

HB3289



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB3289

by Rep. Jay Hoffman

SYNOPSIS AS INTRODUCED:

New Act

Creates the Innovative Project Delivery Act. Sets forth provisions for the procurement of certain design-build and other services under either a single-phase or 2-phase selection process. Sets forth qualification and prequalification procedures. Sets forth various requirements concerning procurement under either selection process. Sets forth disclosure requirements and protest requirements. Requires the application of the Act to certain subcontracts.

LRB100 10503 MLM 20718 b

A BILL FOR

1 AN ACT concerning finance.

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 Innovative Project Delivery Act.

6 Section 5. Purposes. The purposes of this Act include:

7 (1) Authorizing agencies to use the
8 construction-manager-at-risk, and design-build project
9 delivery methods in addition to their existing authority to use
10 the design-bid-build project delivery method.

11 (2) Authorizing agencies to select contractors to perform
12 design-build construction services using qualifications based
13 selection or a combination of qualifications based selection
14 and best-value selection and to select contractors to perform
15 construction-manager-at-risk construction services using
16 qualifications based selection.

17 (3) Authorizing agencies to use 2 selection processes:

18 (A) Single-phase (one-step) selection to select
19 contractors for construction-manager-at-risk and
20 design-build construction services. This procurement
21 process consists of an agency issuing a request for
22 qualifications, offerors making qualifications
23 submissions, interviews of selected offerors if the agency

1 elects to conduct interviews, and qualifications-based
2 selection of the winning offeror.

3 (B) Two-phase (2-step) selection to select contractors
4 for design-build or job-order-contacting construction
5 services. In this procurement process, the first step
6 consists of agency issuance of a request for
7 qualifications, qualifications submissions, interviews of
8 selected offerors if the agency elects to conduct
9 interviews, and qualifications-based selection of a final
10 list of offerors. The second step consists of agency
11 issuance of a request for proposals to the offerors on the
12 final list, submissions of proposals, and best-value
13 selection of the winning offeror.

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

15 "Agency" means the State, any agency, board or commission
16 of the State, any State university, any State college, any
17 community college or community college district, any school
18 district, any county, city or town, or board or commission of
19 any county, city or town, and any special taxing district,
20 including, without limitation, any irrigation, power,
21 electrical, drainage, flood protection or flood control
22 district, any tax levying public improvement district, and any
23 county or city improvement districts.

24 "Best-value selection" means a selection process in which
25 proposals contain both price and qualitative components and

1 award is based upon a combination of price and qualitative
2 factors.

3 "Construction" means the process of improving real
4 property through physically altering its state or adding
5 improvements to the real property to meet an intended need.

6 "Construction-manager-at-risk" means a project delivery
7 method in which:

8 (A) The agency contracts with one individual or entity
9 for design services and contracts with a different
10 individual or entity for construction services.

11 (B) The agency may contract for construction services
12 at the same time as the agency contracts for design
13 services or at a later time.

14 (C) Design and construction of the project may be
15 either:

16 (i) Sequential with the entire design complete
17 before construction commences.

18 (ii) Concurrent with the design produced in 2 or
19 more phases and construction of some phases commencing
20 before the entire design is complete.

21 (D) Finance services, maintenance services, operations
22 services, preconstruction services, and other related
23 services may be included.

24 (E) Selection is a single-phase (one-step) selection
25 process using qualifications-based selection.

26 "Construction services" means either of the following for

1 construction-manager-at-risk and design-build and project
2 delivery methods:

3 (A) Construction, excluding services, through the
4 construction-manager-at-risk project delivery method.

5 (B) A combination of construction and, as elected by
6 the agency, one or more related services, such as finance
7 services, maintenance services, operations services,
8 design services, and preconstruction services, as those
9 services are authorized in the definitions of construction
10 manager-at-risk or design-build.

11 "Contractor" means an individual or an entity that
12 contracts with an agency to provide construction services under
13 this Act.

14 "Design-build" means a project delivery method in which:

15 (A) The agency contracts with a single individual or
16 entity for both design services and construction services.

17 (B) Design and construction of the project may be
18 either:

19 (i) Sequential with the entire design complete
20 before construction commences.

21 (ii) Concurrent with the design produced in 2 or
22 more phases and construction of some phases commencing
23 before the entire design is complete.

24 (C) Finance services, maintenance services, operations
25 services, design services, preconstruction services, and
26 other related services may be included.

1 (D) Selection is either a single-phase (one-step)
2 selection using qualifications-based selection or a
3 2-phase (2-step) selection using qualifications-based
4 selection in the first phase and using best-value selection
5 in the second phase.

6 "Design-builder" means an entity that desires to provide or
7 contracts with an agency to provide design-build construction
8 services. Qualified design-builders must have employees
9 certified in Design-Build by the Design-Build Institute of
10 America or any other national design-build accreditation
11 program.

12 "Design professional" means an individual or entity
13 properly licensed or authorized in this State to perform
14 architectural, engineering, landscape architectural, or other
15 regulated design services.

16 "Maintenance services" means routine maintenance, repair,
17 and replacement of existing facilities, structures, buildings,
18 or real property.

19 "Offeror" means an individual or entity responding to a
20 request for qualifications or a request for proposals issued by
21 an agency.

22 "Operations services" means routine operation of
23 facilities, structures, buildings, or real property in
24 accordance with the contract specifications including, without
25 limitation, provision of any needed personnel and equipment.

