



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB3490

Introduced 2/28/2007, by Rep. Harry Osterman

SYNOPSIS AS INTRODUCED:

50 ILCS 20/3	from Ch. 85, par. 1033
50 ILCS 20/20	from Ch. 85, par. 1050
50 ILCS 20/20.3 new	
50 ILCS 20/20.4 new	
50 ILCS 20/20.5 new	
50 ILCS 20/20.10 new	
50 ILCS 20/20.15 new	
50 ILCS 20/20.20 new	

Amends the Public Building Commission Act. Authorizes a Commission to solicit and award design-build construction contracts.

LRB095 04549 JAM 24602 b

1 AN ACT concerning local government.

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

4 Section 5. The Public Building Commission Act is amended by
5 changing Sections 3 and 20 and by adding Sections 20.3, 20.4,
6 20.5, 20.10, 20.15, and 20.20 as follows:

7 (50 ILCS 20/3) (from Ch. 85, par. 1033)

8 Sec. 3. The following terms, wherever used, or referred to
9 in this Act, mean unless the context clearly requires a
10 different meaning:

11 (a) "Commission" means a Public Building Commission
12 created pursuant to this Act.

13 (b) "Commissioner" or "Commissioners" means a Commissioner
14 or Commissioners of a Public Building Commission.

15 (c) "County seat" means a city, village or town which is
16 the county seat of a county.

17 (d) "Municipality" means any city, village or incorporated
18 town of the State of Illinois.

19 (e) "Municipal corporation" includes a county, city,
20 village, town, (including a county seat), park district, school
21 district in a county of 3,000,000 or more population, board of
22 education of a school district in a county of 3,000,000 or more
23 population, sanitary district, airport authority contiguous

1 with the County Seat as of July 1, 1969 and any other municipal
2 body or governmental agency of the State, and until July 1,
3 2011, a school district that (i) was organized prior to 1860,
4 (ii) is located in part in a city originally incorporated prior
5 to 1840, and (iii) entered into a lease with a Commission prior
6 to 1993, and its board of education, but does not include a
7 school district in a county of less than 3,000,000 population,
8 a board of education of a school district in a county of less
9 than 3,000,000 population, or a community college district in a
10 county of less than 3,000,000 population, except that until
11 July 1, 2011, a school district that (i) was organized prior to
12 1860, (ii) is located in part in a city originally incorporated
13 prior to 1840, and (iii) entered into a lease with a Commission
14 prior to 1993, and its board of education, are included.

15 (f) "Governing body" includes a city council, county board,
16 or any other body or board, by whatever name it may be known,
17 charged with the governing of a municipal corporation.

18 (g) "Presiding officer" includes the mayor or president of
19 a city, village or town, the presiding officer of a county
20 board, or the presiding officer of any other board or
21 commission, as the case may be.

22 (h) "Oath" means oath or affirmation.

23 (i) "Building" means an improvement to real estate to be
24 made available for use by a municipal corporation for the
25 furnishing of governmental services to its citizens, together
26 with any land or interest in land necessary or useful in

1 connection with the improvement.

2 (j) "Delivery system" means the design and construction
3 approach used to develop and construct a project.

4 (k) "Design-bid-build" means the traditional delivery
5 system used on public projects that incorporates the Local
6 Government Professional Services Selection Act (50 ILCS 510/)
7 and the principles of competitive selection.

8 (l) "Design-build" means a delivery system that provides
9 responsibility within a single contract for the furnishing of
10 architecture, engineering, land surveying and related services
11 as required, and the labor, materials, equipment, and other
12 construction services for the project.

13 (m) "Design-build contract" means a contract for a public
14 project under this Act between the Commission and a
15 design-build entity to furnish architecture, engineering, land
16 surveying, and related services as required, and to furnish the
17 labor, materials, equipment, and other construction services
18 for the project. The design-build contract may be conditioned
19 upon subsequent refinements in scope and price and may allow
20 the Commission to make modifications in the project scope
21 without invalidating the design-build contract.

