



94TH GENERAL ASSEMBLY

State of Illinois

2005 and 2006

HB1067

Introduced 2/7/2005, by Rep. Jay C. Hoffman

SYNOPSIS AS INTRODUCED:

New Act

Creates the Design-Build Procurement Act. Authorizes the Department of Transportation and the Illinois State Toll Highway Authority, for highway projects, and the Capital Development Board, for other construction projects, to award construction contracts using a design-build method that accepts and evaluates proposals from entities that encompass the designing and the building of the project. Establishes criteria and procedures for use of the design-build method. Effective immediately.

LRB094 09053 JAM 39274 b

FISCAL NOTE ACT
MAY APPLY

1 AN ACT concerning procurement.

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

4 ARTICLE 1

5 GENERAL PROVISIONS

6 Section 1-1. Short title. This Act may be cited as the
7 Design-Build Procurement Act.

8 Section 1-5. Legislative policy. It is the intent of the
9 General Assembly that the State construction agencies be
10 allowed to use the design-build delivery method for public
11 projects if it is shown to be in the State's best interest for
12 that particular project. It shall be the policy of the State
13 construction agencies in the procurement of design-build
14 services to publicly announce all requirements for
15 design-build services and to procure these services on the
16 basis of demonstrated competence and qualifications and with
17 due regard for the principles of competitive selection.

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

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

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

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

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

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

10 ARTICLE 5
11 CAPITAL DEVELOPMENT BOARD

12 Section 5-10. Definitions. As used in this Article:

13 "State construction agency" means the Capital Development
14 Board.

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

17 "Design-bid-build" means the traditional delivery system
18 used on public projects in this State that incorporates the
19 Architectural, Engineering, and Land Surveying Qualification
20 Based Selection Act (30 ILCS 535/) and the principles of
21 competitive selection in the Illinois Procurement Code (30 ILCS
22 500/).

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

28 "Design-build contract" means a contract for a public
29 project under this Act between the State construction agency
30 and a design-build entity to furnish architecture,
31 engineering, land surveying, and related services as required,
32 and to furnish the labor, materials, equipment, and other
33 construction services for the project. The design-build
34 contract may be conditioned upon subsequent refinements in

1 scope and price and may allow the State construction agency to
2 make modifications in the project scope without invalidating
3 the design-build contract.

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

13 "Design professional" means any individual, sole
14 proprietorship, firm, partnership, joint venture, corporation,
15 professional corporation, or other entity that offers services
16 under the Illinois Architecture Practice Act of 1989 (225 ILCS
17 305/), the Professional Engineering Practice Act of 1989 (225
18 ILCS 325/), the Structural Engineering Licensing Act of 1989
19 (225 ILCS 340/), or the Illinois Professional Land Surveyor Act
20 of 1989 (225 ILCS 330/).

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

29 "Proposal" means the offer to enter into a design-build
30 contract as submitted by a design-build entity in accordance
31 with this Article.

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

35 "Scope and performance criteria" means the requirements
36 for the public project, including but not limited to, the

1 intended usage, capacity, size, scope, quality and performance
2 standards, life-cycle costs, and other programmatic criteria
3 that are expressed in performance-oriented and quantifiable
4 specifications and drawings that can be reasonably inferred and
5 are suited to allow a design-build entity to develop a
6 proposal.

7 Section 5-15. Solicitation of proposals.

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

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

23 (1) The name of the State construction agency.

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

26 (3) The proposed budget for the project, the source of
27 funds, and the currently available funds at the time the
28 request for proposal is submitted.

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

1 (5) Material requirements of the contract, including
2 but not limited to, the proposed terms and conditions,
3 required performance and payment bonds, insurance,
4 affirmative action, and workforce requirements, if any.

5 (6) The performance criteria.

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

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

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

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

23 Section 5-20. Development of scope and performance
24 criteria.

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

34 (b) Each request for proposal shall also include a
35 description of the level of design to be provided in the

1 proposals. This description must include the scope and type of
2 renderings, drawings, and specifications that, at a minimum,
3 will be required by the State construction agency to be
4 produced by the design-build entities.

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

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

15 Section 5-25. Selection Committee.

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

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

32 Section 5-30. Procedures for Selection.

33 (a) The State construction agency must use a two-phase
34 procedure for the selection of the successful design-build

1 entity. Phase I of the procedure will evaluate and shortlist
2 the design-build entities based on qualifications, and Phase II
3 will evaluate the technical and cost proposals.

