



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004
HB4619

Introduced 02/04/04, by Jay C. Hoffman

SYNOPSIS AS INTRODUCED:

New Act

Creates the Design-Build Procurement Act. Provides procedures by which certain State agencies may solicit design-build proposals. Requires that each request for design-build proposals include scope and performance criteria. Requires State agencies to establish a committee to evaluate and select design-build firms. Sets forth the procedures for selecting a design-build firm. Sets forth the procedures by which design-build firms may submit proposals. Sets forth the procedures by which a State agency may award a design-build contract. Makes other provisions concerning design-build contracts. Effective immediately.

LRB093 20721 BDD 46609 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning procurement.

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

4 Section 1. Short title. This Act may be cited as
5 theDesign-Build Procurement Act.

6 Section 5. Legislative policy. It is the intent of the
7 General Assembly that State construction agencies be allowed to
8 use the design-build delivery method for public projects if it
9 is shown to be in the State's best interest for that particular
10 project. It shall be the policy of State construction agencies
11 in the procurement of design-build services to publicly
12 announce all requirements for design-build services and to
13 procure these services on the basis of demonstrated competence
14 and qualifications and with due regard for the principles of
15 competitive selection.

16 A State construction agency shall, prior to issuing
17 requests for proposals, promulgate and publish procedures for
18 the solicitation and award of contracts pursuant to this Act.

19 A State construction agency shall, for each public project
20 or projects permitted under this Act, make a written
21 determination, including a description as to the particular
22 advantages of the design-build procurement method, that it is
23 in the best interests of this State to enter into a
24 design-build contract for the project or projects. In making
25 that determination, the following factors shall be considered:

26 (1) The probability that the design-build procurement
27 method will be in the best interests of the State by
28 providing a material savings of time or cost over the
29 design-bid-build or other delivery system.

30 (2) The type and size of the project and its
31 suitability to the design-build procurement method.

32 (3) The ability of the State construction agency to

1 define and provide comprehensive scope and performance
2 criteria for the project.

3 The State construction agency shall within 15 days after
4 the initial determination provide an advisory copy to the
5 Procurement Policy Board and maintain the full record of
6 determination for 5 years.

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

8 "State construction agency" means and includes those
9 agencies as defined in Section 1-15.25 of the Illinois
10 Procurement Code, as amended, but does not mean the Illinois
11 Department of Transportation and the Illinois State Toll
12 Highway Authority.

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

15 "Design-bid-build" means the traditional delivery system
16 used on public projects in this State that incorporates the
17 Architectural, Engineering, and Land Surveying Qualification
18 Based Selection Act (30 ILCS 535/) and the principles of
19 competitive selection in the Illinois Procurement Code (30 ILCS
20 500/).

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

26 "Design-build contract" means a contract for a public
27 project under this Act between a State construction agency and
28 a design-build entity to furnish architecture, engineering,
29 land surveying, and related services as required, and to
30 furnish the labor, materials, equipment, and other
31 construction services for the project. The design-build
32 contract may be conditioned upon subsequent refinements in
33 scope and price and may allow the State construction agency to
34 make modifications in the project scope without invalidating
35 the design-build contract.

1 "Design-build entity" means any individual, sole
2 proprietorship, firm, partnership, joint venture, corporation,
3 professional corporation, or other entity that proposes to
4 design and construct any public project under this Act. A
5 design-build entity and associated design-build professionals
6 shall conduct themselves in accordance with the laws of this
7 State and the related provisions of the Illinois Administrative
8 Code, as referenced by the licensed design professional Acts of
9 this State, with respect to the solicitation and contracting of
10 design-build services.

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

19 "Evaluation criteria" means the requirements for the
20 separate phases of the selection process as defined in this Act
21 and may include the specialized experience, technical
22 qualifications and competence, capacity to perform, past
23 performance, experience with similar projects, assignment of
24 personnel to the project, and other appropriate factors. Price
25 may not be used as a factor in the evaluation of Phase I
26 proposals.

27 "Proposal" means the offer to enter into a design-build
28 contract as submitted by a design-build entity in accordance
29 with this Act.

30 "Request for proposal" means the document used by a State
31 construction agency to solicit proposals for a design-build
32 contract.

33 "Scope and performance criteria" means the requirements
34 for the public project, including but not limited to, the
35 intended usage, capacity, size, scope, quality and performance
36 standards, life-cycle costs, and other programmatic criteria

1 that are expressed in performance-oriented and quantifiable
2 specifications and drawings that can be reasonably inferred and
3 are suited to allow a design-build entity to develop a
4 proposal.

5 Section 15. Solicitation of proposals.

6 (a) A State construction agency that elects to use the
7 design-build delivery method must issue a notice of intent to
8 receive requests for proposals for the project at least 14 days
9 before issuing the request for the proposal. The State
10 construction agency must publish the advance notice in the
11 official procurement bulletin of the State or the professional
12 services bulletin of the State construction agency, if any. The
13 agency is encouraged to use publication of the notice in
14 related construction industry service publications. A brief
15 description of the proposed procurement must be included in the
16 notice. The State construction agency must provide a copy of
17 the request for proposal to any party requesting a copy.

