



Sen. Don Harmon

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1 AMENDMENT TO HOUSE BILL 3490

2 AMENDMENT NO. _____. Amend House Bill 3490 by replacing
3 everything after the enacting clause with the following:

4 "Section 5. The Public Building Commission Act is amended
5 by changing Sections 3 and 20 and by adding Sections 2.5, 20.3,
6 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25 as follows:

7 (50 ILCS 20/2.5 new)

8 Sec. 2.5. Legislative policy; conditions for use of
9 design-build. It is the intent of the General Assembly that a
10 commission be allowed to use the design-build delivery method
11 for public projects if it is shown to be in the commission's
12 best interest for that particular project.

13 It shall be the policy of the commission in the procurement
14 of design-build services to publicly announce all requirements
15 for design-build services and to procure these services on the
16 basis of demonstrated competence and qualifications and with

1 due regard for the principles of competitive selection.

2 The commission shall, prior to issuing requests for
3 proposals, promulgate and publish procedures for the
4 solicitation and award of contracts pursuant to this Act.

5 The commission shall, for each public project or projects
6 permitted under this Act, make a written determination,
7 including a description as to the particular advantages of the
8 design-build procurement method, that it is in the best
9 interests of the commission to enter into a design-build
10 contract for the project or projects.

11 In making that determination, the following factors shall
12 be considered:

13 (1) The probability that the design-build procurement
14 method will be in the best interests of the commission by
15 providing a material savings of time or cost over the
16 design-bid-build or other delivery system.

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

19 (3) The ability of the design-build entity to define
20 and provide comprehensive scope and performance criteria
21 for the project.

22 No commission may use a design-build procurement method
23 unless the commission determines in writing that the project
24 will comply with the disadvantaged business and equal
25 employment practices of the State as established in the
26 Business Enterprise for Minorities, Females, and Persons with

1 Disabilities Act and Section 2-105 of the Illinois Human Rights
2 Act.

3 This Section is repealed 5 years after the effective date
4 of this amendatory Act of the 95th General Assembly.

5 (50 ILCS 20/3) (from Ch. 85, par. 1033)

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

9 (a) "Commission" means a Public Building Commission
10 created pursuant to this Act.

11 (b) "Commissioner" or "Commissioners" means a Commissioner
12 or Commissioners of a Public Building Commission.

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

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

17 (e) "Municipal corporation" includes a county, city,
18 village, town, (including a county seat), park district, school
19 district in a county of 3,000,000 or more population, board of
20 education of a school district in a county of 3,000,000 or more
21 population, sanitary district, airport authority contiguous
22 with the County Seat as of July 1, 1969 and any other municipal
23 body or governmental agency of the State, and until July 1,
24 2011, a school district that (i) was organized prior to 1860,
25 (ii) is located in part in a city originally incorporated prior

1 to 1840, and (iii) entered into a lease with a Commission prior
2 to 1993, and its board of education, but does not include a
3 school district in a county of less than 3,000,000 population,
4 a board of education of a school district in a county of less
5 than 3,000,000 population, or a community college district in a
6 county of less than 3,000,000 population, except that until
7 July 1, 2011, a school district that (i) was organized prior to
8 1860, (ii) is located in part in a city originally incorporated
9 prior to 1840, and (iii) entered into a lease with a Commission
10 prior to 1993, and its board of education, are included.

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

14 (g) "Presiding officer" includes the mayor or president of
15 a city, village or town, the presiding officer of a county
16 board, or the presiding officer of any other board or
17 commission, as the case may be.

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

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

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

26 (k) "Design-bid-build" means the traditional delivery

1 system used on public projects that incorporates the Local
2 Government Professional Services Selection Act (50 ILCS 510/)
3 and the principles of competitive selection.

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

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

18 (n) "Design-build entity" means any individual, sole
19 proprietorship, firm, partnership, joint venture, corporation,
20 professional corporation, or other entity that proposes to
21 design and construct any public project under this Act. A
22 design-build entity and associated design-build professionals
23 shall conduct themselves in accordance with the laws of this
24 State and the related provisions of the Illinois Administrative
25 Code, as referenced by the licensed design professionals Acts
26 of this State.

