



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB3458

Introduced 2/24/2011, by Rep. Mike Fortner

#### SYNOPSIS AS INTRODUCED:

70 ILCS 1205/8-50 new  
70 ILCS 1205/8-51 new  
70 ILCS 1205/8-52 new  
70 ILCS 1205/8-53 new  
70 ILCS 1205/8-54 new  
70 ILCS 1205/8-55 new  
70 ILCS 1205/8-56 new  
70 ILCS 1205/8-57 new

Amends the Park District Code. Authorizes park districts to enter into "design-build" contracts. Defines "design-build". Specifies the solicitation process for design-build proposals. Sets forth the requirements for the award of design-build contracts. Provides that park districts must use a 2-phase procedure for the selection of the successful design-build entity for projects where the budgeted construction cost is over \$12,000,000. Effective immediately.

LRB097 09595 RLJ 49732 b

FISCAL NOTE ACT  
MAY APPLY

A BILL FOR

1 AN ACT concerning local government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Park District Code is amended by adding  
5 Sections 8-50, 8-51, 8-52, 8-53, 8-54, 8-55, 8-56, and 8-57 as  
6 follows:

7 (70 ILCS 1205/8-50 new)

8 Sec. 8-50. Definitions. For the purposes of Sections 8-50  
9 through 8-57, the following terms shall have the following  
10 meanings, unless the context requires a different meaning:

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

13 "Design-bid-build" means the traditional delivery system  
14 used on public projects that incorporates the Local Government  
15 Professional Services Selection Act and the principles of  
16 competitive selection.

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

22 "Design-build contract" means a contract for a public  
23 project under this Act between any park district and a

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

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

18 "Design professional" means any individual, sole  
19 proprietorship, firm, partnership, joint venture, corporation,  
20 professional corporation, or other entity that offers services  
21 under the Illinois Architecture Practice Act of 1989, the  
22 Professional Engineering Practice Act of 1989, the Structural  
23 Engineering Practice Act of 1989, or the Illinois Professional  
24 Land Surveyor Act of 1989.

25 "Evaluation criteria" means the requirements for the  
26 separate phases of the selection process for design-build

1 proposals as defined in this Act and may include the  
2 specialized experience, technical qualifications and  
3 competence, capacity to perform, past performance, experience  
4 with similar projects, assignment of personnel to the project,  
5 and other appropriate factors. Price may not be used as a  
6 factor in the evaluation of Phase I proposals.

7 "Guaranteed maximum price" means a form of contract in  
8 which compensation may vary according to the scope of work  
9 involved but in any case may not exceed an agreed total amount.

10 "Landscape architect design professional" means any  
11 person, sole proprietorship, or entity including, but not  
12 limited to, a partnership, professional service corporation,  
13 or corporation that offers services under the Illinois  
14 Landscape Architecture Act of 1989.

15 "Proposal" means the offer to enter into a design-build  
16 contract as submitted by a design-build entity in accordance  
17 with this Act.

18 "Request for proposal" means the document used by the park  
19 district to solicit proposals for a design-build contract.

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

1 entity to develop a proposal.

2 (70 ILCS 1205/8-51 new)

3 Sec. 8-51. Authorization for design-build; advertisement.

4 (a) A park district shall have the power to enter into  
5 design-build contracts. In addition to the requirements set  
6 forth in its ordinances, the park district shall advertise a  
7 design-build solicitation at least once in a daily newspaper of  
8 general circulation within the county in which the park  
9 district is located. The date that Phase I submissions by  
10 design-build entities are due must be at least 14 calendar days  
11 after the date the newspaper advertisement for design-build  
12 proposals is first published. The advertisement shall identify  
13 the design-build project, the due date, the place and time for  
14 Phase I submissions, and the place where proposers may obtain a  
15 complete copy of the request for design-build proposals,  
16 including the criteria for evaluation and the scope and  
17 performance criteria. The park district is not precluded from  
18 using other media or from placing advertisements in addition to  
19 the one required under this subsection.

20 (b) A park district may reject any and all bids and  
21 proposals received and may readvertise for bids or issue a new  
22 request for design-build proposals.

23 (70 ILCS 1205/8-52 new)

24 Sec. 8-52. Solicitation of design-build proposals.

1       (a) When a park district elects to use the design-build  
2 delivery method, it must issue a notice of intent to receive  
3 proposals for the project at least 14 days before issuing the  
4 request for proposal. The park district shall publish notice of  
5 the request for the design-build proposal in a newspaper of  
6 general circulation within the county in which the park  
7 district is located. The park district shall, if possible, post  
8 plans and specifications in a related construction industry  
9 service publication. A brief description of the proposed  
10 procurement must be included in the notice. The park district  
11 must provide a copy of the request for proposal to any party  
12 requesting a copy.