26 "Performance specification" means a specification

1 expressed in terms of an expected outcome or acceptable
2 performance standard.

3 "Preconstruction services" means services as determined by
4 the agency to be rendered by the construction contractor during
5 the design phase to assist in development of the design, the
6 schedule, costs, and price. "Preconstruction services" may
7 include estimating, cost models, scheduling, value
8 engineering, and constructability review and other technical
9 consulting services phase.

10 "Price proposal" means that portion of a proposal that
11 stipulates the price at which the offeror will provide the
12 requested construction services. The price proposal is one part
13 of an offeror's proposal submitted in response to the request
14 for proposals in the second phase (second step) of a 2-phase
15 (two-step) selection.

16 "Proposal" means the written documentation submitted by an
17 offeror in response to a request for proposals in the second
18 phase (second step) of a 2-phase (2-step) selection. The
19 proposal includes a qualitative and technical proposal and a
20 separate price proposal.

21 "Qualifications-based selection" means a form of
22 procurement selection based solely upon the qualifications and
23 demonstrated competence of the offerors. Price is not a factor
24 in the selection.

25 "Qualifications submission" means a written submission by
26 an offeror in response to a request for qualifications

1 describing the qualifications of the offeror. This submission
2 is made in a single-phase (one-step) selection or in the first
3 phase (first step) of a 2-phase (2-step) selection.

4 "Qualitative and technical proposal" means that portion of
5 an offeror's proposal that describes the offeror's
6 qualifications to perform the construction services and, in a
7 proposal for design-build construction services, also contains
8 the offeror's technical proposal concerning schedule and
9 design. The qualitative and technical proposal is one part of
10 an offeror's proposal submitted in response to the request for
11 proposals in the second phase (second step) of a 2-phase
12 (2-step) selection.

13 "Single-phase (one-step) selection" means a procurement
14 process that consists of an agency issuing a request for
15 qualifications, offerors making qualifications submissions,
16 interviews of selected offerors, if the agency elects to
17 conduct interviews, and qualifications based selection of the
18 winning offeror, as provided in Section 30 of this Act.

19 "Stipend" means an award by an agency to an unsuccessful
20 offeror in a design-build request for proposals competition as
21 provided in Section 30 of this Act.

22 "2-phase (2-step) selection" means a procurement process
23 in which the first phase (first step) consists of issuance of a
24 request for qualifications, qualifications submissions,
25 interviews of selected offerors, if the agency elects to
26 conduct interviews, and qualifications-based selection of a

1 final list of offerors. The second phase (second step) consists
2 of the issuance of a request for proposals to offerors on the
3 final list, submissions of proposals, and best-value selection
4 of the winning offeror, all as provided in Section 30 of this
5 Act.

6 Section 15. Authorization.

7 (a) Notwithstanding any other law or procedure governing
8 the procurement of construction, an agency is authorized to
9 procure construction services to be performed under the
10 construction-management-at-risk, and design-build project
11 delivery methods in accordance with the requirements in this
12 Act and subject to the following:

13 (1) The agency shall, prior to issuing any request for
14 qualifications or any request for proposals, adopt rules
15 consistent with this Act for the procurement of contracts
16 for construction services and shall adhere to this Act and
17 those procedures.

18 (2) The agency is required to comply with the
19 requirements of other laws governing public construction
20 contracts only to the extent compatible with use of the
21 design-build and construction-management-at risk project
22 delivery methods and with the provisions of this Act.

23 (b) The rules adopted by the agency under paragraph (1) of
24 subsection (a) of this Section shall include, at a minimum, the
25 following:

1 (1) The procedure to select or designate a performance
2 specification developer and prepare the performance
3 specification, consistent with comparable State
4 procedures.

5 (2) The procedures for the preparation and contents of
6 requests for qualifications.

7 (3) The procedures for the preparation and contents of
8 requests for proposals.

9 (4) The procedure and standards to be used to
10 prequalify design-builders for participation in a
11 procurement of design-build construction services under
12 this Act.

13 (5) The procedures for preparing and submitting
14 qualifications submissions and proposals.

15 (6) The procedures for evaluating qualifications
16 submissions and proposals.

17 (7) The procedures for discussions between the agency
18 and offerors in the second phase (second step) of a 2-phase
19 (2-step) selection as provided in Section 30 of this Act.
20 The procedure shall contain safeguards to prevent
21 disclosure of information included in an offeror's
22 preliminary qualifications and technical proposal that an
23 offeror has requested be kept confidential because it
24 contains trade secrets or other proprietary information
25 and the agency has agreed to keep confidential and to
26 prevent disclosure to competing offerors of information

1 derived from an offeror's preliminary qualitative and
2 technical proposal. The procedures shall also contain
3 safeguards to prevent price or any element of price from
4 being included in any preliminary qualitative and
5 technical proposal and from being any part of the
6 discussions.

7 (8) The procedures for awarding and executing
8 construction-manager-at-risk and design-build.

9 (9) The procedures for awarding
10 construction-manager-at-risk and design-build in the event
11 of public emergencies.

12 (10) The procedures for acting on formal protests
13 relating to the solicitation or award of
14 construction-manager-at-risk and design-build.