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

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

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

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

22 (s) "Scope and performance criteria" means the
23 requirements for the public project, including but not limited
24 to, the intended usage, capacity, size, scope, quality and
25 performance standards, life-cycle costs, and other
26 programmatic criteria that are expressed in

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

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

7 Definitions in this Section with respect to design-build
8 shall have no effect beginning 5 years after the effective date
9 of this amendatory Act of the 95th General Assembly.

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

11 (50 ILCS 20/20) (from Ch. 85, par. 1050)

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

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

23 (b) A contract awarded on the basis of competitive bidding
24 shall be awarded after public advertisement published at least
25 once in each week for three consecutive weeks prior to the

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

15 (c) In addition to the requirements of Section 20.3, the
16 Commission shall advertise a design-build solicitation at
17 least once in a daily newspaper of general circulation in the
18 county where the Commission is located. The date that Phase I
19 submissions by design-build entities are due must be at least
20 14 calendar days after the date the newspaper advertisement for
21 design-build proposals is first published. The advertisement
22 shall identify the design-build project, the due date, the
23 place and time for Phase I submissions, and the place where
24 proposers can obtain a complete copy of the request for
25 design-build proposals, including the criteria for evaluation
26 and the scope and performance criteria. The Commission is not

1 precluded from using other media or from placing advertisements
2 in addition to the one required under this subsection.

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

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

25 (f) In case any work shall be abandoned by any contractor
26 or design-build entity, the Commission may, if the best

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

14 (g) The provisions of this Section with respect to
15 design-build shall have no effect beginning 5 years after the
16 effective date of this amendatory Act of the 95th General
17 Assembly.

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

19 (50 ILCS 20/20.3 new)

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

21 (a) When the Commission elects to use the design-build
22 delivery method, it must issue a notice of intent to receive
23 proposals for the project at least 14 days before issuing the
24 request for the proposal. The Commission must publish the
25 advance notice in a daily newspaper of general circulation in

1 the county where the Commission is located. The Commission is
2 encouraged to use publication of the notice in related
3 construction industry service publications. A brief
4 description of the proposed procurement must be included in the
5 notice. The Commission must provide a copy of the request for
6 proposal to any party requesting a copy.

7 (b) The request for proposal shall be prepared for each
8 project and must contain, without limitation, the following
9 information:

10 (1) The name of the Commission.

11 (2) A preliminary schedule for the completion of the
12 contract.

13 (3) The proposed budget for the project, the source of
14 funds, and the currently available funds at the time the
15 request for proposal is submitted.

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

22 (5) Material requirements of the contract, including
23 but not limited to, the proposed terms and conditions,
24 required performance and payment bonds, insurance, and the
25 entity's plan to comply with the utilization goals
26 established by the corporate authorities of the Commission

1 for minority and women business enterprises and to comply
2 with Section 2-105 of the Illinois Human Rights Act.

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 Commission may include any other relevant
9 information that it chooses to supply. The design-build entity
10 shall be entitled to rely upon the accuracy of this
11 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 \$12,000,000, 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 Commission shall include in the request for
18 proposal a minimum of 30 days to develop the Phase II
19 submissions after the selection of entities from the Phase I
20 evaluation is completed.

21 (e) This Section is repealed 5 years after the effective
22 date of this amendatory Act of the 95th General Assembly.

23 (50 ILCS 20/20.4 new)

24 Sec. 20.4. Development of design-build scope and
25 performance criteria.

1 (a) The Commission shall develop, with the assistance of a
2 licensed design professional, a request for proposal, which
3 shall include scope and performance criteria. The scope and
4 performance criteria must be in sufficient detail and contain
5 adequate information to reasonably apprise the qualified
6 design-build entities of the Commission's overall programmatic
7 needs and goals, including criteria and preliminary design
8 plans, general budget parameters, schedule, and delivery
9 requirements.

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

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

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

25 (e) This Section is repealed 5 years after the effective
26 date of this amendatory Act of the 95th General Assembly.

1 (50 ILCS 20/20.5 new)

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

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

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

17 The Commission shall include the following criteria in
18 every Phase I evaluation of design-build entities: (1)
19 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 (7) commitment to assign personnel for the duration of the
24 project and qualifications of the entity's consultants; and (8)
25 ability or past performance in meeting or exhausting good faith

1 efforts to meet the utilization goals for minority and women
2 business enterprises established by the corporate authorities
3 of the Commission and in complying with Section 2-105 of the
4 Illinois Human Rights Act. The Commission may include any
5 additional relevant criteria in Phase I that it deems necessary
6 for a proper qualification review. The Commission may include
7 any additional relevant criteria in Phase I that it deems
8 necessary for a proper qualification review.

