

1 AN ACT concerning procurement.

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

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

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

16 The Capital Development Board shall, prior to issuing
17 requests for proposals, promulgate and publish procedures for
18 the solicitation and award of contracts pursuant to this Act.

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

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

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

32 (3) The ability of the State construction agency to

1 define and provide comprehensive scope and performance
2 criteria for the project.

3 No State construction agency may use a design-build
4 procurement method unless the agency determines in writing that
5 the project will comply with the disadvantaged business and
6 equal employment practices of the State as established in the
7 Business Enterprise for Minorities, Females, and Persons with
8 Disabilities Act and Section 2-105 of the Illinois Human Rights
9 Act.

10 The Capital Development Board shall within 15 days after
11 the initial determination provide an advisory copy to the
12 Procurement Policy Board and maintain the full record of
13 determination for 5 years.

14 Section 10. Definitions. As used in this Act:

15 "State construction agency" means the Capital Development
16 Board.

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

19 "Design-bid-build" means the traditional delivery system
20 used on public projects in this State that incorporates the
21 Architectural, Engineering, and Land Surveying Qualification
22 Based Selection Act (30 ILCS 535/) and the principles of
23 competitive selection in the Illinois Procurement Code (30 ILCS
24 500/).

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

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

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

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

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

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

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

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

36 "Scope and performance criteria" means the requirements

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

8 Section 15. Solicitation of proposals.

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

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

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

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

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

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

1 construction agency.

2 (5) Material requirements of the contract, including
3 but not limited to, the proposed terms and conditions,
4 required performance and payment bonds, insurance, and the
5 entity's plan to comply with the utilization goals for
6 business enterprises established in the Business
7 Enterprise for Minorities, Females, and Persons with
8 Disabilities Act, and with Section 2-105 of the Illinois
9 Human Rights Act.

10 (6) The performance criteria.

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

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

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

19 (d) The date that proposals are due must be at least 21
20 calendar days after the date of the issuance of the request for
21 proposal. In the event the cost of the project is estimated to
22 exceed \$10 million, then the proposal due date must be at least
23 28 calendar days after the date of the issuance of the request
24 for proposal. The State construction agency shall include in
25 the request for proposal a minimum of 30 days to develop the
26 Phase II submissions after the selection of entities from the
27 Phase I evaluation is completed.

28 Section 20. Development of scope and performance criteria.

29 (a) The State construction agency shall develop, with the
30 assistance of a licensed design professional, a request for
31 proposal, which shall include scope and performance criteria.
32 The scope and performance criteria must be in sufficient detail
33 and contain adequate information to reasonably apprise the
34 qualified design-build entities of the State construction
35 agency's overall programmatic needs and goals, including

1 criteria and preliminary design plans, general budget
2 parameters, schedule, and delivery requirements.

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

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

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

19 Section 25. Selection Committee.

20 (a) When the State construction agency elects to use the
21 design-build delivery method, it shall establish a committee to
22 evaluate and select the design-build entity. The committee,
23 under the discretion of the State construction agency, shall
24 consist of 5 or 7 members and shall include at least one
25 licensed design professional and 2 members of the public.
26 Public members may not be employed or associated with any firm
27 holding a contract with the State construction agency. One
28 public member shall be nominated by associations representing
29 the general design or construction industry and one member
30 shall be nominated by associations that represent minority or
31 female-owned design or construction industry businesses. The
32 selection committee may be designated for a set term or for the
33 particular project subject to the request for proposal.

34 (b) The members of the selection committee must certify for
35 each request for proposal that no conflict of interest exists

1 between the members and the design-build entities submitting
2 proposals. If a conflict exists, the member must be replaced
3 before any review of proposals.

4 Section 30. Procedures for Selection.

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

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

20 The State construction agency shall include the following
21 criteria in every Phase I evaluation of design-build entities:
22 (1) experience of personnel; (2) successful experience with
23 similar project types; (3) financial capability; (4)
24 timeliness of past performance; (5) experience with similarly
25 sized projects; (6) successful reference checks of the firm;
26 (7) commitment to assign personnel for the duration of the
27 project and qualifications of the entity's consultants; and (8)
28 ability or past performance in meeting or exhausting good faith
29 efforts to meet the utilization goals for business enterprises
30 established in the Business Enterprise for Minorities,
31 Females, and Persons with Disabilities Act and with Section
32 2-105 of the Illinois Human Rights Act. The State construction
33 agency may include any additional relevant criteria in Phase I
34 that it deems necessary for a proper qualification review.

