



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1775

Introduced 2/9/2011, by Sen. Edward D. Maloney

SYNOPSIS AS INTRODUCED:

70 ILCS 2605/70 new
70 ILCS 2605/71 new
70 ILCS 2605/72 new
70 ILCS 2605/73 new
70 ILCS 2605/74 new
70 ILCS 2605/75 new
70 ILCS 2605/76 new
70 ILCS 2605/77 new

Amends the Metropolitan Water Reclamation District Act. Authorizes the Metropolitan Water Reclamation District 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 the Metropolitan Water Reclamation District 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.

LRB097 07025 RLJ 47118 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 Metropolitan Water Reclamation District Act
5 is amended by adding Sections 70, 71, 72, 73, 74, 75, 76, and
6 77 as follows:

7 (70 ILCS 2605/70 new)

8 Sec. 70. Definitions. For the purposes of Sections 70
9 through 77, 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. Furthermore, it
22 means a version of design-build, sometimes referred to as
23 "Bridged Design-Build", in which substantial design work is

1 completed before a Guaranteed Maximum Price is established to
2 complete the design and perform the construction.

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

14 "Design-build entity" means any type of organization
15 recognized to do business under the laws of the State of
16 Illinois that is registered in good standing with the Secretary
17 of State or a joint venture whose members are all entity's
18 registered in good standing to do business in the State of
19 Illinois. The organization must:

20 (i) be registered, or have a member firm of the joint
21 venture registered, under the Illinois Administrative
22 Code, as referenced by the licensed design professionals
23 Acts of this State, to perform design services for the
24 design-build project; and

25 (ii) be capable of project management, direct
26 supervision of construction operations, and

1 self-performance of a major portion of the construction
2 work.

3 "Design professional" means any individual, sole
4 proprietorship, firm, partnership, joint venture, corporation,
5 professional corporation, or other entity that offers services
6 under the Illinois Architecture Practice Act of 1989, the
7 Professional Engineering Practice Act of 1989, the Structural
8 Engineering Practice Act of 1989, or the Illinois Professional
9 Land Surveyor Act of 1989.

10 "Evaluation criteria" means the requirements for the
11 separate phases of the selection process for design-build
12 proposals as defined in this Act and may include the
13 specialized experience, technical qualifications and
14 competence, capacity to perform, past performance, experience
15 with similar projects, assignment of personnel to the project,
16 and other appropriate factors. The GMP may not be used as the
17 sole factor in the evaluation of proposals.

18 "Guaranteed Maximum Price (GMP)" means a form of contract
19 in which compensation may vary according to the scope of work
20 involved but in any case may not exceed an agreed total amount
21 to both complete technical design for and to actually construct
22 a project.

23 "Landscape architect design professional" means any
24 person, sole proprietorship, or entity including, but not
25 limited to, a partnership, professional service corporation,
26 or corporation that offers services under the Illinois

1 Landscape Architecture Act of 1989.

2 "Proposal" means the offer to enter into a design-build
3 contract as submitted by a design-build entity in accordance
4 with this Act.

5 "Request for Proposal (RFP)" means the document used by the
6 Metropolitan Water Reclamation District to solicit proposals
7 for a design-build contract.

8 "Scope and performance criteria" means the requirements
9 for the public project, including, but not limited to:
10 Metropolitan Water Reclamation District standard design
11 specifications, drawings, and criteria; the intended usage,
12 capacity, size, scope, quality, and performance standards;
13 life cycle costs and other programmatic criteria; and
14 quantifiable specifications and drawings developed to the
15 point that a design-build entity will develop a proposal to
16 complete the design, produce final construction documents, and
17 construct the project for a GMP.

18 (70 ILCS 2605/71 new)

19 Sec. 71. Authorization for design-build; advertisement.

20 (a) The Metropolitan Water Reclamation District shall have
21 the power to enter into design-build contracts to complete
22 design and construction of public works. In addition to the
23 requirements set forth in the Purchasing Act for the
24 Metropolitan Sanitary District of Greater Chicago, the
25 Metropolitan Water Reclamation District shall advertise a

1 design-build solicitation at least once in a daily newspaper of
2 general circulation within Cook County and on its own official
3 Internet website or in an electronic plan room for public
4 projects.