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

24 Upon completion of the qualifications evaluation, the
25 Commission shall create a shortlist of the most highly
26 qualified design-build entities. The Commission, in its

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

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

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

20 The Commission shall include the following criteria in
21 every Phase II technical evaluation of design-build entities:
22 (1) compliance with objectives of the project; (2) compliance
23 of proposed services to the request for proposal requirements;
24 (3) quality of products or materials proposed; (4) quality of
25 design parameters; (5) design concepts; (6) innovation in
26 meeting the scope and performance criteria; and (7)

1 constructability of the proposed project. The Commission may
2 include any additional relevant technical evaluation factors
3 it deems necessary for proper selection.

4 The Commission shall include the following criteria in
5 every Phase II cost evaluation: the guaranteed maximum project
6 cost and the time of completion. The Commission may include any
7 additional relevant technical evaluation factors it deems
8 necessary for proper selection. The guaranteed maximum project
9 cost criteria weighing factor shall not exceed 30%.

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

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

17 (d) This Section is repealed 5 years after the effective
18 date of this amendatory Act of the 95th General Assembly.

19 (50 ILCS 20/20.10 new)

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

1 This Section is repealed 5 years after the effective date
2 of this amendatory Act of the 95th General Assembly.

3 (50 ILCS 20/20.15 new)

4 Sec. 20.15. Submission of design-build proposals.
5 Design-build proposals must be properly identified and sealed.
6 Proposals may not be reviewed until after the deadline for
7 submission has passed as set forth in the request for
8 proposals. All design-build entities submitting proposals
9 shall be disclosed after the deadline for submission, and all
10 design-build entities who are selected for Phase II evaluation
11 shall also be disclosed at the time of that determination.

12 Phase II design-build proposals shall include a bid bond in
13 the form and security as designated in the request for
14 proposals. Proposals shall also contain a separate sealed
15 envelope with the cost information within the overall proposal
16 submission. Proposals shall include a list of all design
17 professionals and other entities to which any work identified
18 in Section 30-30 of the Illinois Procurement Code as a
19 subdivision of construction work may be subcontracted during
20 the performance of the contract.

21 Proposals must meet all material requirements of the
22 request for proposal or they may be rejected as non-responsive.
23 The Commission shall have the right to reject any and all
24 proposals.

25 The drawings and specifications of any unsuccessful

1 design-build proposal shall remain the property of the
2 design-build entity.

3 The Commission shall review the proposals for compliance
4 with the performance criteria and evaluation factors.

5 Proposals may be withdrawn prior to the due date and time
6 for submissions for any cause. After evaluation begins by the
7 Commission, clear and convincing evidence of error is required
8 for withdrawal.

9 This Section is repealed 5 years after the effective date
10 of this amendatory Act of the 95th General Assembly.

11 (50 ILCS 20/20.20 new)

12 Sec. 20.20. Design-build award. The Commission may award a
13 design-build contract to the highest overall ranked entity.
14 Notice of award shall be made in writing. Unsuccessful entities
15 shall also be notified in writing. The Commission may not
16 request a best and final offer after the receipt of proposals.
17 The Commission may negotiate with the selected design-build
18 entity after award but prior to contract execution for the
19 purpose of securing better terms than originally proposed,
20 provided that the salient features of the request for proposal
21 are not diminished.

22 This Section is repealed 5 years after the effective date
23 of this amendatory Act of the 95th General Assembly.

24 (50 ILCS 20/20.25 new)

1 Sec. 20.25. Minority and female owned enterprises; total
2 construction budget.

3 (a) Each year, within 60 days following the end of a
4 commission's fiscal year, the commission shall provide a report
5 to the General Assembly addressing the utilization of minority
6 and female owned business enterprises on design-build
7 projects.

8 (b) No more than 25% of a commission's annual construction
9 budget shall be used for design-build procurement.

10 (c) This Section is repealed 5 years after the effective
11 date of this amendatory Act of the 95th General Assembly."