

1 considered:

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

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

8 (3) The ability of the State construction agency to
9 define and provide comprehensive scope and performance
10 criteria for the project.

11 The state construction agency shall within 15 days after
12 the initial determination provide an advisory copy to the
13 Procurement Policy Board and maintain the full record of
14 determination for 5 years.

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

16 "State construction agency" means and includes those
17 agencies as defined in Section 1-15.25 of the Illinois
18 Procurement Code, as amended, but does not mean the Illinois
19 Department of Transportation and the Illinois State Toll
20 Highway Authority.

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

23 "Design-bid-build" means the traditional delivery system
24 used on public projects in this State that incorporates the
25 Architectural, Engineering, and Land Surveying Qualification
26 Based Selection Act (30 ILCS 535/) and the principles of
27 competitive selection in the Illinois Procurement Code (30
28 ILCS 500/).

29 "Design-build" means a delivery system that provides
30 responsibility within a single contract for the furnishing of
31 architecture, engineering, land surveying and related
32 services as required, and the labor, materials, equipment,
33 and other construction services for the project.

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

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

21 "Design professional" means any individual, sole
22 proprietorship, firm, partnership, joint venture,
23 corporation, professional corporation, or other entity that
24 offers services under the Illinois Architecture Practice Act
25 of 1989 (225 ILCS 305/), the Professional Engineering
26 Practice Act of 1989 (225 ILCS 325/), the Structural
27 Engineering Licensing Act of 1989 (225 ILCS 340/), or the
28 Illinois Professional Land Surveyor Act of 1989 (225 ILCS
29 330/).

30 "Evaluation criteria" means the requirements for the
31 separate phases of the selection process as defined in this
32 Act and may include the specialized experience, technical
33 qualifications and competence, capacity to perform, past
34 performance, experience with similar projects, assignment of

1 personnel to the project, and other appropriate factors.
2 Price may not be used as a factor in the evaluation of Phase
3 I proposals.

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

7 "Request for proposal" means the document used by a State
8 construction agency to solicit proposals for a design-build
9 contract.

10 "Scope and performance criteria" means the requirements
11 for the public project, including but not limited to, the
12 intended usage, capacity, size, scope, quality and
13 performance standards, life-cycle costs, and other
14 programmatic criteria that are expressed in
15 performance-oriented and quantifiable specifications and
16 drawings that can be reasonably inferred and are suited to
17 allow a design-build entity to develop a proposal.

18 Section 15. Solicitation of proposals.

19 (a) A State construction agency that elects to use the
20 design-build delivery method must issue a notice of intent to
21 receive requests for proposals for the project at least 14
22 days before issuing the request for the proposal. The State
23 construction agency must publish the advance notice in the
24 official procurement bulletin of the State or the
25 professional services bulletin of the State construction
26 agency, if any. The agency is encouraged to use publication
27 of the notice in related construction industry service
28 publications. A brief description of the proposed procurement
29 must be included in the notice. The State construction agency
30 must provide a copy of the request for proposal to any party
31 requesting a copy.

32 (b) The request for proposal shall be prepared for each
33 project and must contain, without limitation, the following

1 information:

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

4 (2) A preliminary schedule for the completion of
5 the contract.

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

8 (4) Prequalification criteria for design-build
9 entities wishing to submit proposals. The State
10 construction agency shall include, at a minimum, its
11 normal prequalification, licensing, registration, and
12 other requirements, but nothing contained herein
13 precludes the use of additional prequalification criteria
14 by the State construction agency.

15 (5) Material requirements of the contract,
16 including but not limited to, the proposed terms and
17 conditions, required performance and payment bonds,
18 insurance, affirmative action, and workforce
19 requirements, if any.

20 (6) The performance criteria.

21 (7) The evaluation criteria for each phase of the
22 solicitation.

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

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

30 (d) The date that proposals are due must be at least 21
31 calendar days after the date of the issuance of the request
32 for proposal. In the event the cost of the project is
33 estimated to exceed \$10 million, then the proposal due date
34 must be at least 28 calendar days after the date of the

1 issuance of the request for proposal. The State construction
2 agency shall include in the request for proposal a minimum of
3 30 days to develop the Phase II submissions after the
4 selection of entities from the Phase I evaluation is
5 completed.

