

SB0297



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0297

Introduced 2/6/2009, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

New Act

Creates the Design-Build for Highway Construction Demonstration Act. Authorizes the Department of Transportation and the Illinois State Toll Highway Authority to use a design-build method of source selection for highway construction projects. Sets forth procedures for using the design-build method. Requires the agencies to submit an evaluation report concerning the design-build method no later than December 31, 2012. Repeals the Act on June 30, 2013. Effective July 1, 2009.

LRB096 03731 AJT 13760 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning highways.

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 for Highway Construction Demonstration Act.

6 Section 5. Legislative intent. Design-bid-build has been
7 the traditional and preferred method of delivering completed
8 highway construction projects since the inception of the system
9 of state highways under the jurisdiction and management of
10 state government authorities. Design-bid-build has relied on a
11 qualifications-based selection of engineering expertise for
12 the design function and a sealed competitive bid selection for
13 the build function. The existing process is intended to secure
14 a quality project at the lowest cost while avoiding fraud,
15 corruption, and abuse in the contracting process.

16 Design-build combines the design and construction
17 functions in one contract with the intention of saving time and
18 money by taking advantage of innovation in both design and
19 construction and by realizing the benefits of a single
20 contract. The design-build method of project delivery has been
21 used with success in private sector construction and has been
22 attempted by other states for highway construction with mixed
23 results. The civil engineering and highway construction

1 industries in Illinois have developed over a considerable time
2 working in the traditional method of contracting and project
3 delivery.

4 Adoption of design-build carries with it risks that should
5 be assessed and potential rewards that should be identified
6 before the method is fully adopted for highway construction.
7 The State agencies responsible for the construction and
8 maintenance of State highways also need to adapt to the changes
9 that such an adoption would bring. The General Assembly
10 therefore believes that a period of study and evaluation is
11 appropriate before the design-build method is adopted for
12 general use. It is the policy of the State that
13 design-bid-build remains the preferred delivery method of
14 highway construction projects, but that design-build should be
15 authorized and evaluated as an alternative method for selected
16 projects.

17 Section 10. Authority for use.

18 (a) The Illinois Department of Transportation and the
19 Illinois State Toll Highway Authority, as the State highway
20 construction agencies, may provide for use of a design-build
21 method of source selection for highway construction projects,
22 on highways subject to their jurisdiction, in order to
23 demonstrate and evaluate the use, advantages, and
24 disadvantages of that method of source selection for highway
25 construction projects. It is the policy of the State for the

1 use of this method to publicly announce all requirements for
2 design-build services and to procure those services on the
3 basis of demonstrated competence and qualifications with due
4 regard for the principles of competitive selection. The State
5 highway construction agency undertaking demonstration projects
6 selected under the authority of this Act must evaluate the
7 design-build method compared to the traditional method by
8 considering the following factors:

9 (1) The relative advantages and disadvantages,
10 considering time, cost, and the resources of the agency to
11 achieving the final completion of the project;

12 (2) The type, size, and suitability of projects to the
13 design-build method of source selection; and

14 (3) The ability of the agency to define and provide
15 comprehensive scope and performance criteria for the
16 construction project as required by this Act, as well as
17 what may be possible under a design-build contract
18 providing for greater conceptual responsibility for the
19 design-build entity.

20 (b) Projects selected by the Illinois Department of
21 Transportation for demonstration under this Act must be
22 identified in the annual highway construction program document
23 published by the Department under Section 2705-200 of the
24 Department of Transportation Law of the Civil Administrative
25 Code of Illinois.

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

2 "Design-bid-build" means the traditional method of source
3 selection used on public projects in this State that
4 incorporates the Architectural, Engineering, and Land
5 Surveying Qualifications Based Selection Act, and the Illinois
6 Procurement Code.

7 "Design-build" means a method of source selection that
8 provides responsibility within a single contract for the
9 furnishing of engineering, land surveying and related design
10 services, and the labor, materials, equipment, and other
11 construction services for the project.