15 Section 20. Design-builder minimum qualifications;
16 prequalifications; rights.

17 (a) An agency may elect to conduct a prequalification
18 process to assure that each design-builder making a submission
19 in a design-build construction services procurement under this
20 Act has the minimum qualification set forth in this Section. If
21 an agency does this, only design-builders determined by the
22 agency as satisfying the minimum qualifications shall be
23 permitted to make submissions in the procurement. Regardless of
24 whether an agency conducts a prequalification process, each
25 design-builder shall have, at a minimum, the following

1 qualifications:

2 (1) Each design-builder shall be duly licensed and
3 registered to do business in this State as an architect, an
4 engineer, and a general contractor.

5 (2) To the extent a design builder is not duly licensed
6 and registered to do business in this State as an
7 architect, an engineer, and a general contractor, the
8 design builder shall have a contract with an architect, an
9 engineer, or a general contractor duly licensed and
10 registered in this State to perform the architectural,
11 engineering, or construction, respectively.

12 (3) The contractor for construction-manager-at-risk
13 construction services shall be
14 licensed to perform construction in the State.

15 (4) For each project under a
16 construction-manager-at-risk construction services
17 contract, the licensed contractor performing the contract
18 shall perform, with the contractor's own organization,
19 construction work that amounts to not more than 40% of the
20 total contract price for construction. For the purposes of
21 this paragraph (4), the total contract price for
22 construction does not include the cost of preconstruction
23 services, design services, or any other related services or
24 the cost to procure any right-of-way or other cost of
25 condemnation.

26 (b) Each design-builder shall have the following rights and

1 powers:

2 (1) As long the design-builder satisfies the
3 requirements in this Section, the design-builder may have
4 any organizational structure it elects including, without
5 limitation, an individual or entity possessing design and
6 construction resources in-house, a joint venture between a
7 designer and a contractor, a contractor-led team with the
8 designer in a subcontractor role or a designer-led team
9 with the constructor in a subcontractor role.

10 (2) The design-builder may subcontract design services
11 to individuals or entities duly licensed and registered to
12 provide design services in this State.

13 (3) The design-builder may contract with the agency to
14 provide design services, construction or other services
15 that the design-builder is not itself licensed,
16 registered, or otherwise qualified to perform, subject to
17 any statutory limits applicable to the agency on types and
18 amounts of design services, construction, or other
19 services the agency is permitted to perform for itself.

20 Section 25. Development of performance specifications.

21 (a) The design requirements in each request for proposals
22 for design-build construction services shall contain a
23 performance specification prepared by a design professional
24 who is the performance specification developer. This
25 performance specification developer shall be disqualified from

1 submitting a proposal to enter into the design-build contract
2 and the design-builder shall not be permitted to delegate
3 services under the design-build contract to the performance
4 specification developer.

5 (b) The performance specification developer shall be
6 either an employee of the agency or the agency to the extent
7 allowed by law may procure the development of specific aspects
8 of the performance specification from other consultants.

9 (c) The agency, in consultation with the performance
10 specification developer, shall determine the scope and level of
11 detail required for the performance specification. The
12 performance specification should be detailed enough to permit
13 qualified individuals and entities to submit proposals in
14 accordance with the request for proposals, given the nature of
15 the public project and the level of design to be provided in
16 the proposal.

17 Section 30. Procurement process.

18 (a) In a procurement of construction-manager-at-risk or
19 design-build construction services pursuant to this Section:

20 (1) The following requirements apply:

21 (A) The agency and the selection committee shall
22 not request or consider fees, price, man-hours, or any
23 other cost information at any point in the selection
24 process under this subsection (a), including, without
25 limitation, the selection of offerors to be

1 interviewed, the selection of offerors to be on the
2 final list, in determining the order of preference of
3 offerors on the final list or for any other purpose in
4 the selection process in this subsection (a).

5 (B) In determining the offerors to participate in
6 any interviews and in determining the offerors to be on
7 the final list and their order on the final list, the
8 selection committee shall use and shall consider only
9 the criteria and weighting of criteria specified by the
10 agency for that purpose as provided in this subsection
11 (a). No other factors or criteria may be used in the
12 evaluation, determinations and other actions.

13 (C) The agency may elect not to use a single
14 contract for construction-manager-at-risk or
15 design-build construction services to be awarded in a
16 single-phase (one-step) selection and contracted for
17 under subsection (e) of Section 30 of this Act and the
18 agency may elect separate contracts with the single
19 contractor for preconstruction services during the
20 design phase, for construction during the construction
21 phase, and for any other construction services
22 included in the request for qualifications.

23 (D) Once the agency enters into the first contract
24 with an offeror for preconstruction services or other
25 construction services as the result of a procurement,
26 the procurement under this Section ends. After

1 execution of that first contract the agency may not use
2 the procurement or the existing final list in the
3 procurement as the basis for entering into a contract
4 with any other offeror that participated in the
5 procurement.

6 (E) Notwithstanding any other provision of this
7 Section specifying the number of offerors to be
8 interviewed, the number of offerors to be on a final
9 list, or any other numerical specification as to the
10 number of offerors participating in the selection
11 process in this Section:

12 (i) If a smaller number of offerors respond to
13 the request for qualifications or if one or more
14 offerors drop out of the procurement so that there
15 is a smaller number of offerors participating in
16 the procurement, the agency may elect to proceed
17 with the procurement with the participating
18 offerors if there are at least two participating
19 responsive and responsible offerors.
20 Alternatively, the agency may elect to terminate
21 the procurement.