6 (e) Each design-build entity whose proposal proceeds to
7 the technical and cost evaluation phase may be reimbursed by
8 the State construction agency to defray costs associated with
9 the proposal preparation. If the State construction agency
10 elects to provide reimbursement, it shall specify in the
11 request for proposal the basis or overall reimbursement to be
12 provided.

13 Section 20. Development of scope and performance
14 criteria.

15 (a) The State construction agency shall develop, at the
16 direction of a licensed design professional, a request for
17 proposal, which shall include scope and performance criteria.
18 The scope and performance criteria must be in sufficient
19 detail and contain adequate information to reasonably apprise
20 the qualified design-build entities of the State construction
21 agency's overall programmatic needs and goals, including
22 criteria and preliminary design plans, general budget
23 parameters, schedule, and delivery requirements.

24 (b) Each request for proposal shall also include a
25 description of the level of design to be provided in the
26 proposals. This description must include the scope and type
27 of renderings, drawings, and specifications that, at a
28 minimum, will be required by the State construction agency to
29 be produced by the design-build entities.

30 (c) The scope and performance criteria shall be prepared
31 by a design professional who is an employee of the State
32 construction agency, or the State construction agency may
33 contract with an independent design professional selected

1 under the Architectural, Engineering and Land Surveying
2 Qualification Based Selection Act (30 ILCS 535/) to provide
3 these services.

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

7 Section 25. Selection Committee.

8 (a) Each State construction agency that elects to use
9 the design-build delivery method shall establish a committee
10 to evaluate and select the design-build entity. The
11 committee, under the discretion of the State Construction
12 Agency, shall consist of 3, 5, or 7 members and shall include
13 at least one licensed design professional and one member of
14 the public. The public member may not be employed or
15 associated with any firm holding a contract with the State
16 construction agency and shall be nominated by design or
17 construction industry associations. The selection committee
18 may be designated for a set term or for the particular
19 project subject to the request for proposal.

20 (b) The members of the selection committee must certify
21 for each request for proposal that no conflict of interest
22 exists between the members and the design-build entities
23 submitting proposals. If a conflict exists, the member must
24 be replaced before any review of proposals.

25 Section 30. Procedures for Selection.

26 (a) The State construction agency must use a two-phase
27 procedure for the selection of the successful design-build
28 entity. Phase I of the procedure will evaluate and shortlist
29 the design-build entities based on qualifications, and the
30 Phase II will evaluate the technical and cost proposals.

31 (b) The State construction agency shall include in the
32 request for proposal the evaluating factors to be used in

1 Phase I. These factors are in addition to any
2 prequalification requirements of design-build entities that
3 the agency has set forth. Each request for proposal shall
4 establish the relative importance assigned to each evaluation
5 factor and subfactor, including any weighting of criteria to
6 be employed by the State construction agency. The State
7 construction agency must maintain a record of the evaluation
8 scoring to be disclosed in event of a protest regarding the
9 solicitation.

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

21 The State construction agency may not consider any
22 design-build entity for evaluation or award if the entity has
23 any pecuniary interest in the project or has other
24 relationships or circumstances, including but not limited to,
25 long term leasehold, mutual performance, or development
26 contracts with the State construction agency, that may give
27 the design-build entity a financial or tangible advantage
28 over other design-build entities in the preparation,
29 evaluation, or performance of the design-build contract or
30 that create the appearance of impropriety.

31 Upon completion of the qualifications evaluation, the
32 State construction agency shall create a shortlist of the
33 most highly qualified design-build entities. The State
34 construction agency, in its discretion, is not required to

1 shortlist the maximum number of entities as identified for
2 Phase II evaluation, provided however, no less than 2
3 design-build entities nor more than 6 are selected to submit
4 Phase II proposals.

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

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

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

33 The State construction agency shall include the following
34 criteria in every Phase II cost evaluation the total project

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

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

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

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

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

30 Proposals shall include a bid bond in the form and
31 security as designated in the request for proposals.
32 Proposals shall also contain a separate sealed envelope with

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

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

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

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

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

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

31 Section 50. Administrative Procedure Act. The Illinois
32 Administrative Procedure Act (5 ILCS 100/) applies to all

1 administrative rules and procedures of the State construction
2 agency under this Act.

3 Section 53. Federal requirements. In the procurement of
4 design-build contracts, State construction agencies shall
5 comply with federal law and regulations and take all
6 necessary steps to adapt their rules, policies, and
7 procedures to remain eligible for federal aid.

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

10 Section 99. Effective date. This Act takes effect upon
11 becoming law."