

AN ACT concerning local government.

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

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

(50 ILCS 20/2.5 new)

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

It shall be the policy of the commission in the procurement of design-build services to publicly announce all requirements for design-build services and to procure these services on the basis of demonstrated competence and qualifications and with due regard for the principles of competitive selection.

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

The commission shall, for each public project or projects permitted under this Act, make a written determination, including a description as to the particular advantages of the

design-build procurement method, that it is in the best interests of the commission to enter into a design-build contract for the project or projects.

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

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

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

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

The commission shall require the design-build entity to comply with the utilization goals established by the corporate authorities of the commission for minority and women business enterprises and to comply with Section 2-105 of the Illinois Human Rights Act.

This Section is repealed 5 years after the effective date of this amendatory Act of the 95th General Assembly.

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

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

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

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

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

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

(e) "Municipal corporation" includes a county, city, village, town, (including a county seat), park district, school district in a county of 3,000,000 or more population, board of education of a school district in a county of 3,000,000 or more population, sanitary district, airport authority contiguous with the County Seat as of July 1, 1969 and any other municipal body or governmental agency of the State, and until July 1, 2011, a school district that (i) was organized prior to 1860, (ii) is located in part in a city originally incorporated prior to 1840, and (iii) entered into a lease with a Commission prior to 1993, and its board of education, but does not include a school district in a county of less than 3,000,000 population, a board of education of a school district in a county of less than 3,000,000 population, or a community college district in a county of less than 3,000,000 population, except that until July 1, 2011, a school district that (i) was organized prior to 1860, (ii) is located in part in a city originally incorporated prior to 1840, and (iii) entered into a lease with a Commission

prior to 1993, and its board of education, are included.

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

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

(h) "Oath" means oath or affirmation.

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

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

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

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

(m) "Design-build contract" means a contract for a public

project under this Act between the Commission and a design-build entity to furnish architecture, engineering, land surveying, and related services as required, and to furnish the labor, materials, equipment, and other construction services for the project. The design-build contract may be conditioned upon subsequent refinements in scope and price and may allow the Commission to make modifications in the project scope without invalidating the design-build contract.

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

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

(p) "Evaluation criteria" means the requirements for the

separate phases of the selection process for design-build proposals as defined in this Act and may include the specialized experience, technical qualifications and competence, capacity to perform, past performance, experience with similar projects, assignment of personnel to the project, and other appropriate factors. Price may not be used as a factor in the evaluation of Phase I proposals.

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

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

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

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

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

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

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

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

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

(b) A contract awarded on the basis of competitive bidding shall be awarded after public advertisement published at least once in each week for three consecutive weeks prior to the opening of bids, in a daily newspaper of general circulation in the county where the commission is located. Nothing contained in this Section shall be construed to prohibit the Board of Commissioners from placing additional advertisements in recognized trade journals. Advertisements for bids shall describe the character of the proposed contract in sufficient detail to enable the bidders thereon to know what their obligation will be, either in the advertisement itself, or by reference to detailed plans and specifications on file in the

office of the Public Building Commission at the time of the publication of the first announcement. Such advertisement shall also state the date, time, and place assigned for the opening of bids. No ~~and no~~ bids shall be received at any time subsequent to the time indicated in said advertisement.

(c) In addition to the requirements of Section 20.3, the Commission shall advertise a design-build solicitation at least once in a daily newspaper of general circulation in the county where the Commission is located. The date that Phase I submissions by design-build entities are due must be at least 14 calendar days after the date the newspaper advertisement for design-build proposals is first published. The advertisement shall identify the design-build project, the due date, the place and time for Phase I submissions, and the place where proposers can obtain a complete copy of the request for design-build proposals, including the criteria for evaluation and the scope and performance criteria. The Commission is not precluded from using other media or from placing advertisements in addition to the one required under this subsection.

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

(e) All bids shall be open to public inspection in the office of the Public Building Commission for a period of at least forty-eight (48) hours before award is made. The successful bidder for such work shall enter into contracts

furnished and prescribed by the Board of Commissioners and in addition to any other bonds required under this Act the successful bidder shall execute and give bond, payable to and to be approved by the Commission, with a corporate surety authorized to do business under the laws of the State of Illinois, in an amount to be determined by the Board of Commissioners, conditioned upon the payment of all labor furnished and materials supplied in the prosecution of the contracted work. If the bidder whose bid has been accepted shall neglect or refuse to accept the contract within five (5) days after written notice that the same has been awarded to him, or if he accepts but does not execute the contract and give the proper security, the Commission may accept the next lowest bidder, or readvertise and relet in manner above provided.

(f) In case any work shall be abandoned by any contractor or design-build entity, the Commission may, if the best interests of the Commission be thereby served, adopt on behalf of the Commission all subcontracts made by such contractor or design-build entity for such work and all such sub-contractors shall be bound by such adoption if made; and the Commission shall, in the manner provided in this Act ~~herein,~~ readvertise and relet, or request proposals and award design-build contracts for, the work specified in the original contract exclusive of so much thereof as shall be accepted. Every contract when made and entered into, as ~~herein~~ provided in this

Section or Section 20.20 ~~for~~, shall be executed in duplicate, one copy of which shall be held by the Commission, and filed in its records, and one copy of which shall be given to the contractor or design-build entity.

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

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

(50 ILCS 20/20.3 new)

Sec. 20.3. Solicitation of design-build proposals.

(a) When the Commission elects to use the design-build delivery method, it must issue a notice of intent to receive proposals for the project at least 14 days before issuing the request for the proposal. The Commission must publish the advance notice in a daily newspaper of general circulation in the county where the Commission is located. The Commission is encouraged to use publication of the notice in related construction industry service publications. A brief description of the proposed procurement must be included in the notice. The Commission must provide a copy of the request for proposal to any party requesting a copy.

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

(1) The name of the Commission.

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

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

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

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

(6) The performance criteria.

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

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

(c) The Commission may include any other relevant information that it chooses to supply. The design-build entity

shall be entitled to rely upon the accuracy of this documentation in the development of its proposal.

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

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

(50 ILCS 20/20.4 new)

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

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

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

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

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

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

(50 ILCS 20/20.5 new)

Sec. 20.5. Procedures for design-build selection.

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

(b) The Commission shall include in the request for

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

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

The Commission may not consider any design-build entity for

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

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

The Commission shall notify the entities selected for the shortlist in writing. This notification shall commence the period for the preparation of the Phase II technical and cost evaluations. The Commission must allow sufficient time for the shortlist entities to prepare their Phase II submittals

considering the scope and detail requested by the Commission.

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

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

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

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

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

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

(50 ILCS 20/20.10 new)

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

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

(50 ILCS 20/20.15 new)

Sec. 20.15. Submission of design-build proposals. Design-build proposals must be properly identified and sealed. Proposals may not be reviewed until after the deadline for submission has passed as set forth in the request for proposals. All design-build entities submitting proposals

shall be disclosed after the deadline for submission, and all design-build entities who are selected for Phase II evaluation shall also be disclosed at the time of that determination.

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

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

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

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

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

This Section is repealed 5 years after the effective date

of this amendatory Act of the 95th General Assembly.

(50 ILCS 20/20.20 new)

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

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

(50 ILCS 20/20.25 new)

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

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

(b) The payments for design-build projects by any commission in one fiscal year shall not exceed 25% of the

Public Act 095-0595

HB3490 Enrolled

LRB095 04549 JAM 24602 b

moneys spent on construction projects during the same fiscal year.

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