22 (ii) As to a request for qualifications for
23 construction services to be negotiated pursuant to
24 subsection (c) of this Section only, if only one
25 responsive and responsible offeror responds to the
26 request for qualifications or, if one or more

1 offerors drop out of the procurement so that only
2 one responsive and responsible offeror remains in
3 the procurement, the agency may elect to proceed
4 with the procurement with only one offeror if the
5 agency determines in writing that the fee
6 negotiated pursuant to subsection (c) of this
7 Section is fair and reasonable and that either
8 other prospective offerors had reasonable
9 opportunity to respond or there is not adequate
10 time for a re-solicitation.

11 (iii) If an offeror on the final list withdraws
12 or is removed from the procurement and the
13 selection committee determines that it is in the
14 best interest of the agency, the selection
15 committee may replace that offeror on the final
16 list with another offeror that submitted
17 qualifications in the procurement and that is
18 selected by the selection committee as the next
19 most qualified offeror.

20 (2) An agency shall issue a request for qualifications
21 for each procurement and publish notice of the request for
22 qualifications. This notice shall be published by
23 advertising in a newspaper of general circulation in the
24 county in which the agency is located for 2 consecutive
25 publications if it is a weekly newspaper or for 2
26 publications that are at least 6 but no more than 10 days

1 apart if it is a daily newspaper. The request for
2 qualifications shall:

3 (A) State that one contract may or will be awarded,
4 describe the construction services to be performed
5 under the contract and state that one offeror may or
6 will be awarded the contract.

7 (B) In a procurement of a contract to be negotiated
8 under subsection (d) of this Section, state that there
9 will be a single final list of at least 3 and not more
10 than 5 offerors. In a procurement in which the contract
11 will be awarded under subsection (e) of this Section,
12 state that there will be a single final list and that
13 the number of offerors on the final list will be 3.

14 (C) As prescribed below, state the selection
15 criteria and relative weight of the selection criteria
16 to be used by the selection committee. One of the
17 criteria shall be the offeror's subcontractor
18 selection plan or procedures to implement the agency's
19 subcontractor selection plan. All selection criteria
20 under this subparagraph (C) shall be factors that
21 demonstrate competence and qualifications for the type
22 of construction services included in the procurement.
23 If:

24 (i) Interviews will be held, the request for
25 qualifications shall state the selection criteria
26 and relative weight of the selection criteria to be

1 used in selecting the offerors to be interviewed
2 and the request for qualifications may state the
3 selection criteria and relative weight of the
4 selection criteria to be used in selecting the
5 offerors on the final list and in determining their
6 order on the final list. The final list selection
7 criteria and relative weights may be different
8 than the selection criteria and relative weights
9 used to determine the offerors to be interviewed.
10 The request for qualifications shall also state
11 whether the agency will select the offerors on the
12 final list and their order on the final list solely
13 through the results of the interview process or
14 through the combined results of both the interview
15 process and the evaluation of qualifications
16 submissions submitted in response to the agency's
17 request for qualifications.

18 (ii) Interviews will not be held, the request
19 for qualifications shall state the selection
20 criteria and relative weight of the selection
21 criteria to be used in selecting the offerors on
22 the final list and in determining their order on
23 the final list.

24 (D) Include either:

25 (i) A requirement that each offeror submit a
26 proposed subcontractor selection plan and a

1 requirement that the proposed subcontractor
2 selection plan must select subcontractors based on
3 qualifications alone or on a combination of
4 qualifications and price and shall not select
5 subcontractors based on price alone.

6 (ii) A subcontractor selection plan adopted by
7 the agency that applies to the offeror that is
8 selected to perform the construction services and
9 that requires subcontractors to be selected based
10 on qualifications alone or on a combination of
11 qualifications and price and not based on price
12 alone and a requirement that each offeror must
13 submit a description of the procedures it proposes
14 to use to implement the agency's subcontractor
15 selection plan.

16 (E) Include information about the protest policy
17 and procedures applicable to the procurement:

18 (i) If the agency has a procurement protest
19 policy and procedures that have been formally
20 adopted and published by the agency for protests
21 relating to procurements under this Section, the
22 agency shall include a description of the publicly
23 available location of the agency's protest policy
24 and procedures.

25 (ii) If the agency does not have a procurement
26 protest policy and procedures that have been

1 formally adopted and published by the agency for
2 protests relating to procurements under this
3 Section, the agency shall include in the request
4 for qualifications:

5 (I) A statement that the agency will
6 follow the procurement protest policy and
7 procedures of consistent with the Department
8 of Central Management Services; and

9 (II) A description of the publicly
10 available location of the Department of
11 Central Management Services protest policy and
12 procedures.

13 (F) In a procurement of design-build or
14 construction-manager-at-risk construction services to
15 be performed at multiple locations, include:

16 (i) A brief description of the construction
17 services to be performed at each location.

18 (ii) The estimated budget for the construction
19 services to be performed at each location.

20 (iii) A schedule for the construction services
21 to be performed at each location that shows the
22 agency's intent to commence all construction at
23 each location within 30 months after execution of
24 the first contract for preconstruction services or
25 other construction services at any of the
26 locations.