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

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

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

35 Upon completion of the qualifications evaluation, the
36 State construction agency shall create a shortlist of the most

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

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

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

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

35 The State construction agency shall include the following
36 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. The total project cost criteria weighing factor
5 shall be 25%.

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

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

14 Section 5-35. Small projects. In any case where the total
15 overall cost of the project is estimated to be less than \$10
16 million, the State construction agency may combine the
17 two-phase procedure for selection described in Section 30 into
18 one combined step, provided that all the requirements of
19 evaluation are performed in accordance with Section 30.

20 Section 5-40. Submission of proposals. Proposals must be
21 properly identified and sealed. Proposals may not be reviewed
22 until after the deadline for submission has passed as set forth
23 in the request for proposals. All design-build entities
24 submitting proposals shall be disclosed after the deadline for
25 submission, and all design-build entities who are selected for
26 Phase II evaluation shall also be disclosed at the time of that
27 determination.

28 Proposals shall include a bid bond in the form and security
29 as designated in the request for proposals. Proposals shall
30 also contain a separate sealed envelope with the cost
31 information within the overall proposal submission. Proposals
32 shall include a list of all design professionals and other
33 entities as defined in Section 30-30 of the Illinois
34 Procurement Code to which any work may be subcontracted during

1 the performance of the contract. Any entity that will perform
2 any of the 5 subdivisions of work defined in Section 30-30 of
3 the Illinois Procurement Code must meet prequalification
4 standards of the State construction agency.

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

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

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

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

18 Section 5-45. Award. The State construction agency may
19 award the contract to the highest overall ranked entity. Notice
20 of award shall be made in writing. Unsuccessful entities shall
21 also be notified in writing. The State construction agency may
22 not request a best and final offer after the receipt of
23 proposals. The State construction agency may negotiate with the
24 selected design-build entity after award but prior to contract
25 execution for the purpose of securing better terms than
26 originally proposed, provided that the salient features of the
27 request for proposal are not diminished.

28 Section 5-50. Administrative Procedure Act. The Illinois
29 Administrative Procedure Act (5 ILCS 100/) applies to all
30 administrative rules and procedures of the State construction
31 agency under this Article except that nothing herein shall be
32 construed to render any prequalification or other
33 responsibility criteria as a "license" or "licensing" under
34 that Act.

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

6 ARTICLE 10
7 DEPARTMENT OF TRANSPORTATION AND TOLL HIGHWAY AUTHORITY

8 Section 10-10. Authority for use. The Illinois Department
9 of Transportation and the Illinois State Toll Highway
10 Authority, as the State highway construction agencies, may
11 provide for use of a design-build method of source selection
12 for highway construction projects, on highways subject to their
13 jurisdiction, in order to demonstrate and evaluate the use,
14 advantages, and disadvantages of that method of source
15 selection for highway construction projects. It shall be the
16 policy of the State for the use of such method to publicly
17 announce all requirements for design-build services, and to
18 procure such services on the basis of demonstrated competence
19 and qualifications with due regard for the principles of
20 competitive selection. The State highway construction agency
21 undertaking demonstration projects selected under the
22 authority of this Article shall evaluate and submit a report as
23 prescribed in Section 10-80 of this Article on the design-build
24 method compared to the traditional method by considering the
25 following factors:

26 (1) The relative advantages and disadvantages,
27 considering time, cost, and the resources of the agency to
28 achieving the final completion of the project.

29 (2) The type, size, and suitability of projects to the
30 design-build method of source selection.

31 (3) The ability of the agency to define and provide
32 comprehensive scope and performance criteria for the
33 construction project as required by this Article, as well

1 as what may be possible under a design-build contract
2 providing for greater conceptual responsibility for the
3 design-build entity.

4 Projects selected by the Illinois Department of
5 Transportation for demonstration under this Article shall be
6 identified in the annual highway construction program document
7 published by the Department pursuant to Section 2705-200 of the
8 Department of Transportation Law of the Civil Administrative
9 Code of Illinois.

10 Section 10-15. Definitions. As used in this Article:

11 "Agency", "State construction agency", "State highway
12 construction agency", and "State transportation construction
13 agency" mean the Illinois Department of Transportation or the
14 Illinois State Toll Highway Authority.