12 "Design-build contract" means a contract for a public
13 project procured under this Act between a State highway
14 construction agency and a design-build entity to furnish
15 engineering, land surveying and related design services as
16 required and to furnish the labor, materials, equipment, and
17 other construction services for the project. The design-build
18 contract may be conditioned upon subsequent refinements in
19 scope and price and may allow the State highway construction
20 agency to make modifications in the project scope and contract
21 price without invalidating the design-build contract.

22 "Design-build entity" means any entity organized in a
23 manner recognized in law that proposes to design and build a
24 public project under this Act.

25 "Design professional" means any entity recognized by law to
26 offer services under the Professional Engineering Practice Act

1 of 1989, the Structural Engineering Practice Act of 1989, the
2 Illinois Professional Land Surveyor Act of 1989, or the
3 Illinois Architecture Practice Act of 1989.

4 "Evaluation criteria" means the requirements to be used for
5 the selection process as defined in this Act including any
6 specialized experience, technical qualifications and
7 competence, financial capacity to perform, past performance or
8 experience, personnel resources, cost, and other appropriate
9 factors. The manner of judging qualifications in relation to
10 the proposed costs must be clearly defined as provided in this
11 Act.

12 "Proposal" means the offer to enter into a design-build
13 contract as submitted by a design-build entity in accordance
14 with this Act.

15 "Request for proposals" means the document used by a State
16 highway construction agency to solicit proposals for a
17 design-build contract.

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

1 Section 20. Scope and performance criteria. The State
2 highway construction agency must develop the scope and
3 performance criteria. The scope and performance criteria must
4 be in reasonably sufficient detail and contain reasonably
5 adequate information to inform the qualified design-build
6 entities of the State highway construction agency's overall
7 needs and goals, including, but not limited to, applicable
8 standards adopted by the agency governing the work of the
9 project, preliminary design plans, anticipated schedules, and
10 delivery requirements. The scope and performance criteria must
11 also include a description of the level of design to be
12 provided in the proposals. The description must include the
13 scope and type of renderings, drawings, and specifications
14 that, at a minimum, will be required to be produced by the
15 design-build entity. The scope and performance criteria must be
16 prepared by an appropriately licensed design professional who
17 may be an employee of the agency, or the agency may contract
18 with an independent design professional selected in accordance
19 with the Architectural, Engineering, and Land Surveying
20 Qualification Based Selection Act to provide these services.
21 The design professional that prepares the scope and performance
22 criteria is prohibited from participating in any design-build
23 entity proposal for the project.

24 Section 25. Solicitation of design-build proposals.
25 Design-build contracts must be procured by a request for

1 proposals process conforming to this Act. A request for
2 proposals must be prepared for each project and must contain,
3 at a minimum, all of the following information:

4 (1) The State transportation construction agency that
5 will award the design-build contract;

6 (2) The desired schedule for the completion of the
7 project;

8 (3) The qualification criteria for design-build
9 entities desiring to submit proposals incorporating any
10 established prequalification, registration, or other
11 requirements that are relevant to the needs of the
12 individual project;

13 (4) The terms and conditions of the contract that will
14 govern the performance of the project;

15 (5) The scope and performance criteria governing the
16 contract;

17 (6) The selection criteria to evaluate the
18 design-build entity proposal;

19 (7) The date, time, and place that proposals are due
20 that in no case may be less than 30 calendar days after the
21 date of the issuance of the request for proposals;

22 (8) The requirements for identification of the
23 design-build team members; and

24 (9) The date, time, and place that the cost component
25 of accepted proposals will be publicly opened and read.

1 Section 30. Publication of requests for proposals. All
2 requests for design-build proposals must be published in the
3 volume of the Illinois Procurement Bulletin used by the State
4 highway construction agency for its regular construction
5 contract lettings under the Illinois Procurement Code.