22 (n) "Design-build entity" means any individual, sole
23 proprietorship, firm, partnership, joint venture, corporation,
24 professional corporation, or other entity that proposes to
25 design and construct any public project under this Act. A
26 design-build entity and associated design-build professionals

1 shall conduct themselves in accordance with the laws of this
2 State and the related provisions of the Illinois Administrative
3 Code, as referenced by the licensed design professionals Acts
4 of this State.

5 (o) "Design professional" means any individual, sole
6 proprietorship, firm, partnership, joint venture, corporation,
7 professional corporation, or other entity that offers services
8 under the Illinois Architecture Practice Act of 1989 (225 ILCS
9 305/), the Professional Engineering Practice Act of 1989 (225
10 ILCS 325/), the Structural Engineering Licensing Act of 1989
11 (225 ILCS 340/), or the Illinois Professional Land Surveyor Act
12 of 1989 (225 ILCS 330/).

13 (p) "Evaluation criteria" means the requirements for the
14 separate phases of the selection process for design-build
15 proposals as defined in this Act and may include the
16 specialized experience, technical qualifications and
17 competence, capacity to perform, past performance, experience
18 with similar projects, assignment of personnel to the project,
19 and other appropriate factors. Price may not be used as a
20 factor in the evaluation of Phase I proposals.

21 (q) "Proposal" means the offer to enter into a design-build
22 contract as submitted by a design-build entity in accordance
23 with this Act.

24 (r) "Request for proposal" means the document used by the
25 Commission to solicit proposals for a design-build contract.

26 (s) "Scope and performance criteria" means the

1 requirements for the public project, including but not limited
2 to, the intended usage, capacity, size, scope, quality and
3 performance standards, life-cycle costs, and other
4 programmatic criteria that are expressed in
5 performance-oriented and quantifiable specifications and
6 drawings that can be reasonably inferred and are suited to
7 allow a design-build entity to develop a proposal.

8 (t) "Guaranteed maximum price" means a form of contract in
9 which compensation may vary according to the scope of work
10 involved but in any case may not exceed an agreed total amount.

11 (Source: P.A. 94-1071, eff. 1-1-07.)

12 (50 ILCS 20/20) (from Ch. 85, par. 1050)

13 Sec. 20. Contracts let to lowest responsible bidder;
14 competitive bidding; advertisement for bids; design-build
15 contracts.

16 (a) All contracts to be let for the construction,
17 alteration, improvement, repair, enlargement, demolition or
18 removal of any buildings or other facilities, or for materials
19 or supplies to be furnished, where the amount thereof is in
20 excess of \$5,000, shall be awarded as a design-build contract
21 in accordance with Sections 20.3 through 20.20 or shall be let
22 to the lowest responsible bidder, or bidders on open
23 competitive bidding. 7

24 (b) A contract awarded on the basis of competitive bidding
25 shall be awarded after public advertisement published at least

1 once in each week for three consecutive weeks prior to the
2 opening of bids, in a daily newspaper of general circulation in
3 the county where the commission is located. Nothing contained
4 in this Section shall be construed to prohibit the Board of
5 Commissioners from placing additional advertisements in
6 recognized trade journals. Advertisements for bids shall
7 describe the character of the proposed contract in sufficient
8 detail to enable the bidders thereon to know what their
9 obligation will be, either in the advertisement itself, or by
10 reference to detailed plans and specifications on file in the
11 office of the Public Building Commission at the time of the
12 publication of the first announcement. Such advertisement
13 shall also state the date, time, and place assigned for the
14 opening of bids. No ~~and no~~ bids shall be received at any time
15 subsequent to the time indicated in said advertisement.

