



Rep. Harry Osterman

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1 AMENDMENT TO SENATE BILL 2049

2 AMENDMENT NO. _____. Amend Senate Bill 2049, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Public Building Commission Act is amended
6 by changing Sections 3 and 20 and by adding Sections 20.3,
7 20.4, 20.5, 20.10, 20.15, and 20.20 as follows:

8 (50 ILCS 20/3) (from Ch. 85, par. 1033)

9 Sec. 3. The following terms, wherever used, or referred to
10 in this Act, mean unless the context clearly requires a
11 different meaning:

12 (a) "Commission" means a Public Building Commission
13 created pursuant to this Act.

14 (b) "Commissioner" or "Commissioners" means a Commissioner
15 or Commissioners of a Public Building Commission.

16 (c) "County seat" means a city, village or town which is
17 the county seat of a county.

18 (d) "Municipality" means any city, village or incorporated
19 town of the State of Illinois.

20 (e) "Municipal corporation" includes a county, city,
21 village, town, (including a county seat), park district, school
22 district in a county of 3,000,000 or more population, board of
23 education of a school district in a county of 3,000,000 or more
24 population, sanitary district, airport authority contiguous

1 with the County Seat as of July 1, 1969 and any other municipal
2 body or governmental agency of the State but does not include a
3 school district in a county of less than 3,000,000 population,
4 a board of education of a school district in a county of less
5 than 3,000,000 population, or a community college district in a
6 county of less than 3,000,000 population.

7 (f) "Governing body" includes a city council, county board,
8 or any other body or board, by whatever name it may be known,
9 charged with the governing of a municipal corporation.

10 (g) "Presiding officer" includes the mayor or president of
11 a city, village or town, the presiding officer of a county
12 board, or the presiding officer of any other board or
13 commission, as the case may be.

14 (h) "Oath" means oath or affirmation.

15 (i) "Building" means an improvement to real estate to be
16 made available for use by a municipal corporation for the
17 furnishing of governmental services to its citizens, together
18 with any land or interest in land necessary or useful in
19 connection with the improvement.

20 (j) "Delivery system" means the design and construction
21 approach used to develop and construct a project.

22 (k) "Design-bid-build" means the traditional delivery
23 system used on public projects that incorporates the Local
24 Government Professional Services Selection Act (50 ILCS 510/)
25 and the principles of competitive selection.

26 (l) "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 (m) "Design-build contract" means a contract for a public
32 project under this Act between the Commission and a
33 design-build entity to furnish architecture, engineering, land
34 surveying, and related services as required, and to furnish the

1 labor, materials, equipment, and other construction services
2 for the project. The design-build contract may be conditioned
3 upon subsequent refinements in scope and price and may allow
4 the Commission to make modifications in the project scope
5 without invalidating the design-build contract.

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

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

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

31 (q) "Proposal" means the offer to enter into a design-build
32 contract as submitted by a design-build entity in accordance
33 with this Act.

34 (r) "Request for proposal" means the document used by the

1 Commission to solicit proposals for a design-build contract.

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

10 (t) "Guaranteed maximum price" means a form of contract in
11 which compensation may vary according to the scope of work
12 involved but in any case may not exceed an agreed total amount.

13 (Source: P.A. 88-304.)

14 (50 ILCS 20/20) (from Ch. 85, par. 1050)

15 Sec. 20. Contracts let to lowest responsible bidder;
16 competitive bidding; advertisement for bids; design-build
17 contracts.

18 (a) All contracts to be let for the construction,
19 alteration, improvement, repair, enlargement, demolition or
20 removal of any buildings or other facilities, or for materials
21 or supplies to be furnished, where the amount thereof is in
22 excess of \$5,000, shall be awarded as a design-build contract
23 in accordance with Sections 20.3 through 20.20 or shall be let
24 to the lowest responsible bidder, or bidders on open
25 competitive bidding. 7

26 (b) A contract awarded on the basis of competitive bidding
27 shall be awarded after public advertisement published at least
28 once in each week for three consecutive weeks prior to the
29 opening of bids, in a daily newspaper of general circulation in
30 the county where the commission is located. Nothing contained
31 in this Section shall be construed to prohibit the Board of
32 Commissioners from placing additional advertisements in
33 recognized trade journals. Advertisements for bids shall

1 describe the character of the proposed contract in sufficient
2 detail to enable the bidders thereon to know what their
3 obligation will be, either in the advertisement itself, or by
4 reference to detailed plans and specifications on file in the
5 office of the Public Building Commission at the time of the
6 publication of the first announcement. Such advertisement
7 shall also state the date, time, and place assigned for the
8 opening of bids. No ~~and no~~ bids shall be received at any time
9 subsequent to the time indicated in said advertisement.