15 "Design-bid-build" means the traditional method of source
16 selection used on highway construction projects in this State
17 with authority provided by the Architectural, Engineering, and
18 Land Surveying Qualifications Based Selection Act and the
19 Illinois Procurement Code to select separate design and
20 construction contractors.

21 "Design-build" means a method of source selection that
22 allows the selection of a single contractor for the furnishing
23 of engineering, land surveying and related design services, and
24 the labor, materials, equipment, and other construction
25 services for the project.

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

1 design-build contract.

2 "Design-build entity" means any entity organized in a
3 manner recognized in law that proposes to design and build a
4 highway construction project under this Article.

5 "Design professional" means the member of the design-build
6 entity that is licensed to offer services under the
7 Professional Engineering Practice Act of 1989, the Structural
8 Engineering Licensing Act of 1989, the Illinois Professional
9 Land Surveyor Act of 1989, or the Illinois Architecture
10 Practice Act of 1989.

11 "Evaluation criteria" means the requirements to be used for
12 the selection process as defined in this Article to judge the
13 responsiveness and quality of the technical design component of
14 a proposal prepared by the design professional member of the
15 design-build entity, including achievement of the scope and
16 performance criteria, and any specialized technical
17 requirements and design tasks contained in the request for
18 proposals. The manner of scoring the technical components shall
19 be set forth in the evaluation criteria. The manner of judging
20 proposed costs shall be as provided in this Article.

21 "Proposal" means the offer to enter into a design-build
22 contract as submitted by a design-build entity in response to a
23 request for proposals issued in accordance with this Article.

24 "Qualification criteria" means the procedures and criteria
25 used by the State highway construction agency to assess the
26 responsibility of a potential design-build entity contractor,
27 including but not limited to, competence, financial capacity to
28 perform, past performance, prior experience, and personnel
29 resources. The State highway construction agency is authorized
30 to use existing prequalification procedures for purposes of
31 this Article.

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

35 "Scope and performance criteria" means the requirements
36 for the project, including but not limited to, the intended

1 usage, capacity, size, scope, quality and performance
2 standards, life-cycle costs, and other programmatic criteria
3 that are expressed in performance-oriented and quantifiable
4 specifications and drawings or that can be reasonably inferred
5 and that are suitable to allow a design-build entity to develop
6 a proposal and final plans for a project under this Article.

7 Section 10-20. Scope and performance criteria. The State
8 highway construction agency shall develop the scope and
9 performance criteria. The scope and performance criteria shall
10 be in reasonably sufficient detail and contain reasonably
11 adequate information to inform the qualified design-build
12 entities of the State highway construction agency's overall
13 needs and goals, including, but not limited to, applicable
14 standards adopted by the agency governing the work of the
15 project, preliminary design plans, anticipated or acceptable
16 schedules, and any optional or mandatory delivery
17 requirements. The scope and performance criteria shall also
18 include a description of the level of design to be provided in
19 the proposals. This description must include the scope and type
20 of renderings, drawings, and specifications that, at a minimum,
21 will be required to be produced by the design-build entity for
22 the proposal and for the final plans. The scope and performance
23 criteria shall be prepared by an appropriately licensed design
24 professional who may be an employee of the agency, or the
25 agency may contract with an independent design professional
26 selected in accordance with the Architectural, Engineering and
27 Land Surveying Qualification Based Selection Act to provide
28 these services. The design professional that prepares the scope
29 and performance criteria is prohibited from participating in
30 any design-build entity proposal for the project.

31 Section 10-25. Solicitation of design-build proposals.
32 Design-build contracts shall be procured by a request for
33 proposals process conforming to this Article. A request for
34 proposals shall be prepared for each project containing the

1 following minimum information:

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

4 (2) The desired schedule for the completion of the
5 project or the manner in which proposed schedules be
6 accepted.

7 (3) The qualification criteria for design-build
8 entities desiring to submit proposals.

9 (4) The terms and conditions of the contract that will
10 govern performance.

11 (5) The scope and performance criteria governing the
12 contract.

13 (6) The evaluation criteria used to score the technical
14 component of proposals.

15 (7) The requirements for identification of the
16 design-build team members.

17 (8) The date, time, and place that proposals are due
18 that in no case shall be less than 30 calendar days after
19 the date of the issuance of the request for proposals.