16 (c) In addition to the requirements of Section 20.3, the
17 Commission shall advertise a design-build solicitation at
18 least once in a daily newspaper of general circulation in the
19 county where the Commission is located. The date that Phase I
20 submissions by design-build entities are due must be at least
21 14 calendar days after the date the newspaper advertisement for
22 design-build proposals is first published. The advertisement
23 shall identify the design-build project, the due date, the
24 place and time for Phase I submissions, and the place where
25 proposers can obtain a complete copy of the request for
26 design-build proposals, including the criteria for evaluation

1 and the scope and performance criteria. The Commission is not
2 precluded from using other media or from placing advertisements
3 in addition to the one required under this subsection.

4 (d) The Board of Commissioners may reject any and all bids
5 and proposals received and may readvertise for bids or issue a
6 new request for design-build proposals.

7 (e) All bids shall be open to public inspection in the
8 office of the Public Building Commission for a period of at
9 least forty-eight (48) hours before award is made. The
10 successful bidder for such work shall enter into contracts
11 furnished and prescribed by the Board of Commissioners and in
12 addition to any other bonds required under this Act the
13 successful bidder shall execute and give bond, payable to and
14 to be approved by the Commission, with a corporate surety
15 authorized to do business under the laws of the State of
16 Illinois, in an amount to be determined by the Board of
17 Commissioners, conditioned upon the payment of all labor
18 furnished and materials supplied in the prosecution of the
19 contracted work. If the bidder whose bid has been accepted
20 shall neglect or refuse to accept the contract within five (5)
21 days after written notice that the same has been awarded to
22 him, or if he accepts but does not execute the contract and
23 give the proper security, the Commission may accept the next
24 lowest bidder, or readvertise and relet in manner above
25 provided.

26 (f) In case any work shall be abandoned by any contractor

1 or design-build entity, the Commission may, if the best
2 interests of the Commission be thereby served, adopt on behalf
3 of the Commission all subcontracts made by such contractor or
4 design-build entity for such work and all such sub-contractors
5 shall be bound by such adoption if made; and the Commission
6 shall, in the manner provided in this Act herein, readvertise
7 and relet, or request proposals and award design-build
8 contracts for, the work specified in the original contract
9 exclusive of so much thereof as shall be accepted. Every
10 contract when made and entered into, as ~~herein~~ provided in this
11 Section or Section 20.20 for, shall be executed in duplicate,
12 one copy of which shall be held by the Commission, and filed in
13 its records, and one copy of which shall be given to the
14 contractor or design-build entity.

15 (Source: P.A. 84-249.)

16 (50 ILCS 20/20.3 new)

17 Sec. 20.3. Solicitation of design-build proposals.

18 (a) When the Commission elects to use the design-build
19 delivery method, it must issue a notice of intent to receive
20 proposals for the project at least 14 days before issuing the
21 request for the proposal. The Commission must publish the
22 advance notice in a daily newspaper of general circulation in
23 the county where the Commission is located. The Commission is
24 encouraged to use publication of the notice in related
25 construction industry service publications. A brief

1 description of the proposed procurement must be included in the
2 notice. The Commission must provide a copy of the request for
3 proposal to any party requesting a copy.

4 (b) The request for proposal shall be prepared for each
5 project and must contain, without limitation, the following
6 information:

7 (1) The name of the Commission.

8 (2) A preliminary schedule for the completion of the
9 contract.

10 (3) The proposed budget for the project, the source of
11 funds, and the currently available funds at the time the
12 request for proposal is submitted.

13 (4) Prequalification criteria for design-build
14 entities wishing to submit proposals. The Commission shall
15 include, at a minimum, its normal prequalification,
16 licensing, registration, and other requirements, but
17 nothing contained herein precludes the use of additional
18 prequalification criteria by the Commission.

19 (5) Material requirements of the contract, including
20 but not limited to, the proposed terms and conditions,
21 required performance and payment bonds, insurance, and the
22 entity's plan to comply with the utilization goals
23 established by the corporate authorities of the Commission
24 for minority and women business enterprises and to comply
25 with Section 2-105 of the Illinois Human Rights Act.