10 (c) In addition to the requirements of Section 20.3, the
11 Commission shall advertise a design-build solicitation at
12 least once in a daily newspaper of general circulation in the
13 county where the Commission is located. The date that Phase I
14 submissions by design-build entities are due must be at least
15 14 calendar days after the date the newspaper advertisement for
16 design-build proposals is first published. The advertisement
17 shall identify the design-build project, the due date, the
18 place and time for Phase I submissions, and the place where
19 proposers can obtain a complete copy of the request for
20 design-build proposals, including the criteria for evaluation
21 and the scope and performance criteria. The Commission is not
22 precluded from using other media or from placing advertisements
23 in addition to the one required under this subsection.

24 (d) The Board of Commissioners may reject any and all bids
25 and proposals received and may readvertise for bids or issue a
26 new request for design-build proposals.

27 (e) All bids shall be open to public inspection in the
28 office of the Public Building Commission for a period of at
29 least forty-eight (48) hours before award is made. The
30 successful bidder for such work shall enter into contracts
31 furnished and prescribed by the Board of Commissioners and in
32 addition to any other bonds required under this Act the
33 successful bidder shall execute and give bond, payable to and
34 to be approved by the Commission, with a corporate surety

1 authorized to do business under the laws of the State of
2 Illinois, in an amount to be determined by the Board of
3 Commissioners, conditioned upon the payment of all labor
4 furnished and materials supplied in the prosecution of the
5 contracted work. If the bidder whose bid has been accepted
6 shall neglect or refuse to accept the contract within five (5)
7 days after written notice that the same has been awarded to
8 him, or if he accepts but does not execute the contract and
9 give the proper security, the Commission may accept the next
10 lowest bidder, or readvertise and relet in manner above
11 provided.

12 (f) In case any work shall be abandoned by any contractor
13 or design-build entity, the Commission may, if the best
14 interests of the Commission be thereby served, adopt on behalf
15 of the Commission all subcontracts made by such contractor or
16 design-build entity for such work and all such sub-contractors
17 shall be bound by such adoption if made; and the Commission
18 shall, in the manner provided in this Act herein, readvertise
19 and relet, or request proposals and award design-build
20 contracts for, the work specified in the original contract
21 exclusive of so much thereof as shall be accepted. Every
22 contract when made and entered into, as ~~herein~~ provided in this
23 Section or Section 20.20 for, shall be executed in duplicate,
24 one copy of which shall be held by the Commission, and filed in
25 its records, and one copy of which shall be given to the
26 contractor or design-build entity.

27 (Source: P.A. 84-249.)

28 (50 ILCS 20/20.3 new)

29 Sec. 20.3. Solicitation of design-build proposals.

30 (a) When the Commission elects to use the design-build
31 delivery method, it must issue a notice of intent to receive
32 proposals for the project at least 14 days before issuing the
33 request for the proposal. The Commission must publish the

1 advance notice in a daily newspaper of general circulation in
2 the county where the Commission is located. The Commission is
3 encouraged to use publication of the notice in related
4 construction industry service publications. A brief
5 description of the proposed procurement must be included in the
6 notice. The Commission must provide a copy of the request for
7 proposal to any party requesting a copy.

8 (b) The request for proposal shall be prepared for each
9 project and must contain, without limitation, the following
10 information:

11 (1) The name of the Commission.

12 (2) A preliminary schedule for the completion of the
13 contract.

14 (3) The proposed budget for the project, the source of
15 funds, and the currently available funds at the time the
16 request for proposal is submitted.

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

23 (5) Material requirements of the contract, including
24 but not limited to, the proposed terms and conditions,
25 required performance and payment bonds, insurance, and the
26 entity's plan to comply with the utilization goals
27 established by the corporate authorities of the Commission
28 for minority and women business enterprises and to comply
29 with Section 2-105 of the Illinois Human Rights Act.

30 (6) The performance criteria.

31 (7) The evaluation criteria for each phase of the
32 solicitation.

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

1 (c) The Commission may include any other relevant
2 information that it chooses to supply. The design-build entity
3 shall be entitled to rely upon the accuracy of this
4 documentation in the development of its proposal.

5 (d) The date that proposals are due must be at least 21
6 calendar days after the date of the issuance of the request for
7 proposal. In the event the cost of the project is estimated to
8 exceed \$12,000,000, then the proposal due date must be at least
9 28 calendar days after the date of the issuance of the request
10 for proposal. The Commission shall include in the request for
11 proposal a minimum of 30 days to develop the Phase II
12 submissions after the selection of entities from the Phase I
13 evaluation is completed.