5 (b) The Metropolitan Water Reclamation District may reject
6 any and all bids and proposals received and may readvertise for
7 bids or issue a new request for design-build proposals.

8 (70 ILCS 2605/72 new)

9 Sec. 72. Solicitation of design-build proposals.

10 (a) When the Metropolitan Water Reclamation District
11 elects to use the design-build delivery method, it must issue a
12 notice of intent to receive proposals for the project at least
13 14 days before issuing the request for the proposal. The
14 Metropolitan Water Reclamation District shall publish notice
15 of the request for the design-build proposal in a newspaper of
16 general circulation within Cook County. The Metropolitan Water
17 Reclamation District shall, if possible, post plans and
18 specifications in a related construction industry service. A
19 brief description of the proposed procurement must be included
20 in the notice.

21 (b) The request for proposal shall be prepared for each
22 project and must contain, without limitation, the following
23 information:

24 (1) A preliminary schedule for the completion of the
25 contract.

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

4 (3) The developed design plans and specifications to be
5 completed under the GMP.

6 (4) Prequalification criteria for design-build
7 entities wishing to submit proposals. The Metropolitan
8 Water Reclamation District shall include, at a minimum, its
9 normal prequalification, licensing, registration, and
10 other requirements, but nothing contained in this Section
11 precludes the use of additional prequalification criteria
12 by the Metropolitan Water Reclamation District.

13 (5) Material requirements of the contract, including,
14 but not limited to, the proposed terms and conditions,
15 required performance and payment bonds, and insurance.

16 (6) The performance criteria.

17 (7) The evaluation criteria for the solicitation.

18 (8) The list of items intended to be considered for the
19 technical and cost evaluation phase.

20 (c) The Metropolitan Water Reclamation District may
21 include any other relevant information that it chooses to
22 supply. The design-build entity shall be entitled to rely upon
23 the accuracy of this documentation in the development of its
24 proposal.

25 (d) The date that proposals are due must be at least 21
26 calendar days after the date of the issuance of the request for

1 proposal. In the event the construction portion of the cost of
2 the project is estimated to exceed \$12,000,000, then the
3 proposal due date must be at least 28 calendar days after the
4 date of the issuance of the request for proposal. The
5 Metropolitan Water Reclamation District shall include in the
6 request for proposal a minimum of 21 days to develop the Phase
7 II submissions for those entities shortlisted in the Phase I
8 evaluation.

9 (70 ILCS 2605/73 new)

10 Sec. 73. Development of design-build scope and performance
11 criteria when a Guaranteed Maximum Price proposal is sought.

12 (a) The Metropolitan Water Reclamation District shall
13 develop the scope and performance criteria in sufficient
14 detail. The scope and performance criteria must contain
15 adequate information to reasonably apprise the qualified
16 design-build entities of the District's original programmatic
17 needs and goals, plus budget parameters, schedule, and delivery
18 requirements for completion of the design and construction.

19 (b) Each request for proposal shall also include a
20 developed design to be provided in the proposals. This
21 description must include the scope, drawings, and
22 specifications by the Metropolitan Water Reclamation District
23 that form the basis of the full design to be completed by the
24 design-build entities.

25 (c) The scope and performance criteria shall be prepared by

1 the Metropolitan Water Reclamation District, directly by its
2 staff or by a contract with an independent design professional
3 selected under the Local Government Professional Services
4 Selection Act to provide these services.

5 (d) An individual or corporate design professional or
6 landscape architect design professional that prepares the
7 scope and performance criteria is prohibited from
8 participating in any design-build entity proposal for the
9 project.

10 (70 ILCS 2605/74 new)

11 Sec. 74. Procedures for design-build selection.

12 (a) The Metropolitan Water Reclamation District must use a
13 2-phase procedure for the selection of the successful
14 design-build entity for projects where the budgeted
15 construction cost is over \$12,000,000. Phase I of the procedure
16 will evaluate and shortlist the design-build entities based on
17 best qualifications to design and build the specific project,
18 and Phase II will evaluate the technical and cost proposals for
19 design and construction. Evaluation of Phases I and II will be
20 by a panel of 3 to 5 Metropolitan Water Reclamation District
21 employees who are registered design professionals.