1 (3) An agency shall initiate an
2 appropriately-qualified selection committee for each
3 request for qualifications. The agency shall ensure that
4 the selection committee members are competent to serve on
5 the selection committee. Each selection committee must
6 include one employee of the agency or an agency
7 representative who is appointed by the agency. The
8 selection committee shall not have more than 7 members,
9 except that, if the contract involves the agency and
10 additional governmental or private participants, the
11 number of members of the selection committee shall be
12 increased by one for each additional participant, except
13 that the maximum number of members of the selection
14 committee is 9. The selection committee shall include at
15 least 2 of the following professionals (1) a licensed
16 construction contractor; (2) a licensed architect or (3) a
17 professional engineer. These members may be employees of
18 the agency or outside consultants. A person who is a member
19 of a selection committee shall not be a contractor under a
20 contract awarded under the procurement or provide any
21 design services, construction, construction services,
22 equipment, materials or other services under the contract
23 to be awarded in the procurement. The selection committee
24 and the agency shall do the following:

25 (A) If interviews are specified in the request for
26 qualifications:

1 (i) The selection committee shall determine
2 the offerors to be interviewed by evaluating the
3 qualifications submissions that are submitted in
4 response to the agency's request for
5 qualifications based only on the selection
6 criteria and relative weight of the selection
7 criteria stated in the request for qualifications
8 to be used to determine the offerors to be
9 interviewed. Promptly after determining the list
10 of offerors to be interviewed, the agency shall
11 send actual notice to all other offerors that they
12 are not on the interview list or that others are on
13 the interview list.

14 (ii) If the selection criteria and relative
15 weight of the selection criteria to be used by the
16 selection committee to select the offerors on the
17 final list and to determine their order on the
18 final list are not included in the request for
19 qualifications, before the interviews are held the
20 agency shall distribute to the offerors to be
21 interviewed the selection criteria and relative
22 weight of the selection criteria to be used to
23 select the offerors on the final list and to
24 determine their order on the final list. These
25 selection criteria and relative weight may be
26 different than the selection criteria and relative

1 weight used to determine the offerors to be
2 interviewed.

3 (iii) The selection committee shall conduct
4 interviews with the number of offerors to be
5 interviewed as stated in the request for
6 qualifications regarding the construction services
7 and the relative methods of approach for
8 furnishing the requested construction services.

9 (B) Based only on the selection criteria and
10 relative weight of the selection criteria specified as
11 provided in this subsection (a) for selection of the
12 offerors on the final list and their order on the final
13 list, the selection committee shall select the
14 offerors for the final list and, in the case of a final
15 list for a contract that will be negotiated under
16 subsection (c) of this Section, rank the offerors on
17 the final list in order of preference.

18 (C) The agency shall notify each offeror on the
19 final list that it is on the final list and, if the
20 contract will be negotiated under subsection (c), its
21 rank on the final list. Before or at the same time as
22 the agency notifies the final list offerors, the agency
23 shall send actual notice to each of the following that
24 it is not on the final list or that other offerors are
25 on the final list.

26 (i) If interviews were held, the offerors

1 interviewed and not included in the final list.

2 (ii) If interviews were not held, all offerors
3 that made qualifications submissions and not
4 included in the final list.

5 (b) An agency shall award the single contract under the
6 procurement to a single offeror as provided in subsections (d)
7 or (e) of this Section.

8 (c) The agency shall conduct negotiations with offerors on
9 the final list as follows:

10 (1) The procurement is for a single contract for
11 construction services and there is one final list.

12 (2) The negotiations shall include consideration of
13 compensation and other contract terms that the agency
14 determines to be fair and reasonable to the agency. In
15 making this decision, the agency shall take into account
16 the estimated value, the scope, the complexity and the
17 nature of the construction services to be rendered.

18 (3) The agency shall enter into negotiations with the
19 highest qualified offeror on the final list.

20 (4) If the agency is not able to negotiate a
21 satisfactory contract with the highest qualified offeror
22 on the final list, at compensation and on other contract
23 terms the agency determines to be fair and reasonable to
24 the agency, the agency shall formally terminate
25 negotiations with that offeror. The agency may then
26 undertake negotiations with the next most qualified

1 offeror on the final list in sequence until an agreement is
2 reached or a determination is made to reject all offerors
3 on the final list.

4 (5) If in a procurement under this Section the agency
5 terminates negotiations with an offeror on the final list
6 and commences negotiations with another offeror on the
7 final list, the agency shall not in that procurement
8 recommence negotiations or enter into a contract for the
9 construction services covered by the final list with any
10 offeror on the final list with whom the agency has
11 terminated negotiations.

12 (d) As an alternative to subsection (c) of this Section, an
13 agency may award a single contract for design-build
14 construction services using a request for proposals process as
15 follows:

16 (1) The agency shall use the selection committee
17 appointed for the request for qualifications pursuant to
18 paragraph (3) of subsection (a) of this Section.

19 (2) The agency shall issue a request for proposals to
20 the offerors on the final list developed pursuant to
21 paragraph (3) of subsection (a) of this Section.

22 (3) The request for proposals shall include:

23 (A) A statement that one contract may or will be
24 awarded and that one offeror may or will be awarded the
25 contract.

26 (B) A description of the construction services to

1 be performed under the contract.

2 (C) For design-build construction services only:

3 (i) The agency's project schedule, including,
4 start, duration and completion, and project final
5 budget for design and construction or life cycle
6 budget for a procurement that includes maintenance
7 services or operations services.

8 (ii) The design requirements.

9 (iii) A statement that each offeror's price
10 proposal must be a fixed price or a statement that
11 each offeror's price proposal must be a guaranteed
12 maximum price.

13 (D) A requirement that each offeror submit
14 separately a qualitative and technical proposal and a
15 price proposal and that the offeror's entire proposal
16 is responsive to the requirements in the request for
17 proposals.