14 (50 ILCS 20/20.4 new)

15 Sec. 20.4. Development of design-build scope and
16 performance criteria.

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

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

32 (c) The scope and performance criteria shall be prepared by
33 a design professional who is an employee of the Commission, or

1 the Commission may contract with an independent design
2 professional selected under the Local Government Professional
3 Services Selection Act (50 ILCS 510/) to provide these
4 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 (50 ILCS 20/20.5 new)

9 Sec. 20.5. Procedures for design-build selection.

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

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

24 The Commission shall include the following criteria in
25 every Phase I evaluation of design-build entities: (1)
26 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 (7) commitment to assign personnel for the duration of the
31 project and qualifications of the entity's consultants; and (8)
32 ability or past performance in meeting or exhausting good faith
33 efforts to meet the utilization goals for minority and women

1 business enterprises established by the corporate authorities
2 of the Commission and in complying with Section 2-105 of the
3 Illinois Human Rights Act. The Commission may include any
4 additional relevant criteria in Phase I that it deems necessary
5 for a proper qualification review. The Commission may include
6 any additional relevant criteria in Phase I that it deems
7 necessary for a proper qualification review.

8 The Commission may not consider any design-build entity for
9 evaluation or award if the entity has any pecuniary interest in
10 the project or has other relationships or circumstances,
11 including but not limited to, long-term leasehold, mutual
12 performance, or development contracts with the Commission,
13 that may give the design-build entity a financial or tangible
14 advantage over other design-build entities in the preparation,
15 evaluation, or performance of the design-build contract or that
16 create the appearance of impropriety. No design-build proposal
17 shall be considered that does not include an entity's plan to
18 comply with the requirements established in the minority and
19 women business enterprises and economically disadvantaged
20 firms established by the corporate authorities of the
21 Commission and with Section 2-105 of the Illinois Human Rights
22 Act.

23 Upon completion of the qualifications evaluation, the
24 Commission shall create a shortlist of the most highly
25 qualified design-build entities. The Commission, in its
26 discretion, is not required to shortlist the maximum number of
27 entities as identified for Phase II evaluation, provided
28 however, no less than 2 design-build entities nor more than 6
29 are selected to submit Phase II proposals.

30 The Commission shall notify the entities selected for the
31 shortlist in writing. This notification shall commence the
32 period for the preparation of the Phase II technical and cost
33 evaluations. The Commission must allow sufficient time for the
34 shortlist entities to prepare their Phase II submittals

1 considering the scope and detail requested by the Commission.

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

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

21 The Commission shall include the following criteria in
22 every Phase II cost evaluation: the guaranteed maximum project
23 cost and the time of completion. The Commission may include any
24 additional relevant technical evaluation factors it deems
25 necessary for proper selection. The guaranteed maximum project
26 cost criteria weighing factor shall not exceed 30%.

27 The Commission shall directly employ or retain a licensed
28 design professional to evaluate the technical and cost
29 submissions to determine if the technical submissions are in
30 accordance with generally accepted industry standards.

31 Upon completion of the technical submissions and cost
32 submissions evaluation, the Commission may award the
33 design-build contract to the highest overall ranked entity.

1 (50 ILCS 20/20.10 new)

2 Sec. 20.10. Small design-build projects. In any case where
3 the total overall cost of the project is estimated to be less
4 than \$12,000,000, the Commission may combine the two-phase
5 procedure for design-build selection described in Section 20.5
6 into one combined step, provided that all the requirements of
7 evaluation are performed in accordance with Section 20.5.

8 (50 ILCS 20/20.15 new)

9 Sec. 20.15. Submission of design-build proposals.
10 Design-build proposals must be properly identified and sealed.
11 Proposals may not be reviewed until after the deadline for
12 submission has passed as set forth in the request for
13 proposals. All design-build entities submitting proposals
14 shall be disclosed after the deadline for submission, and all
15 design-build entities who are selected for Phase II evaluation
16 shall also be disclosed at the time of that determination.

17 Phase II design-build proposals shall include a bid bond in
18 the form and security as designated in the request for
19 proposals. Proposals shall also contain a separate sealed
20 envelope with the cost information within the overall proposal
21 submission. Proposals shall include a list of all design
22 professionals and other entities to which any work may be
23 subcontracted during the performance of the contract.

24 Proposals must meet all material requirements of the
25 request for proposal or they may be rejected as non-responsive.
26 The Commission shall have the right to reject any and all
27 proposals.

28 The drawings and specifications of any unsuccessful
29 design-build proposal shall remain the property of the
30 design-build entity.

31 The Commission shall review the proposals for compliance
32 with the performance criteria and evaluation factors.

33 Proposals may be withdrawn prior to the due date and time

1 for submissions for any cause. After evaluation begins by the
2 Commission, clear and convincing evidence of error is required
3 for withdrawal.

4 (50 ILCS 20/20.20 new)

5 Sec. 20.20. Design-build award. The Commission may award a
6 design-build contract to the highest overall ranked entity.
7 Notice of award shall be made in writing. Unsuccessful entities
8 shall also be notified in writing. The Commission may not
9 request a best and final offer after the receipt of proposals.
10 The Commission may negotiate with the selected design-build
11 entity after award but prior to contract execution for the
12 purpose of securing better terms than originally proposed,
13 provided that the salient features of the request for proposal
14 are not diminished."