35 The State construction agency may not consider any

1 design-build entity for evaluation or award if the entity has
2 any pecuniary interest in the project or has other
3 relationships or circumstances, including but not limited to,
4 long-term leasehold, mutual performance, or development
5 contracts with the State construction agency, that may give the
6 design-build entity a financial or tangible advantage over
7 other design-build entities in the preparation, evaluation, or
8 performance of the design-build contract or that create the
9 appearance of impropriety. No proposal shall be considered that
10 does not include an entity's plan to comply with the
11 requirements established in the Business Enterprise for
12 Minorities, Females, and Persons with Disabilities Act and with
13 Section 2-105 of the Illinois Human Rights Act.

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

22 The State construction agency shall notify the entities
23 selected for the shortlist in writing. This notification shall
24 commence the period for the preparation of the Phase II
25 technical and cost evaluations. The State construction agency
26 must allow sufficient time for the shortlist entities to
27 prepare their Phase II submittals considering the scope and
28 detail requested by the State agency.

29 (c) The State construction agency shall include in the
30 request for proposal the evaluating factors to be used in the
31 technical and cost submission components of Phase II. Each
32 request for proposal shall establish, for both the technical
33 and cost submission components of Phase II, the relative
34 importance assigned to each evaluation factor and subfactor,
35 including any weighting of criteria to be employed by the State
36 construction agency. The State construction agency must

1 maintain a record of the evaluation scoring to be disclosed in
2 event of a protest regarding the solicitation.

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

14 The State construction agency shall include the following
15 criteria in every Phase II cost evaluation: the total project
16 cost, the construction costs, and the time of completion. The
17 State construction agency may include any additional relevant
18 technical evaluation factors it deems necessary for proper
19 selection. The total project cost criteria weighing factor
20 shall be 25%.

21 The State construction agency shall directly employ or
22 retain a licensed design professional to evaluate the technical
23 and cost submissions to determine if the technical submissions
24 are in accordance with generally accepted industry standards.

25 Upon completion of the technical submissions and cost
26 submissions evaluation, the State construction agency may
27 award the design-build contract to the highest overall ranked
28 entity.

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

1 Section 40. Submission of proposals. Proposals must be
2 properly identified and sealed. Proposals may not be reviewed
3 until after the deadline for submission has passed as set forth
4 in the request for proposals. All design-build entities
5 submitting proposals shall be disclosed after the deadline for
6 submission, and all design-build entities who are selected for
7 Phase II evaluation shall also be disclosed at the time of that
8 determination.

9 Proposals shall include a bid bond in the form and security
10 as designated in the request for proposals. Proposals shall
11 also contain a separate sealed envelope with the cost
12 information within the overall proposal submission. Proposals
13 shall include a list of all design professionals and other
14 entities as defined in Section 30-30 of the Illinois
15 Procurement Code to which any work may be subcontracted during
16 the performance of the contract. Any entity that will perform
17 any of the 5 subdivisions of work defined in Section 30-30 of
18 the Illinois Procurement Code must meet prequalification
19 standards of the State construction agency.

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

24 The drawings and specifications of the proposal shall
25 remain the property of the design-build entity.

26 The State construction agency shall review the proposals
27 for compliance with the performance criteria and evaluation
28 factors.

29 Proposals may be withdrawn prior to evaluation for any
30 cause. After evaluation begins by the State construction
31 agency, clear and convincing evidence of error is required for
32 withdrawal.

33 Section 45. Award. The State construction agency may award
34 the contract to the highest overall ranked entity. Notice of
35 award shall be made in writing. Unsuccessful entities shall

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

8 Section 46. Reports and evaluation. At the end of every 6
9 month period following the contract award, and again prior to
10 final contract payout and closure, a selected design-build
11 entity shall detail, in a written report submitted to the State
12 agency, its efforts and success in implementing the entity's
13 plan to comply with the utilization goals for business
14 enterprises established in the Business Enterprise for
15 Minorities, Females, and Persons with Disabilities Act and the
16 provisions of Section 2-105 of the Illinois Human Rights Act.
17 If the entity's performance in implementing the plan falls
18 short of the performance measures and outcomes set forth in the
19 plans submitted by the entity during the proposal process, the
20 entity shall, in a detailed written report, inform the General
21 Assembly and the Governor whether and to what degree each
22 design-build contract authorized under this Act promoted the
23 utilization goals for business enterprises established in the
24 Business Enterprise for Minorities, Females, and Persons with
25 Disabilities Act and the provisions of Section 2-105 of the
26 Illinois Human Rights Act.

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

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

6 Section 90. Repealer. This Act is repealed on July 1, 2009.

7 Section 95. Severability. The provisions of this Act are
8 severable under Section 1.31 of the Statute on Statutes.

9 Section 99. Effective date. This Act takes effect upon
10 becoming law.