18 (b) The request for proposal shall be prepared for each
19 project and must contain, without limitation, the following
20 information:

21 (1) The State construction agency that will award the
22 design-build contract.

23 (2) A preliminary schedule for the completion of the
24 contract.

25 (3) The proposed budget for the project, the source of
26 funds, and the currently available funds.

27 (4) Prequalification criteria for design-build
28 entities wishing to submit proposals. The State
29 construction agency shall include, at a minimum, its normal
30 prequalification, licensing, registration, and other
31 requirements, but nothing contained herein precludes the
32 use of additional prequalification criteria by the State
33 construction agency.

34 (5) Material requirements of the contract, including
35 but not limited to, the proposed terms and conditions,

1 required performance and payment bonds, insurance,
2 affirmative action, and workforce requirements, if any.

3 (6) The performance criteria.

4 (7) The evaluation criteria for each phase of the
5 solicitation.

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

8 (c) The State construction agency may include any other
9 relevant information that it chooses to supply. The
10 design-build entity shall be entitled to rely upon the accuracy
11 of this documentation in the development of its proposal.

12 (d) The date that proposals are due must be at least 21
13 calendar days after the date of the issuance of the request for
14 proposal. In the event the cost of the project is estimated to
15 exceed \$10 million, then the proposal due date must be at least
16 28 calendar days after the date of the issuance of the request
17 for proposal. The State construction agency shall include in
18 the request for proposal a minimum of 30 days to develop the
19 Phase II submissions after the selection of entities from the
20 Phase I evaluation is completed.

21 (e) Each design-build entity whose proposal proceeds to the
22 technical and cost evaluation phase may be reimbursed by the
23 State construction agency to defray costs associated with the
24 proposal preparation. If the State construction agency elects
25 to provide reimbursement, it shall specify in the request for
26 proposal the basis or overall reimbursement to be provided.

27 Section 20. Development of scope and performance criteria.

28 (a) The State construction agency shall develop, at the
29 direction of a licensed design professional, a request for
30 proposal, which shall include scope and performance criteria.
31 The scope and performance criteria must be in sufficient detail
32 and contain adequate information to reasonably apprise the
33 qualified design-build entities of the State construction
34 agency's overall programmatic needs and goals, including
35 criteria and preliminary design plans, general budget

1 parameters, schedule, and delivery requirements.

2 (b) Each request for proposal shall also include a
3 description of the level of design to be provided in the
4 proposals. This description must include the scope and type of
5 renderings, drawings, and specifications that, at a minimum,
6 will be required by the State construction agency to be
7 produced by the design-build entities.

8 (c) The scope and performance criteria shall be prepared by
9 a design professional who is an employee of the State
10 construction agency, or the State construction agency may
11 contract with an independent design professional selected
12 under the Architectural, Engineering and Land Surveying
13 Qualification Based Selection Act (30 ILCS 535/) to provide
14 these services.

15 (d) The design professional that prepares the scope and
16 performance criteria is prohibited from participating in any
17 design-build entity proposal for the project.

18 Section 25. Selection Committee.

19 (a) Each State construction agency that elects to use the
20 design-build delivery method shall establish a committee to
21 evaluate and select the design-build entity. The committee,
22 under the discretion of the State construction agency, shall
23 consist of 3, 5, or 7 members and shall include at least one
24 licensed design professional and one member of the public. The
25 public member may not be employed or associated with any firm
26 holding a contract with the State construction agency and shall
27 be nominated by design or construction industry associations.
28 The selection committee may be designated for a set term or for
29 the particular project subject to the request for proposal.

30 (b) The members of the selection committee must certify for
31 each request for proposal that no conflict of interest exists
32 between the members and the design-build entities submitting
33 proposals. If a conflict exists, the member must be replaced
34 before any review of proposals.

1 Section 30. Procedures for Selection.

2 (a) The State construction agency must use a two-phase
3 procedure for the selection of the successful design-build
4 entity. Phase I of the procedure will evaluate and shortlist
5 the design-build entities based on qualifications, and Phase II
6 will evaluate the technical and cost proposals.

7 (b) The State construction agency shall include in the
8 request for proposal the evaluating factors to be used in Phase
9 I. These factors are in addition to any prequalification
10 requirements of design-build entities that the agency has set
11 forth. Each request for proposal shall establish the relative
12 importance assigned to each evaluation factor and subfactor,
13 including any weighting of criteria to be employed by the State
14 construction agency. The State construction agency must
15 maintain a record of the evaluation scoring to be disclosed in
16 event of a protest regarding the solicitation.

17 The State construction agency shall include the following
18 criteria in every Phase I evaluation of design-build entities:
19 (1) experience of personnel; (2) successful experience with
20 similar project types; (3) financial capability; (4)
21 timeliness of past performance; (5) experience with similarly
22 sized projects; (6) successful reference checks of the firm;
23 and (7) commitment to assign personnel for the duration of the
24 project and qualifications of the entity's consultants. The
25 State construction agency may include any additional relevant
26 criteria in Phase I that it deems necessary for a proper
27 qualification review.