20 (9) The date, time, and place that the cost component
21 of accepted proposals will be publicly opened and read.

22 Section 10-30. Publication of requests for proposals. All
23 requests for design-build proposals shall be published in the
24 volume of the Illinois Procurement Bulletin used by the State
25 highway construction agency for its regular construction
26 contract lettings pursuant to the Illinois Procurement Code.

27 Section 10-35. Submission of proposals. Proposals shall be
28 accepted from design-build entities meeting the qualification
29 criteria of the request for proposals. Proposals shall consist
30 of a technical component and a cost component. The cost
31 component shall be contained in a separate sealed envelope
32 within the overall proposal submission. Proposals shall
33 include a bid bond in the form and security as designated in
34 the request for proposals. Proposals must be properly

1 identified and sealed. Proposals shall conform in all material
2 respects to the request for proposal or they may be rejected as
3 non-responsive. The State transportation construction agency
4 shall have the right to reject any and all proposals and to
5 waive technicalities. Any drawings and specifications
6 contained in proposals not selected shall remain the property
7 of the design-build entity. Proposals may be withdrawn prior to
8 evaluation for any reason.

9 Section 10-40. Selection committee. The State highway
10 construction agency shall establish a selection committee to
11 evaluate the technical components of the proposals. The
12 selection committee shall consist of 5 members, 3 of whom shall
13 be professionally licensed officers or employees of the agency
14 and 2 of whom shall be public members. The public members may
15 not be employed or associated with any firm holding a contract
16 with the State highway construction agency and shall be
17 nominated one each by the American Council of Engineering
18 Companies of Illinois and, in the following order on a rotating
19 basis, the Associated General Contractors of Illinois, the
20 Illinois Road and Transportation Builders Association, the
21 Illinois Asphalt Pavement Association, and the Illinois
22 chapter of the American Concrete Pavement Association. The
23 selection committee and individual members may be designated
24 for a set term or for a particular project as determined by the
25 agency. Each member of the selection committee shall certify
26 for each request for proposal that no conflict of interest
27 exists between the individual and each of the design-build
28 entities submitting proposals. If a conflict exists, the member
29 must be replaced before any review of proposals. The chief
30 contracting official responsible for the conduct of lettings in
31 accordance with the regular procedures of the State highway
32 construction agency shall serve as recording secretary to the
33 Selection Committee, and shall organize and schedule the
34 meetings of the committee.

1 Section 10-45. Procedures for selection and award. All
2 design-build entities submitting accepted proposals shall be
3 publicly disclosed after the deadline for submission.
4 Proposals shall not be opened, reviewed, or evaluated until
5 after the deadline for submission has passed. All proposals
6 received by the date and time due shall be opened and recorded.
7 The cost components shall remain sealed and securely retained
8 by the chief contracting official in accordance with the
9 regular procedures of the agency. The chief contracting
10 official shall transmit to the selection committee all
11 technical components for evaluation. The selection committee
12 shall evaluate and score the technical components in accordance
13 with the evaluation criteria set forth in the request. The
14 selection committee may require clarification of any element
15 contained in the technical component in order to determine
16 whether the proposal conforms to the request. The time for
17 evaluation shall be no less than 24 hours unless a longer
18 period is specified in the request. Scoring shall be based on
19 factors set forth in the evaluation criteria. The scoring shall
20 be from one through 100 points. Any technical component scoring
21 less than 77 points shall be marked unacceptable. After
22 evaluation, the chief contracting official shall reseal and
23 retain all technical components. The cost component of each
24 proposal containing an accepted technical component shall be
25 opened and publicly read at the date, time, and place specified
26 in the request. The right shall be reserved to reject any and
27 all proposals, to waive technicalities, and to solicit new
28 proposals. A design-build contract shall be awarded to the best
29 value proposal, provided the cost component is responsive to
30 the request, determined by calculation of the lowest adjusted
31 cost as follows:

32 (1) The cost component for a technical component scored
33 97-100 shall be divided by one.

34 (2) The cost component for a technical component scored
35 93-96 shall be divided by .99.

36 (3) The cost component for a technical component scored

1 89-92 shall be divided by .98.

2 (4) The cost component for a technical component scored
3 85-88 shall be divided by .97.

4 (5) The cost component for a technical component scored
5 81-84 shall be divided by .96.

