

# SB0633



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

SB0633

Introduced 2/8/2007, by Sen. Don Harmon

#### 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 04550 JAM 24603 b

A BILL FOR

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.