22 (b) The Metropolitan Water Reclamation District shall
23 include in the request for proposal the evaluating factors to
24 be used in Phase I. These factors are in addition to any
25 prequalification requirements of design-build entities that

1 the Metropolitan Water Reclamation District has set forth. The
2 Metropolitan Water Reclamation District shall include the
3 following criteria in every Phase I evaluation of design-build
4 entities:

5 (1) experience of key design and construction
6 personnel;

7 (2) successful experience with similar project types;

8 (3) financial capability;

9 (4) timeliness of past performance;

10 (5) experience with similarly sized projects;

11 (6) work history on Metropolitan Water Reclamation
12 District projects;

13 (7) commitment to assign personnel for the duration of
14 the project;

15 (8) qualifications of the entity's consultants and
16 subcontractors; and

17 (9) ability or past performance in meeting the
18 utilization goals for minority and women business
19 enterprises established by Appendix D of the Metropolitan
20 Water Reclamation District Affirmative Action Ordinance
21 and in complying with Section 2-105 of the Illinois Human
22 Rights Act.

23 The Metropolitan Water Reclamation District may include any
24 additional relevant criteria in Phase I that it deems necessary
25 for a proper qualification review.

26 The Metropolitan Water Reclamation District may not

1 consider any design-build entity for evaluation or award if the
2 entity has any pecuniary interest in the project or has other
3 relationships or circumstances, including but not limited to, a
4 long-term leasehold, mutual performance, or development
5 contract with the Metropolitan Water Reclamation District,
6 that may give the design-build entity a financial or tangible
7 advantage over other design-build entities in the preparation,
8 evaluation, or performance of the design-build contract or that
9 creates the appearance of impropriety.

10 Upon completion of the Phase I qualifications evaluation,
11 the Metropolitan Water Reclamation District shall create a
12 shortlist of the most highly qualified design-build entities.
13 The Metropolitan Water Reclamation District, in its
14 discretion, is not required to shortlist the maximum number of
15 entities as identified for Phase II evaluation, except that no
16 less than 2 design-build entities nor more than 4 design-build
17 entities are selected to submit Phase II proposals.

18 (c) The Metropolitan Water Reclamation District shall
19 notify the entities selected for the shortlist in writing. This
20 notification shall commence the period for the preparation of
21 Phase II in 2 separate sections, technical and cost
22 evaluations. The Metropolitan Water Reclamation District must
23 allow sufficient time for the shortlist entities to prepare
24 their Phase II submittals considering the scope and detail
25 requested by the Metropolitan Water Reclamation District.

26 The Metropolitan Water Reclamation District shall include

1 in the shortlist notification the evaluating factors to be used
2 in the technical and cost submission components of Phase II.
3 The notice shall establish, for both the technical and cost
4 submission components of Phase II, the relative importance
5 assigned to each evaluation factor and subfactor, including any
6 weighting of criteria to be employed by the evaluation panel.
7 The Metropolitan Water Reclamation District must maintain a
8 record of the evaluation scoring to be disclosed in the event
9 of a protest regarding the solicitation.

10 The Phase II technical proposal shall be sealed by the
11 primary individual design professional in the design-build
12 entity. The Metropolitan Water Reclamation District shall
13 include the following criteria in every Phase II technical
14 evaluation of design-build entities:

15 (1) compliance with objectives of the project;

16 (2) compliance of design services to fully complete the
17 project design;

18 (3) quality of products or materials proposed;

19 (4) quality of separate technical disciplines required
20 to complete the design;

21 (5) innovative design concepts;

22 (6) innovation in meeting the scope and performance
23 criteria;

24 (7) equipment spread required and manpower curve for
25 construction of the project; and

26 (8) constructability of the proposed project.