18 (E) A statement that in applying the scoring method
19 the selection committee will evaluate and score the
20 qualitative and technical proposals before opening the
21 price proposals.

22 (F) A statement that the agency will use the
23 scoring method described in the request for proposals
24 to determine the winning offeror.

25 (G) A description of the scoring method. In a
26 request for proposals for design-build construction

1 services, the scoring method shall be one of the
2 following:

3 (i) The fixed price/highest score method is a
4 form of best-value selection in which a fixed
5 contract price is established by the agency and
6 stated in the request for proposals. In the request
7 for proposals the agency shall also specify the
8 qualitative and technical factors to be used to
9 score the qualitative and technical proposals and
10 the number of points allocated to each factor. All
11 offeror price proposals must be for the specified
12 fixed price. The selection committee shall
13 evaluate and score the offeror qualitative and
14 technical proposals using the specified scoring
15 factors and allocated numbers of points. The
16 winner will be the responsive and responsible
17 offeror with the highest total number of points on
18 its qualitative and technical proposal.

19 (ii) The proposed price plus time
20 factor/technical score method is a form of
21 best-value selection in which the agency provides
22 the value of time on a daily basis. The number of
23 days in each offeror's proposed schedule is
24 multiplied by the agency's daily rate and the
25 result is added to the offeror's price to create a
26 total. The total is divided by the offeror's

1 qualifications and technical proposal score to
2 determine the offeror's final score, which is a
3 dollars of price per point rating. The responsive
4 and responsible offeror with the lowest score
5 wins. The agency shall include in the request for
6 proposals the qualitative and technical factors to
7 be used to score the qualitative and technical
8 proposals and the number of points allocated to
9 each factor. The selection committee shall
10 evaluate and score the offeror qualitative and
11 technical proposals using the specified scoring
12 factors and allocated numbers of points. The
13 selection committee shall not open the offerors'
14 price proposals until after scoring the offerors'
15 qualitative and technical proposals.

16 (iii) The proposed price/technical score
17 method is a form of best-value selection in which
18 the agency specifies in the request for proposals
19 the qualitative and technical factors to be used to
20 score the qualitative and technical proposals and
21 the number of points allocated to each factor. The
22 selection committee shall evaluate and score the
23 offeror qualitative and technical proposals using
24 the specified scoring factors and allocated
25 numbers of points. The selection committee shall
26 not open the offerors' price proposals until after

1 scoring the offerors' qualitative and technical
2 proposals. After evaluating and scoring the
3 qualitative and technical proposals, each
4 offeror's price proposal is opened and each
5 offeror's proposed price is divided by the
6 offeror' score on its qualitative and technical
7 proposal to determine the offeror's final score,
8 which is a dollars of price per-point rating. The
9 responsive and responsible offeror with the lowest
10 final score is the winner.

11 (4) In evaluating and scoring the offerors' proposals
12 the selection committee shall use one of the four scoring
13 methods in subparagraph (G) of paragraph (2) of subsection
14 (d) of this Section as specified in the request for
15 proposals.

16 (5) Before opening any price proposal, the selection
17 committee shall open the final qualitative and technical
18 proposals, evaluate the final qualitative and technical
19 proposals and score the final qualitative and technical
20 proposals using the scoring method in the request for
21 proposals. No other factors or criteria may be used in the
22 evaluation and scoring.

23 (6) After completion of the evaluation and scoring of
24 all final qualitative and technical proposals, the
25 selection committee shall open the price proposals.

26 (A) For the fixed price/highest score method,

1 price is not a competitive factor, price will not be
2 evaluated or scored and the winner will be the
3 responsive and responsible offeror with the highest
4 score on its qualitative and technical proposal.

5 (B) For the proposed price plus time
6 factor/technical score method, the selection committee
7 multiplies the number of days in the proposed schedule
8 provided by each offeror by the agency's daily rate as
9 stated in the request for proposals and the result is
10 added to the offeror's price to create a total. The
11 total is divided by the offeror's qualitative and
12 technical proposal score to determine the overall
13 score. The responsive and responsible offeror with the
14 lowest overall score is the winner.

15 (C) For the proposed price/technical score method,
16 each offeror's proposed price is divided by the
17 offeror's qualitative and technical proposal score to
18 determine the offeror's final score. The responsive
19 and responsible offeror with the lowest final score is
20 the winner.

21 (7) The agency shall promptly notify the winning
22 offeror that it is the winner. Before or at the same time
23 as the agency notifies the winning offeror that it is the
24 winner, the agency shall send actual notice to each other
25 offeror either that the offeror is not the winner or that
26 another offeror is the winner.

1 (8) The contract or contracts file shall contain the
2 basis on which the award is made, including at a minimum
3 the information and documents required under subsection
4 (f) of this Section.