28 The State construction agency may not consider any
29 design-build entity for evaluation or award if the entity has
30 any pecuniary interest in the project or has other
31 relationships or circumstances, including but not limited to,
32 long-term leasehold, mutual performance, or development
33 contracts with the State construction agency, that may give the
34 design-build entity a financial or tangible advantage over
35 other design-build entities in the preparation, evaluation, or
36 performance of the design-build contract or that create the

1 appearance of impropriety.

2 Upon completion of the qualifications evaluation, the
3 State construction agency shall create a shortlist of the most
4 highly qualified design-build entities. The State construction
5 agency, in its discretion, is not required to shortlist the
6 maximum number of entities as identified for Phase II
7 evaluation, provided however, no less than 2 design-build
8 entities nor more than 6 are selected to submit Phase II
9 proposals.

10 The State construction agency shall notify the entities
11 selected for the shortlist in writing. This notification shall
12 commence the period for the preparation of the Phase II
13 technical and cost evaluations. The State construction agency
14 must allow sufficient time for the shortlist entities to
15 prepare their Phase II submittals considering the scope and
16 detail requested by the State agency.

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

27 The State construction agency shall include the following
28 criteria in every Phase II technical evaluation of design-build
29 entities: (1) compliance with objectives of the project; (2)
30 compliance of proposed services to the request for proposal
31 requirements; (3) quality of products or materials proposed;
32 (4) quality of design parameters; (5) design concepts; (6)
33 innovation in meeting the scope and performance criteria; and
34 (7) constructability of the proposed project. The State
35 construction agency may include any additional relevant
36 technical evaluation factors it deems necessary for proper

1 selection.

2 The State construction agency shall include the following
3 criteria in every Phase II cost evaluation: the total project
4 cost, the construction costs, and the time of completion. The
5 State construction agency may include any additional relevant
6 technical evaluation factors it deems necessary for proper
7 selection. In no event shall the total project cost criteria in
8 this subsection exceed a weighting factor greater than 25%.

9 The State construction agency shall directly employ or
10 retain a licensed design professional to evaluate the technical
11 and cost submissions to determine if the technical submissions
12 are in accordance with generally accepted industry standards.

13 Upon completion of the technical submissions and cost
14 submissions evaluation, the State construction agency may
15 award the design-build contract to the highest overall ranked
16 entity.

17 Section 35. Small projects. In any case where the total
18 overall cost of the project is estimated to be less than \$5
19 million, the State construction agency may combine the
20 two-phase procedure for selection described in Section 30 into
21 one combined step, provided that all the requirements of
22 evaluation are performed in accordance with Section 30.

23 Section 40. Submission of proposals. Proposals must be
24 properly identified and sealed. Proposals may not be reviewed
25 until after the deadline for submission has passed as set forth
26 in the request for proposals. All design-build entities
27 submitting proposals shall be disclosed after the deadline for
28 submission, and all design-build entities who are selected for
29 Phase II evaluation shall also be disclosed at the time of that
30 determination.

31 Proposals shall include a bid bond in the form and security
32 as designated in the request for proposals. Proposals shall
33 also contain a separate sealed envelope with the cost
34 information within the overall proposal submission. Proposals

1 shall include a list of all design professionals and other
2 entities to which any work may be subcontracted during the
3 performance of the contract. In the event the request for
4 proposal so designates, these entities must meet
5 prequalification standards of the State construction agency.

6 Proposals must meet all material requirements of the
7 request for proposal or they may be rejected as non-responsive.
8 The State construction agency shall have the right to reject
9 any and all proposals.

10 The drawings and specifications of the proposal shall
11 remain the property of the design-build entity.

12 The State construction agency shall review the proposals
13 for compliance with the performance criteria and evaluation
14 factors.

15 Proposals may be withdrawn prior to evaluation for any
16 cause. After evaluation begins by the State construction
17 agency, clear and convincing evidence of error is required for
18 withdrawal.

19 Section 45. Award. The State construction agency may award
20 the contract to the highest overall ranked entity. Notice of
21 award shall be made in writing. Unsuccessful entities shall
22 also be notified in writing. The State construction agency may
23 not request a best and final offer after the receipt of
24 proposals. The State construction agency may negotiate with the
25 selected design-build entity after award but prior to contract
26 execution for the purpose of securing better terms than
27 originally proposed, provided that the salient features of the
28 request for proposal are not diminished.

29 Section 50. Administrative Procedure Act. The Illinois
30 Administrative Procedure Act (5 ILCS 100/) applies to all
31 administrative rules and procedures of the State construction
32 agency under this Act.

33 Section 53. Federal requirements. In the procurement of

1 design-build contracts, State construction agencies shall
2 comply with federal law and regulations and take all necessary
3 steps to adapt their rules, policies, and procedures to remain
4 eligible for federal aid.

5 Section 55. Severability. The provisions of this Act are
6 severable under Section 1.31 of the Statute on Statutes.

7 Section 99. Effective date. This Act takes effect upon
8 becoming law.