6 Section 35. Submission of proposals. Proposals must be
7 properly identified and sealed. Proposals may not be reviewed
8 until after the deadline for submission has passed as set forth
9 in the request for proposals. All design-build entities
10 submitting proposals must be disclosed after the deadline for
11 submission. Proposals must include a bid bond in the form and
12 security as designated in the request for proposals. Proposals
13 must contain a separate sealed envelope containing the cost
14 component within the overall proposal submission. Proposals
15 must conform in all material respects to the request for
16 proposal or they may be rejected as non-responsive. The State
17 transportation construction agency may reject any and all
18 proposals and may waive technicalities. Any drawings and
19 specifications contained in proposals not selected remain the
20 property of the design-build entity unless otherwise provided
21 for in the request for proposals. Proposals may be withdrawn
22 prior to evaluation for any reason.

23 Section 40. Selection committee. The State highway
24 construction agency must establish a selection committee to

1 evaluate the technical components of the proposals. The
2 selection committee must consist of 5 members, 3 of whom are
3 professionally licensed officers or employees of the agency,
4 and 2 of whom are public members. The public members may not be
5 employed or associated with any firm holding a contract with
6 the State highway construction agency and must be nominated,
7 one each, by the American Council of Engineering Companies of
8 Illinois, and, in the following order on a rotating basis, the
9 Associated General Contractors of Illinois, the Illinois Road
10 and Transportation Builders Association, the Illinois Asphalt
11 Pavement Association, and the Illinois chapter of the American
12 Concrete Pavement Association. The selection committee and
13 individual members may be designated for a set term or for a
14 particular project. Each member of the selection committee must
15 certify, for each request for proposal, that no conflict of
16 interest exists between the member and each of the design-build
17 entities submitting proposals. If a conflict exists, the member
18 must be replaced before any review of proposals.

19 Section 45. Procedures for selection and award.

20 (a) For highway construction projects estimated to cost
21 \$10,000,000 or less, all proposals received by the date and
22 time due must be opened and recorded. The cost component must
23 remain sealed and retained by the chief contracting official
24 responsible for the conduct of lettings in accordance with the
25 regular procedures of the agency. The chief contracting

1 official must transmit all technical components for evaluation
2 to the selection committee. The chief contracting official must
3 serve as recording secretary to the selection committee. The
4 selection committee must evaluate each proposal for
5 responsiveness to the request, qualifications of the
6 design-build team, proposed methods of achieving the scope and
7 performance criteria, and achievement of any other evaluation
8 factors set forth in the request. The selection committee may
9 require clarification of any element contained in the technical
10 component in order to determine whether the proposal conforms
11 to the request. The proposals may not be ranked, except that
12 after evaluation, the selection committee must mark and record
13 each proposal as either "accepted" or "not accepted." The time
14 for evaluation must be no less than 24 hours unless a longer
15 period is specified in the request. After evaluation, the chief
16 contracting official must reseal and retain all accepted and
17 unaccepted proposals. The cost component of each accepted
18 proposal must be opened and publicly read at the date, time,
19 and place specified in the request. The right to reject any and
20 all proposals, to waive technicalities, and to solicit new
21 proposals must be reserved. The design-build contract may be
22 awarded to the lowest accepted proposal by the State highway
23 construction agency provided the cost component is responsive
24 to the request. After the award, all proposals not accepted and
25 non-low proposals must be returned.

26 (b) For highway construction projects exceeding an

1 estimate of \$10,000,000, the procedures and rights are the same
2 as subsection (a) of this Section, except that accepted
3 proposals must be graded by the selection committee for quality
4 of the proposal and achievement of the scope and performance
5 criteria. The scoring is from 1 through 100 points. Any
6 accepted proposal scoring less than 76 points must be marked
7 unacceptable. The time for evaluation must be no less than 72
8 hours unless a longer period is specified in the request. The
9 design-build contract may be awarded to the responsive best
10 value proposal determined by adjusting the as read cost
11 component by the technical component score as follows:

12 (1) The cost component for a proposal scored 97-100
13 must be divided by 1;

14 (2) The cost component for a proposal scored 93-96 must
15 be divided by 0.99;

16 (3) The cost component for a proposal scored 89-92 must
17 be divided by 0.98;

18 (4) The cost component for a proposal scored 85-88 must
19 be divided by 0.97;

20 (5) The cost component for a proposal scored 81-84 must
21 be divided by 0.96; and

22 (6) The cost component for a proposal scored 77-80 must
23 be divided by 0.95.