5 (9) For design-build construction services only, the
6 agency shall award a stipend equal to a percentage, as
7 prescribed in the request for proposals, of the agency's
8 project final budget for design and construction, as
9 prescribed in the request for proposals, but not less than
10 0.3% of the project final budget for design and
11 construction to each final list offeror who provides a
12 responsive, but unsuccessful, proposal. If the agency does
13 not award a contract, all responsive final list offerors
14 shall receive the stipend based on the agency's project
15 final budget for design and construction as included in the
16 request for proposals. The agency shall pay the stipend to
17 each offeror within 90 days after the award of the initial
18 contract or the decision not to award a contract. In
19 consideration for paying the stipend, the agency may use
20 any ideas or information contained in the proposals in
21 connection with any contract awarded for the project or in
22 connection with a subsequent procurement, without any
23 obligation to pay any additional compensation to the
24 offerors. Notwithstanding the other provisions of this
25 paragraph (9), an offeror may elect to waive the stipend.
26 If an offeror elects to waive the stipend, the agency may

1 not use ideas and information contained in the offeror's
2 proposal, except that this restriction does not prevent the
3 agency from using any idea or information if the idea or
4 information is also included in a proposal of an offeror
5 that accepts the stipend.

6 (e) At a minimum, the agency shall retain the following for
7 each procurement under this Section:

8 (1) For each request for qualifications procurement
9 process under subsection (d) of this Section:

10 (A) If interviews were not held:

11 (i) The submittal of the offeror listed first
12 on the final list and, if different, the submittal
13 of the offeror with which the agency enters into a
14 contract.

15 (ii) The final list.

16 (iii) A list of the selection criteria and
17 relative weight of selection criteria used to
18 select the offerors for the final list and to
19 determine their order on the final list.

20 (iv) A list that contains the name of each
21 offeror that submitted qualifications and that
22 shows the offeror's final overall rank or score.

23 (v) A document or documents that show the final
24 score or rank on each selection criteria of each
25 offeror that made qualifications submissions and
26 that support the final overall rankings and scores

1 of the offerors that made qualifications
2 submissions. At the election of the agency, this
3 documentation may be in the form of a consolidated
4 scoring sheet for the entire selection committee,
5 in the form of individual scoring sheets for
6 individual selection committee members or any
7 other form as determined by the agency.

8 (B) If interviews were held:

9 (i) All submittals of the offeror listed first
10 on the final list and, if different, all submittals
11 of the offeror with which the agency enters into a
12 contract.

13 (ii) The final list.

14 (iii) A list of the selection criteria and
15 relative weight of selection criteria used to
16 select the offerors for the final list and to
17 determine their order on the final list.

18 (iv) A list that contains the name of each
19 offeror that was interviewed and that shows the
20 offeror's final overall rank or score.

21 (v) A document or documents that shows the
22 final score or rank on each selection criteria of
23 each offeror that was interviewed and that support
24 the final overall rankings and scores of the
25 offerors that were interviewed. At the election of
26 the agency, this documentation may be in the form

1 of a consolidated scoring sheet for the entire
2 selection committee, in the form of individual
3 scoring sheets for individual selection committee
4 members, or any other form as determined by the
5 agency.

6 (vi) A list of the selection criteria and
7 relative weight of the selection criteria used to
8 select the offerors for the short list to be
9 interviewed.

10 (vii) A list that contains the name of each
11 offeror that made a qualifications submission and
12 that shows the offeror's final overall rank or
13 score in the selection of the offerors to be on the
14 short list to be interviewed.

15 (viii) A document or documents that show the
16 final score or rank on each selection criteria of
17 each offeror that made a qualifications submission
18 and that support the final overall rankings and
19 scores of the offerors that made qualifications
20 submissions in the selection of the offerors to be
21 on the short list to be interviewed. At the
22 election of the agency, this documentation may be
23 in the form of a consolidated scoring sheet for the
24 entire selection committee, in the form of
25 individual scoring sheets for the individual
26 selection committee members or any other form as

1 determined by the agency.

2 (2) For each request for proposals procurement process
3 under subsection (d) of this Section:

4 (A) The entire proposal submitted by the winning
5 offeror and, if different, the entire proposal
6 submitted by the offeror with which the agency enters
7 into a contract.

8 (B) The description of the scoring method, the list
9 of factors in the scoring method and the number of
10 points allocated to each factor, all as included in the
11 request for proposals.

12 (C) A list that contains the name of each offeror
13 that submitted a proposal and that shows the offeror's
14 final overall score.

15 (D) A document or documents that show the final
16 score on each factor in the scoring method in the
17 request for proposals of each offeror that submitted a
18 proposal, that show the calculation of the final
19 overall score of each offeror, and that support the
20 final overall scores of the offerors that submitted
21 proposals. At the election of the agency, the
22 documentation of each offeror's final score on each
23 factor may be in the form of a consolidated scoring
24 sheet for the entire selection committee, in the form
25 of individual scoring sheets for individual selection
26 committee members or any other form as determined by

1 the agency.

2 (f) Information relating to each procurement under this
3 Section shall be made available to the public as follows:

4 (1) Notwithstanding any other provision of law, until
5 the agency awards a contract or terminates the procurement,
6 only the name of each offeror on the final list developed
7 pursuant to subsection (d) of this Section may be made
8 available to the public. All other information received by
9 the agency in response to the request for qualifications
10 pursuant to subsection (d) of this Section or contained in
11 proposals submitted pursuant to subsection (a) of this
12 Section shall be confidential in order to avoid disclosure
13 of the contents that may be prejudicial to competing
14 offerors during the selection process.

15 (2) After the agency awards the contract or terminates
16 the procurement, the agency shall make available to the
17 public at a minimum all of the items that the agency is
18 required to retain under subsection (e) of this Section,
19 except the proposals submitted in response to a request for
20 proposals under subsection (d) of this Section and the
21 document or documents prescribed in item (v) of
22 subparagraph (A) of paragraph (1) of subsection (e) of this
23 Section, items (v) and (viii) of subparagraph (B) of
24 paragraph (1) of subsection (e) of this Section, and
25 subparagraph (D) of paragraph (2) of subsection (e) of this
26 Section.