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

16           (1) A preliminary schedule for the completion of the  
17 contract.

18           (2) The proposed budget for the project, the source of  
19 funds, and the funds available at the time the request for  
20 proposal is submitted.

21           (3) Prequalification criteria for design-build  
22 entities wishing to submit proposals. The park district  
23 shall include, at a minimum, its normal prequalification,  
24 licensing, registration, and other requirements, but  
25 nothing contained in this Section precludes the use of  
26 additional prequalification criteria by the park district.

1           (4) Material requirements of the contract, including,  
2           but not limited to, the proposed terms and conditions,  
3           required performance and payment bonds, insurance, and the  
4           entity's plan to comply with the utilization goals  
5           established by the corporate authorities of the park  
6           district for minority and women business enterprises and to  
7           comply with Section 2-105 of the Illinois Human Rights Act.

8           (5) The performance criteria.

9           (6) The evaluation criteria for each phase of the  
10           solicitation.

11           (7) The number of entities to be considered for the  
12           technical and cost evaluation phase.

13           (c) The park district may include any other relevant  
14           information that it chooses to supply. The design-build entity  
15           shall be entitled to rely upon the accuracy of this  
16           documentation in the development of its proposal.

17           (d) The date that proposals are due must be at least 21  
18           calendar days after the date of the issuance of the request for  
19           proposal. In the event the construction portion of the cost of  
20           the project is estimated to exceed \$12,000,000, then the  
21           proposal due date must be at least 28 calendar days after the  
22           date of the issuance of the request for proposal. The park  
23           district shall include in the request for proposal a minimum of  
24           30 days to develop the Phase II submissions after the selection  
25           of entities from the Phase I evaluation is completed.

1 (70 ILCS 1205/8-53 new)

2 Sec. 8-53. Development of design-build scope and  
3 performance criteria.

4 (a) The Park District shall develop, with the assistance of  
5 a licensed design professional or a landscape architect design  
6 professional, as appropriate, a request for proposal, which  
7 shall include scope and performance criteria. The scope and  
8 performance criteria must be in sufficient detail and contain  
9 adequate information to reasonably apprise the qualified  
10 design-build entities of the park district's overall  
11 programmatic needs and goals, including criteria and  
12 preliminary design plans, general budget parameters, schedule,  
13 and delivery requirements.

14 (b) Each request for proposal shall also include a  
15 description of the level of design to be provided in the  
16 proposals. This description must include the scope and type of  
17 renderings, drawings, and specifications that, at a minimum,  
18 will be required by the park district to be produced by the  
19 design-build entities.

20 (c) The scope and performance criteria shall be prepared by  
21 a design professional or a landscape architect design  
22 professional, as appropriate, who is an employee of the park  
23 district, or the park district may contract with an independent  
24 design professional selected under the Local Government  
25 Professional Services Selection Act to provide these services.

26 (d) The design professional or landscape architect design



1 professional that prepares the scope and performance criteria  
2 is prohibited from participating in any design-build entity  
3 proposal for the project.

4 (70 ILCS 1205/8-54 new)

5 Sec. 8-54. Procedures for design-build selection.

6 (a) The park district must use a two-phase procedure for  
7 the selection of the successful design-build entity. Phase I of  
8 the procedure shall evaluate and shortlist the design-build  
9 entities based on qualifications, and Phase II will evaluate  
10 the technical and cost proposals.

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

23 (1) experience of personnel;

24 (2) successful experience with similar project types;

25 (3) financial capability;

1 (4) timeliness of past performance;

2 (5) experience with similarly sized projects;

3 (6) successful reference checks of the firm;

4 (7) commitment to assign personnel for the duration of  
5 the project;

6 (8) qualifications of the entity's consultants; and

7 (9) ability or past performance in meeting or  
8 exhausting good faith efforts to meet the utilization goals  
9 for minority and women business enterprises established by  
10 the corporate authorities of the park district and in  
11 complying with Section 2-105 of the Illinois Human Rights  
12 Act.

13 The park district may include any additional relevant  
14 criteria in Phase I that it deems necessary for a proper  
15 qualification review.

16 The park district may not consider any design-build entity  
17 for evaluation or award if the entity has any pecuniary  
18 interest in the project or has other relationships or  
19 circumstances, including, but not limited to, long-term  
20 leasehold, mutual performance, or development contracts with  
21 the park district, that may give the design-build entity a  
22 financial or tangible advantage over other design-build  
23 entities in the preparation, evaluation, or performance of the  
24 design-build contract or that create the appearance of  
25 impropriety. No design-build proposal shall be considered that  
26 does not include an entity's plan to comply with the

1 requirements concerning minority and women business  
2 enterprises and economically disadvantaged firms established  
3 by the corporate authorities of the park district and with  
4 Section 2-105 of the Illinois Human Rights Act.