24 Section 50. Confidentiality. The status of a proposal as
25 accepted or not accepted and proposal scores may not be

1 disclosed for any reason before the cost element is publicly
2 opened and read.

3 Section 55. Conditions. Projects selected for procurement
4 under the terms of this Act are subject to the following
5 conditions:

6 (1) Department of Transportation projects must be
7 selected that have been designed through at least the
8 completion of Phase I preliminary engineering, as defined
9 by the design policies and procedures of the Department. On
10 any project selected for this demonstration program, the
11 design-build components may be initiated only after all
12 necessary approvals have been obtained from the department
13 and, as applicable, the Federal Highway Administration for
14 an engineering study and report that establishes the
15 location and scope of the project, and for environmental
16 documentation that analyzes the environmental impacts of
17 the project alternatives considered.

18 (2) All necessary rights-of-way, permanent and
19 temporary, must be acquired prior to the commencement of
20 construction by the design-build entity. Nothing in this
21 paragraph (2) prohibits the design-build entity from
22 securing any additional temporary interests or rights of
23 access deemed necessary to accomplish the project.

24 (3) The State highway construction agency must secure
25 all necessary permits.

1 (4) The State highway construction agency must secure
2 any necessary relocation of utilities located on existing
3 or acquired rights-of-way unless the request for proposals
4 provides that existing utilities will be planned for and
5 adjusted during construction. Notwithstanding any
6 provision contained in Section 9-113 of the Illinois
7 Highway Code concerning the provision of final engineering
8 plans prior to notice given to permitted utilities to
9 relocate, a permitted utility must proceed to relocate and
10 adjust permitted facilities pursuant to Section 9-113 of
11 the Illinois Highway Code upon notice with preliminary
12 plans showing the final or adjusted position of the
13 utilities.

14 Section 60. Procurement and contract mandates.
15 Design-build contracts procured under this Act are subject to
16 all applicable federal and State laws governing the performance
17 of public contracts and all applicable ethical and conflict of
18 interest disclosures and prohibitions mandated by law. The
19 design-build entity must certify that no state appropriated
20 funds have been or will be paid, by or on behalf of the
21 design-build entity, to any person for influencing or
22 attempting to influence an officer or employee of a State
23 agency or the Governor's office, a member of the General
24 Assembly, an officer or employee of the General Assembly, or an
25 employee of a member of the General Assembly in connection with

1 the awarding of any design-build contract.

2 Section 65. Design professional seal. Nothing in this Act
3 may be deemed to eliminate, reduce, or affect the requirements
4 of the Structural Engineering Practice Act of 1989,
5 Professional Engineering Practice Act of 1989, the Illinois
6 Professional Land Surveyor Act of 1989, and the Illinois
7 Architecture Practice Act of 1989, including, but not limited
8 to, the preparation and sealing of plans and documents.

9 Section 70. Rules and regulations. The State highway
10 construction agencies are not required to adopt rules and
11 regulations pursuant to the Illinois Administrative Procedure
12 Act in order to implement this Act. All policies and procedures
13 adopted to implement this Act must be identified and published
14 in the web site maintained by the Department of Transportation.

15 Section 75. Report. The State highway construction
16 agencies must, jointly or severally, submit an evaluation
17 report as required by Section 10 of this Act. The agencies must
18 solicit, accept, and respond to comments provided by the
19 industry groups or associations providing appointed public
20 members to the selection committee, and must incorporate the
21 comments and responses into the report. The report is due and
22 must be filed with the Procurement Policy Board no later than
23 December 31, 2012.

1 Section 80. Sunset. This Act is repealed on June 30, 2013.

2 Section 99. Effective date. This Act is effective July 1,
3 2009.