1 (3) The proposals submitted under subsection (d) of
2 this Section and the document or documents prescribed in
3 item (v) of subparagraph (A) of paragraph (1) subsection
4 (e) and items (v) and (viii) of subparagraph (B) of
5 paragraph (2) of subsection (e) shall not be made available
6 to the public until after the agency has entered into a
7 contract or terminated the procurement and shall be made
8 available to the public after the agency has entered into a
9 contract or terminated the procurement.

10 (4) To the extent that the offeror designates and the
11 agency concurs, trade secrets and other proprietary data
12 contained in a proposal remain confidential.

13 (g) An agency may cancel a request for qualifications or a
14 request for proposals, reject in whole or in part any or all
15 qualifications submissions or proposals, or determine not to
16 enter into a contract as specified in the solicitation if the
17 agency determines in the agency's absolute and sole discretion
18 that the action is in the best interest of the agency. The
19 agency shall make the reasons for cancellation, rejection or
20 determination not to enter into a contract part of the contract
21 file.

22 (h) If the agency does not have a procurement protest
23 policy and procedures that have been formally adopted and
24 published by the agency for protests relating to procurements
25 under this Section, the agency shall follow the procurement
26 protest policy and procedures of the Department of Central

1 Management Service and the agency shall process all protests
2 relating to procurements under this Section in accordance with
3 that policy and procedure. If the agency is required to use the
4 Department of Central Management Services protest policy and
5 procedures or if the agency has a procurement protest policy
6 and procedures that the agency has formally adopted, the agency
7 may choose to make information relating to each procurement
8 available earlier than required under subsection (f) of this
9 Section if the agency determines the release of the information
10 is necessary to adequately follow and manage the applicable
11 procurement protest policy and procedures.

12 Section 35. Contracts and operations.

13 (a) The requirements in this Section apply to each contract
14 entered into as the result of procurement under this chapter
15 and to the provision of construction-manager-at-risk,
16 design-build construction services.

17 (b) If a procurement under this Act is for
18 construction-manager-at-risk construction services or
19 design-build construction services to be contracted pursuant
20 to subsection (a) of Section 30 of this Act, the agency shall
21 enter into a written contract with the contractor for
22 preconstruction services under which the agency shall pay the
23 contractor a fee for preconstruction services in an amount
24 agreed by the agency and the contractor, and the agency shall
25 not request or obtain a fixed price or a guaranteed maximum

1 price for the construction from the contractor or enter into a
2 construction contract with the contractor until after the
3 agency has entered into the written contract for
4 preconstruction services and a preconstruction services fee.

5 (c) If a contract for construction services is entered into
6 as the result of a procurement under this chapter, construction
7 shall not commence until the agency and contractor agree in
8 writing on either a fixed price that the agency will pay for
9 the construction to be commenced or a guaranteed maximum price
10 for the construction to be commenced. The construction to be
11 commenced may be the entire project or may be one or more
12 phased parts of the project.

13 (d) The following provisions apply to all construction
14 services procured under this Act:

15 (1) The contractor performing the construction
16 services is permitted to self-perform part of the
17 construction work if and to the extent agreed in writing by
18 the agency and the contractor. The agency may use methods
19 other than competitive bidding to assure itself that the
20 price the agency pays to the contractor for self-performed
21 work is fair and reasonable. Permitted methods to evaluate
22 fairness and reasonableness of the price of self-performed
23 work include evaluation of the contractor's proposed scope
24 of work and price for self-performed work by an estimator
25 who is hired and paid by the agency, who is independent of
26 the contractor, and who may be an employee of the agency.

1 Although the agency may elect to so require, nothing in
2 this Act or any other law shall be construed or interpreted
3 to require the agency to require a contractor desiring to
4 self-perform part of the construction work to
5 competitively bid that part of the construction work
6 against other contractors in a bid competition.

7 (2) The following requirements apply to the
8 construction work to be performed by subcontractors and do
9 not apply to construction work that the agency and the
10 contractor agree in writing will be self-performed by the
11 contractor:

12 (A) The offerors selected to perform the
13 construction services shall select subcontractors
14 based on qualifications alone or on a combination of
15 qualifications and price and shall not select
16 subcontractors based on price alone. A qualifications
17 and price selection may be a single-step selection
18 based on a combination of qualifications and price or a
19 2-step selection. In a 2-step selection, the first step
20 shall be based on qualifications alone and the second
21 step may be based on a combination of qualifications
22 and price or on price alone.

23 (B) The agency shall include in each contract:

24 (i) If the agency included its subcontractor
25 selection plan in the request for qualifications,
26 the agency's subcontractor selection plan and the

1 procedures to implement the agency's subcontractor
2 selection plan proposed by the selected offeror in
3 submitting its qualifications with those
4 modifications to the procedures as the agency and
5 the selected offeror agree.

6 (ii) If the agency did not include its
7 subcontractor selection plan in the request for
8 qualifications, the subcontractor selection plan
9 proposed by the selected offeror in submitting its
10 qualifications with those modifications as the
11 agency and the selected offeror agree.

12 (3) In making the selection of subcontractors, each
13 offeror contracted to perform construction services shall
14 use the subcontractor selection plan and any procedures
15 included in its contract.