26 (6) The performance criteria.

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

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

5 (c) The Commission may include any other relevant
6 information that it chooses to supply. The design-build entity
7 shall be entitled to rely upon the accuracy of this
8 documentation in the development of its proposal.

9 (d) The date that proposals are due must be at least 21
10 calendar days after the date of the issuance of the request for
11 proposal. In the event the cost of the project is estimated to
12 exceed \$12,000,000, then the proposal due date must be at least
13 28 calendar days after the date of the issuance of the request
14 for proposal. The Commission shall include in the request for
15 proposal a minimum of 30 days to develop the Phase II
16 submissions after the selection of entities from the Phase I
17 evaluation is completed.

18 (50 ILCS 20/20.4 new)

19 Sec. 20.4. Development of design-build scope and
20 performance criteria.

21 (a) The Commission shall develop, with the assistance of a
22 licensed design professional, a request for proposal, which
23 shall include scope and performance criteria. The scope and
24 performance criteria must be in sufficient detail and contain
25 adequate information to reasonably apprise the qualified

1 design-build entities of the Commission's overall programmatic
2 needs and goals, including criteria and preliminary design
3 plans, general budget parameters, schedule, and delivery
4 requirements.

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

11 (c) The scope and performance criteria shall be prepared by
12 a design professional who is an employee of the Commission, or
13 the Commission may contract with an independent design
14 professional selected under the Local Government Professional
15 Services Selection Act (50 ILCS 510/) to provide these
16 services.

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

20 (50 ILCS 20/20.5 new)

21 Sec. 20.5. Procedures for design-build selection.

22 (a) The Commission must use a two-phase procedure for the
23 selection of the successful design-build entity. Phase I of the
24 procedure will evaluate and shortlist the design-build
25 entities based on qualifications, and Phase II will evaluate

1 the technical and cost proposals.

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

11 The Commission shall include the following criteria in
12 every Phase I evaluation of design-build entities: (1)
13 experience of personnel; (2) successful experience with
14 similar project types; (3) financial capability; (4)
15 timeliness of past performance; (5) experience with similarly
16 sized projects; (6) successful reference checks of the firm;
17 (7) commitment to assign personnel for the duration of the
18 project and qualifications of the entity's consultants; and (8)
19 ability or past performance in meeting or exhausting good faith
20 efforts to meet the utilization goals for minority and women
21 business enterprises established by the corporate authorities
22 of the Commission and in complying with Section 2-105 of the
23 Illinois Human Rights Act. The Commission may include any
24 additional relevant criteria in Phase I that it deems necessary
25 for a proper qualification review. The Commission may include
26 any additional relevant criteria in Phase I that it deems

1 necessary for a proper qualification review.

2 The Commission may not consider any design-build entity for
3 evaluation or award if the entity has any pecuniary interest in
4 the project or has other relationships or circumstances,
5 including but not limited to, long-term leasehold, mutual
6 performance, or development contracts with the Commission,
7 that may give the design-build entity a financial or tangible
8 advantage over other design-build entities in the preparation,
9 evaluation, or performance of the design-build contract or that
10 create the appearance of impropriety. No design-build proposal
11 shall be considered that does not include an entity's plan to
12 comply with the requirements established in the minority and
13 women business enterprises and economically disadvantaged
14 firms established by the corporate authorities of the
15 Commission and with Section 2-105 of the Illinois Human Rights
16 Act.

17 Upon completion of the qualifications evaluation, the
18 Commission shall create a shortlist of the most highly
19 qualified design-build entities. The Commission, in its
20 discretion, is not required to shortlist the maximum number of
21 entities as identified for Phase II evaluation, provided
22 however, no less than 2 design-build entities nor more than 6
23 are selected to submit Phase II proposals.