6 (6) The cost component for a technical component scored
7 77-80 shall be divided by .95.

8 Section 10-50. Confidentiality. The status of a proposal as
9 accepted or not accepted and proposal scores shall not be
10 disclosed for any reason before the cost element is publicly
11 opened and read. After award, all proposals except the awarded
12 proposal shall be returned.

13 Section 10-55. Conditions. Projects selected for
14 procurement under the terms of this Article shall be subject to
15 the following conditions:

16 (1) Illinois Department of Transportation projects
17 shall be selected that have been designed through at least
18 the completion of Phase I preliminary engineering as
19 defined by the design policies and procedures of the
20 Department, provided that all necessary approvals have
21 been obtained from the Department and, as applicable, the
22 Federal Highway Administration, for an engineering study
23 and report that establish the location and scope of the
24 project, for the type, size, and location drawings for
25 bridge projects, and for environmental documentation that
26 analyzes the environmental impacts of the project
27 alternatives considered.

28 (2) All necessary rights-of-way, permanent and
29 temporary, shall be acquired prior to the commencement of
30 construction by the design-build entity. Nothing herein
31 shall prohibit the design-build entity from securing any
32 additional temporary interests or rights of access deemed
33 necessary to accomplish the project.

34 (3) The State highway construction agency shall secure

1 all necessary permits identified in the Phase I engineering
2 report.

3 (4) The State highway construction agency shall secure
4 any necessary relocation of utilities located on existing
5 or acquired right-of-way unless the request for proposals
6 provides that existing utilities will be planned for and
7 adjusted during construction. Notwithstanding any
8 provision contained in Section 9-113 of the Illinois
9 Highway Code respecting the provision of final engineering
10 plans prior to notice given to permitted utilities to
11 relocate, a permitted utility shall proceed to relocate and
12 adjust permitted facilities upon notice given pursuant to
13 Section 9-113 except that preliminary plans showing
14 acceptable final locations or adjusted positions of those
15 said utilities shall satisfy the notice requirements in
16 lieu of final plans; provided, however, that any utility
17 required to make subsequent adjustments on account of final
18 plans for the same project shall be compensated for the
19 cost of subsequent adjustments.

20 Section 10-60. Procurement and contract mandates.
21 Design-build contracts procured under this Article shall be
22 subject to all applicable federal and State laws governing the
23 performance of public contracts and all applicable ethical and
24 conflict of interest disclosures and contracting prohibitions
25 mandated by law.

26 Section 10-65. Design professional seal. Nothing in this
27 Article shall be deemed to eliminate, reduce, or affect the
28 requirements of the Structural Engineering Practice Act of
29 1989, the Professional Engineering Practice Act of 1989, the
30 Illinois Professional Land Surveyor Act of 1989, and the
31 Illinois Architecture Practice Act of 1989, including but not
32 limited to the preparation and sealing of plans and documents.

33 Section 10-70. Performance evaluation. The performance of

1 the design-build entity shall be evaluated on completion of a
2 contract. The evaluation shall be made available to the
3 design-build entity, which may submit a written response, and
4 the evaluation and response shall be retained by the agency.
5 The evaluation and response shall not be made available to any
6 other person or firm and are exempt from disclosure under the
7 Freedom of Information Act.

8 Section 10-75. Rules and regulations. The State highway
9 construction agencies shall not be required to adopt rules and
10 regulations pursuant to the Illinois Administrative Procedures
11 Act in order to implement this Act. All policies and procedures
12 adopted to implement this Act shall be identified and published
13 on the web site maintained by the Department of Transportation.

14 Section 10-80. Report. The State highway construction
15 agencies shall, jointly or severally, submit an evaluation
16 report as required by Section 10-10 of this Act. The agencies
17 shall solicit, accept, and respond to comments provided by the
18 industry groups or associations providing appointed public
19 members to the selection committee and shall incorporate the
20 comments and responses into the report. The report shall be due
21 and filed with the Procurement Policy Board and the leadership
22 of the General Assembly no later than December 31, 2007.

23 ARTICLE 95

24 SEVERABILITY

25 Section 95-5. Severability. The provisions of this Act are
26 severable under Section 1.31 of the Statute on Statutes.

27 ARTICLE 99

28 EFFECTIVE DATE

29 Section 99-5. Effective date. This Act takes effect upon
30 becoming law.