1 The Metropolitan Water Reclamation District may include
2 any additional relevant technical evaluation factors it deems
3 necessary for proper selection. The Metropolitan Water
4 Reclamation District shall include the following criteria in
5 every Phase II cost evaluation:

6 (1) guaranteed maximum project cost;

7 (2) quality of the design cost proposal portion of the
8 GMP;

9 (3) quality of the construction cost proposal portion
10 of the GMP;

11 (4) estimated cash flow curve for the project;

12 (5) unit rates for personnel and equipment for both
13 design and construction change orders; and

14 (6) time of completion.

15 The Metropolitan Water Reclamation District may include any
16 additional relevant technical evaluation factors it deems
17 necessary for proper selection. The Metropolitan Water
18 Reclamation District shall prepare an independent engineer's
19 estimate for use in the overall evaluation of the GMP and to
20 verify the reasonable value and balance in the sections of the
21 GMP. The weighting between the technical and cost sections used
22 in the evaluation of Phase II shall be the percentages of the
23 design costs and of the construction costs as a portion of the
24 total GMP, respectively.

25 Upon completion of the technical submissions and cost
26 submissions evaluation, the Metropolitan Water Reclamation

1 District may award the design-build contract to the highest
2 overall ranked entity.

3 (70 ILCS 2605/75 new)

4 Sec. 75. Small design-build projects. In any case where the
5 total overall construction cost of the project is estimated to
6 be less than \$12,000,000, the Metropolitan Water Reclamation
7 District may combine the 2-phase procedure for design-build
8 selection described in Section 74 into one combined step,
9 provided that all the requirements of evaluation are performed.

10 (70 ILCS 2605/76 new)

11 Sec. 76. Submission of design-build proposals.
12 Design-build proposals must be properly identified and
13 physically sealed when submitted to the Metropolitan Water
14 Reclamation District. Proposals may not be reviewed until after
15 the deadline for submission has passed as set forth in the
16 request for proposals. All design-build entities submitting
17 proposals shall be disclosed after the deadline for submission,
18 and all design-build entities who are selected for Phase II
19 evaluation shall also be disclosed at the time of that
20 determination.

21 Phase II design-build proposals shall include a bid bond in
22 the form and security as designated in the request for
23 proposals.

24 Proposals must meet all material requirements of the

1 request for proposal or they may be rejected as non-responsive.
2 The Metropolitan Water Reclamation District shall have the
3 right to reject any proposal.

4 The drawings and specifications of any unsuccessful
5 design-build proposal shall remain the property of the
6 design-build entity and are not subject to disclosure under the
7 Illinois Freedom of Information Act nor retention under the
8 Local Records Act as proprietary information. The Metropolitan
9 Water Reclamation District shall hold unsuccessful
10 design-build submittals for 30 days after the contract signing
11 or decision not to proceed with the project in order for
12 unsuccessful entities to retrieve the submittals. The drawings
13 and specifications of the successful design-build proposal
14 shall become the property of the Metropolitan Water Reclamation
15 District upon signing the design-build contract.

16 The Metropolitan Water Reclamation District shall review
17 the proposals for compliance with the performance criteria and
18 evaluation factors.

19 Proposals may be withdrawn before the due date and time for
20 submissions for any cause. After evaluation begins by the
21 Metropolitan Water Reclamation District, clear and convincing
22 evidence of error is required for withdrawal of a proposal.

23 (70 ILCS 2605/77 new)

24 Sec. 77. Design-build award. The Metropolitan Water
25 Reclamation District may notify the highest overall ranked

1 entity of the intent to award it the design-build contract.
2 Notice of intent to award shall be made in writing. The
3 Metropolitan Water Reclamation District may then negotiate
4 with the selected design-build entity prior to contract
5 execution for the purpose of clarifying or securing better
6 terms than originally proposed, provided that the salient
7 features of the request for proposal are not diminished. When
8 negotiations are complete, then the design-build contract can
9 be awarded and signed. In the event that matters of importance
10 in the negotiations are not resolved, the Metropolitan Water
11 Reclamation District may withdrawal the intent to award and
12 notify the next-ranked design-build entity of the intent to
13 award it the contract. Unsuccessful entities must be notified
14 in writing after the contract is signed or when a definitive
15 decision is made not to proceed with the design-build contract.

16 Section 97. Severability. The provisions of this Act are
17 severable under Section 1.31 of the Statute on Statutes.