24 The Commission shall notify the entities selected for the
25 shortlist in writing. This notification shall commence the
26 period for the preparation of the Phase II technical and cost

1 evaluations. The Commission must allow sufficient time for the
2 shortlist entities to prepare their Phase II submittals
3 considering the scope and detail requested by the Commission.

4 (c) The Commission shall include in the request for
5 proposal the evaluating factors to be used in the technical and
6 cost submission components of Phase II. Each request for
7 proposal shall establish, for both the technical and cost
8 submission components of Phase II, the relative importance
9 assigned to each evaluation factor and subfactor, including any
10 weighting of criteria to be employed by the Commission. The
11 Commission must maintain a record of the evaluation scoring to
12 be disclosed in event of a protest regarding the solicitation.

13 The Commission shall include the following criteria in
14 every Phase II technical evaluation of design-build entities:
15 (1) compliance with objectives of the project; (2) compliance
16 of proposed services to the request for proposal requirements;
17 (3) quality of products or materials proposed; (4) quality of
18 design parameters; (5) design concepts; (6) innovation in
19 meeting the scope and performance criteria; and (7)
20 constructability of the proposed project. The Commission may
21 include any additional relevant technical evaluation factors
22 it deems necessary for proper selection.

23 The Commission shall include the following criteria in
24 every Phase II cost evaluation: the guaranteed maximum project
25 cost and the time of completion. The Commission may include any
26 additional relevant technical evaluation factors it deems

1 necessary for proper selection. The guaranteed maximum project
2 cost criteria weighing factor shall not exceed 30%.

3 The Commission shall directly employ or retain a licensed
4 design professional to evaluate the technical and cost
5 submissions to determine if the technical submissions are in
6 accordance with generally accepted industry standards.

7 Upon completion of the technical submissions and cost
8 submissions evaluation, the Commission may award the
9 design-build contract to the highest overall ranked entity.

10 (50 ILCS 20/20.10 new)

11 Sec. 20.10. Small design-build projects. In any case where
12 the total overall cost of the project is estimated to be less
13 than \$12,000,000, the Commission may combine the two-phase
14 procedure for design-build selection described in Section 20.5
15 into one combined step, provided that all the requirements of
16 evaluation are performed in accordance with Section 20.5.

17 (50 ILCS 20/20.15 new)

18 Sec. 20.15. Submission of design-build proposals.
19 Design-build proposals must be properly identified and sealed.
20 Proposals may not be reviewed until after the deadline for
21 submission has passed as set forth in the request for
22 proposals. All design-build entities submitting proposals
23 shall be disclosed after the deadline for submission, and all
24 design-build entities who are selected for Phase II evaluation

1 shall also be disclosed at the time of that determination.

2 Phase II design-build proposals shall include a bid bond in
3 the form and security as designated in the request for
4 proposals. Proposals shall also contain a separate sealed
5 envelope with the cost information within the overall proposal
6 submission. Proposals shall include a list of all design
7 professionals and other entities to which any work may be
8 subcontracted during the performance of the contract.

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

13 The drawings and specifications of any unsuccessful
14 design-build proposal shall remain the property of the
15 design-build entity.

16 The Commission shall review the proposals for compliance
17 with the performance criteria and evaluation factors.

18 Proposals may be withdrawn prior to the due date and time
19 for submissions for any cause. After evaluation begins by the
20 Commission, clear and convincing evidence of error is required
21 for withdrawal.

22 (50 ILCS 20/20.20 new)

23 Sec. 20.20. Design-build award. The Commission may award a
24 design-build contract to the highest overall ranked entity.
25 Notice of award shall be made in writing. Unsuccessful entities

1 shall also be notified in writing. The Commission may not
2 request a best and final offer after the receipt of proposals.
3 The Commission may negotiate with the selected design-build
4 entity after award but prior to contract execution for the
5 purpose of securing better terms than originally proposed,
6 provided that the salient features of the request for proposal
7 are not diminished.