5 Upon completion of the qualifications evaluation, the park  
6 district shall create a shortlist of the most highly qualified  
7 design-build entities. The park district, in its discretion, is  
8 not required to shortlist the maximum number of entities as  
9 identified for Phase II evaluation, except that no less than 2  
10 design-build entities nor more than 6 are selected to submit  
11 Phase II proposals. The park district shall notify the entities  
12 selected for the shortlist in writing. This notification shall  
13 commence the period for the preparation of Phase II technical  
14 and cost evaluations. The park district must allow sufficient  
15 time for the shortlist entities to prepare their Phase II  
16 submittals considering the scope and detail requested by the  
17 park district.

18 (c) The park district shall include in the request for  
19 proposal the evaluating factors to be used in the technical and  
20 cost submission components of Phase II. Each request for  
21 proposal shall establish, for both the technical and cost  
22 submission components of Phase II, the relative importance  
23 assigned to each evaluation factor and subfactor, including any  
24 weighting of criteria to be employed by the park district. The  
25 park district must maintain a record of the evaluation scoring  
26 to be disclosed in the event of a protest regarding the

1 solicitation.

2 The park district shall include the following criteria in  
3 every Phase II technical evaluation of design-build entities:

4 (1) compliance with objectives of the project;

5 (2) compliance of proposed services to the request for  
6 proposal requirements;

7 (3) quality of products or materials proposed;

8 (4) quality of design parameters;

9 (5) design concepts;

10 (6) innovation in meeting the scope and performance  
11 criteria; and

12 (7) constructability of the proposed project.

13 The park district may include any additional relevant  
14 technical evaluation factors it deems necessary for proper  
15 selection.

16 The park district shall include the following criteria in  
17 every Phase II cost evaluation: the guaranteed maximum project  
18 cost and the time of completion. The park district may include  
19 any additional relevant technical evaluation factors it deems  
20 necessary for proper selection. The guaranteed maximum project  
21 cost criteria weighing factor shall not exceed 30%.

22 The park district shall directly employ or retain a  
23 licensed design professional or landscape architect design  
24 professional, as appropriate, to evaluate the technical and  
25 cost submissions to determine if the technical submissions are  
26 in accordance with generally accepted industry standards.

1       Upon completion of the technical submissions and cost  
2       submissions evaluation, the park district may award the  
3       design-build contract to the highest overall ranked entity.

4           (70 ILCS 1205/8-55 new)

5       Sec. 8-55. Small design-build projects. In any case where  
6       the total overall cost of the project is estimated to be less  
7       than \$12,000,000, the park district may combine the two-phase  
8       procedure for design-build selection described in Section 8-50  
9       into one combined step, provided that all the requirements of  
10       evaluation are performed in accordance with Section 8-50.

11           (70 ILCS 1205/8-56 new)

12       Sec. 8-56. Submission of design-build proposals.  
13       Design-build proposals must be properly identified and sealed.  
14       Proposals may not be reviewed until after the deadline for  
15       submission has passed as set forth in the request for  
16       proposals. All design-build entities submitting proposals  
17       shall be disclosed after the deadline for submission, and all  
18       design-build entities who are selected for Phase II evaluation  
19       shall also be disclosed at the time of that determination.

20       Phase II design-build proposals shall include a bid bond in  
21       the form and security as designated in the request for  
22       proposals. Proposals shall also contain a separate sealed  
23       envelope with the cost information within the overall proposal  
24       submission. Proposals shall include a list of all design

1 professionals, landscape architect design professionals, and  
2 other entities to which any work may be subcontracted during  
3 the performance of the contract.

4 Proposals must meet all material requirements of the  
5 request for proposal or they may be rejected as non-responsive.  
6 The park district shall have the right to reject any and all  
7 proposals.

8 The drawings and specifications of any unsuccessful  
9 design-build proposal shall remain the property of the  
10 design-build entity.

11 The park district shall review the proposals for compliance  
12 with the performance criteria and evaluation factors set forth  
13 in this Act.

14 Proposals may be withdrawn before the due date and time for  
15 submissions for any cause. After evaluation begins by the park  
16 district, clear and convincing evidence of error is required  
17 for withdrawal.

18 (70 ILCS 1205/8-57 new)

19 Sec. 8-57. Design-build award. The park district may award  
20 a design-build contract to the highest overall ranked entity.  
21 Notice of award shall be made in writing. Unsuccessful entities  
22 shall also be notified in writing. The park district may not  
23 request a best and final offer after the receipt of proposals.  
24 The park district may negotiate with the selected design-build  
25 entity after award but prior to contract execution for the

1 purpose of securing better terms than originally proposed,  
2 provided that the salient features of the request for proposal  
3 are not diminished.

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