preparation, evaluation, or  
29 performance of the design-build contract or that create the  
30 appearance of impropriety. No proposal shall be considered that  
31 does not include an entity's plan to comply with the  
32 requirements established in the Business Enterprise for  
33 Minorities, Females, and Persons with Disabilities Act and with  
34 Section 2-105 of the Illinois Human Rights Act.



1           Upon completion of the qualifications evaluation, the  
2 State construction agency shall create a shortlist of the most  
3 highly qualified design-build entities. The State construction  
4 agency, in its discretion, is not required to shortlist the  
5 maximum number of entities as identified for Phase II  
6 evaluation, provided however, no less than 2 design-build  
7 entities nor more than 6 are selected to submit Phase II  
8 proposals.

9           The State construction agency shall notify the entities  
10 selected for the shortlist in writing. This notification shall  
11 commence the period for the preparation of the Phase II  
12 technical and cost evaluations. The State construction agency  
13 must allow sufficient time for the shortlist entities to  
14 prepare their Phase II submittals considering the scope and  
15 detail requested by the State agency.

16           (c) The State construction agency shall include in the  
17 request for proposal the evaluating factors to be used in the  
18 technical and cost submission components of Phase II. Each  
19 request for proposal shall establish, for both the technical  
20 and cost submission components of Phase II, the relative  
21 importance assigned to each evaluation factor and subfactor,  
22 including 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.

26           The State construction agency shall include the following  
27 criteria in every Phase II technical evaluation of design-build  
28 entities: (1) compliance with objectives of the project; (2)  
29 compliance of proposed services to the request for proposal  
30 requirements; (3) quality of products or materials proposed;  
31 (4) quality of design parameters; (5) design concepts; (6)  
32 innovation in meeting the scope and performance criteria; and  
33 (7) constructability of the proposed project. The State  
34 construction agency may include any additional relevant

1 technical evaluation factors it deems necessary for proper  
2 selection.

3 The State construction agency shall include the following  
4 criteria in every Phase II cost evaluation: the total project  
5 cost, the construction costs, and the time of completion. The  
6 State construction agency may include any additional relevant  
7 technical evaluation factors it deems necessary for proper  
8 selection. The total project cost criteria weighing factor  
9 shall be 25%.

10 The State construction agency shall directly employ or  
11 retain a licensed design professional to evaluate the technical  
12 and cost submissions to determine if the technical submissions  
13 are in accordance with generally accepted industry standards.

14 Upon completion of the technical submissions and cost  
15 submissions evaluation, the State construction agency may  
16 award the design-build contract to the highest overall ranked  
17 entity.

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

24 Section 40. Submission of proposals. Proposals must be  
25 properly identified and sealed. Proposals may not be reviewed  
26 until after the deadline for submission has passed as set forth  
27 in the request for proposals. All design-build entities  
28 submitting proposals shall be disclosed after the deadline for  
29 submission, and all design-build entities who are selected for  
30 Phase II evaluation shall also be disclosed at the time of that  
31 determination.

32 Proposals shall include a bid bond in the form and security

1 as designated in the request for proposals. Proposals shall  
2 also contain a separate sealed envelope with the cost  
3 information within the overall proposal submission. Proposals  
4 shall include a list of all design professionals and other  
5 entities as defined in Section 30-30 of the Illinois  
6 Procurement Code to which any work may be subcontracted during  
7 the performance of the contract. Any entity that will perform  
8 any of the 5 subdivisions of work defined in Section 30-30 of  
9 the Illinois Procurement Code must meet prequalification  
10 standards of the State construction agency.

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

15 The drawings and specifications of the proposal shall  
16 remain the property of the design-build entity.

17 The State construction agency shall review the proposals  
18 for compliance with the performance criteria and evaluation  
19 factors.

20 Proposals may be withdrawn prior to evaluation for any  
21 cause. After evaluation begins by the State construction  
22 agency, clear and convincing evidence of error is required for  
23 withdrawal.

24 Section 45. Award. The State construction agency may award  
25 the contract to the highest overall ranked entity. Notice of  
26 award shall be made in writing. Unsuccessful entities shall  
27 also be notified in writing. The State construction agency may  
28 not request a best and final offer after the receipt of  
29 proposals. The State construction agency may negotiate with the  
30 selected design-build entity after award but prior to contract  
31 execution for the purpose of securing better terms than  
32 originally proposed, provided that the salient features of the  
33 request for proposal are not diminished.

1           Section 46. Reports and evaluation. At the end of every 6  
2 month period following the contract award, and again prior to  
3 final contract payout and closure, a selected design-build  
4 entity shall detail, in a written report submitted to the State  
5 agency, its efforts and success in implementing the entity's  
6 plan to comply with the utilization goals for business  
7 enterprises established in the Business Enterprise for  
8 Minorities, Females, and Persons with Disabilities Act and the  
9 provisions of Section 2-105 of the Illinois Human Rights Act.  
10 If the entity's performance in implementing the plan falls  
11 short of the performance measures and outcomes set forth in the  
12 plans submitted by the entity during the proposal process, the  
13 entity shall, in a detailed written report, inform the General  
14 Assembly and the Governor whether and to what degree each  
15 design-build contract authorized under this Act promoted the  
16 utilization goals for business enterprises established in the  
17 Business Enterprise for Minorities, Females, and Persons with  
18 Disabilities Act and the provisions of Section 2-105 of the  
19 Illinois Human Rights Act.

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

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

1           Section 90. Repealer. This Act is repealed on July 1, 2009.

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

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