



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB0132

Introduced 1/27/2011, by Sen. Martin A. Sandoval

SYNOPSIS AS INTRODUCED:

See Index

Amends the Illinois Procurement Code. Creates a new Article concerning Engineering Professional Services. Provides that contracts for engineering professional services shall be procured by competitive sealed bidding. Sets out certain factors for a State agency to consider in determining whether a firm is a responsible bidder. Provides that contracts for small purchases and emergency services may be procured without competitive sealed bidding. Provides that a State agency shall evaluate the performance of each firm upon completion of a contract. Provides that each contract shall contain a certificate of compliance with the new Article signed by both the State agency and the firm. Amends the Freedom of Information Act to exempt firm performance evaluations from inspection and copying. Amends the Architectural, Engineering, and Land Surveying Qualifications Based Selection Act to exempt contracts for engineering professional services from the requirements of the Act.

LRB097 06275 PJG 46351 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning finance.

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

4 Section 5. The Freedom of Information Act is amended by
5 changing Section 7.5 as follows:

6 (5 ILCS 140/7.5)

7 Sec. 7.5. Statutory Exemptions. To the extent provided for
8 by the statutes referenced below, the following shall be exempt
9 from inspection and copying:

10 (a) All information determined to be confidential under
11 Section 4002 of the Technology Advancement and Development Act.

12 (b) Library circulation and order records identifying
13 library users with specific materials under the Library Records
14 Confidentiality Act.

15 (c) Applications, related documents, and medical records
16 received by the Experimental Organ Transplantation Procedures
17 Board and any and all documents or other records prepared by
18 the Experimental Organ Transplantation Procedures Board or its
19 staff relating to applications it has received.

20 (d) Information and records held by the Department of
21 Public Health and its authorized representatives relating to
22 known or suspected cases of sexually transmissible disease or
23 any information the disclosure of which is restricted under the

1 Illinois Sexually Transmissible Disease Control Act.

2 (e) Information the disclosure of which is exempted under
3 Section 30 of the Radon Industry Licensing Act.

4 (f) Firm performance evaluations under Section 55 of the
5 Architectural, Engineering, and Land Surveying Qualifications
6 Based Selection Act and Section 32-35 of the Illinois
7 Procurement Code.

8 (g) Information the disclosure of which is restricted and
9 exempted under Section 50 of the Illinois Prepaid Tuition Act.

10 (h) Information the disclosure of which is exempted under
11 the State Officials and Employees Ethics Act, and records of
12 any lawfully created State or local inspector general's office
13 that would be exempt if created or obtained by an Executive
14 Inspector General's office under that Act.

15 (i) Information contained in a local emergency energy plan
16 submitted to a municipality in accordance with a local
17 emergency energy plan ordinance that is adopted under Section
18 11-21.5-5 of the Illinois Municipal Code.

19 (j) Information and data concerning the distribution of
20 surcharge moneys collected and remitted by wireless carriers
21 under the Wireless Emergency Telephone Safety Act.

22 (k) Law enforcement officer identification information or
23 driver identification information compiled by a law
24 enforcement agency or the Department of Transportation under
25 Section 11-212 of the Illinois Vehicle Code.

26 (l) Records and information provided to a residential

1 health care facility resident sexual assault and death review
2 team or the Executive Council under the Abuse Prevention Review
3 Team Act.

4 (m) Information provided to the predatory lending database
5 created pursuant to Article 3 of the Residential Real Property
6 Disclosure Act, except to the extent authorized under that
7 Article.

8 (n) Defense budgets and petitions for certification of
9 compensation and expenses for court appointed trial counsel as
10 provided under Sections 10 and 15 of the Capital Crimes
11 Litigation Act. This subsection (n) shall apply until the
12 conclusion of the trial of the case, even if the prosecution
13 chooses not to pursue the death penalty prior to trial or
14 sentencing.

15 (o) Information that is prohibited from being disclosed
16 under Section 4 of the Illinois Health and Hazardous Substances
17 Registry Act.

18 (p) Security portions of system safety program plans,
19 investigation reports, surveys, schedules, lists, data, or
20 information compiled, collected, or prepared by or for the
21 Regional Transportation Authority under Section 2.11 of the
22 Regional Transportation Authority Act or the St. Clair County
23 Transit District under the Bi-State Transit Safety Act.

24 (q) Information prohibited from being disclosed by the
25 Personnel Records Review Act.

26 (r) Information prohibited from being disclosed by the

1 Illinois School Student Records Act.

2 (s) Information the disclosure of which is restricted under
3 Section 5-108 of the Public Utilities Act.

4 (t) All identified or deidentified health information in
5 the form of health data or medical records contained in, stored
6 in, submitted to, transferred by, or released from the Illinois
7 Health Information Exchange, and identified or deidentified
8 health information in the form of health data and medical
9 records of the Illinois Health Information Exchange in the
10 possession of the Illinois Health Information Exchange
11 Authority due to its administration of the Illinois Health
12 Information Exchange. The terms "identified" and
13 "deidentified" shall be given the same meaning as in the Health
14 Insurance Accountability and Portability Act of 1996, Public
15 Law 104-191, or any subsequent amendments thereto, and any
16 regulations promulgated thereunder.

17 (u) ~~(t)~~ Records and information provided to an independent
18 team of experts under Brian's Law.

19 (Source: P.A. 96-542, eff. 1-1-10; 96-1235, eff. 1-1-11;
20 96-1331, eff. 7-27-10; revised 9-2-10.)

21 Section 10. The Illinois Procurement Code is amended by
22 adding Article 32 as follows:

23 (30 ILCS 500/Art. 32 heading new)

24 ARTICLE 32. ENGINEERING PROFESSIONAL SERVICES

1 (30 ILCS 500/32-1 new)

2 Sec. 32-1. Applicability. Engineering professional
3 services shall be procured only in accordance with this
4 Article.

5 (30 ILCS 500/32-5 new)

6 Sec. 32-5. Definitions. As used in this Article:

7 "Engineering professional services" means any professional
8 service as defined in Section 4 of the Professional Engineering
9 Practice Act of 1989 or Section 5 of the Structural Engineering
10 Practice Act of 1989.

11 "Firm" means any individual, sole proprietorship, firm,
12 partnership, corporation, association, or other legal entity
13 permitted by law to practice the profession of engineering and
14 provide those services.

15 "Project" means any capital improvement project or any
16 design, study, plan, survey, or new or existing program
17 activity of a State agency, including development of new or
18 existing programs that require engineering professional
19 services.

20 (30 ILCS 500/32-10 new)

21 Sec. 32-10. Method of source selection. Except as otherwise
22 provided in this Article, all contracts for engineering
23 professional services shall be procured by competitive sealed

1 bidding in accordance with Section 20-10.

2 (30 ILCS 500/32-15 new)

3 Sec. 32-15. Prequalification. A State agency shall either
4 establish procedures to prequalify firms seeking to provide
5 engineering services or use one or more prequalification lists
6 from other State agencies to meet the requirements of this
7 Article.

8 (30 ILCS 500/32-20 new)

9 Sec. 32-20. Engineering professional service contracts;
10 responsible bidder considerations.

11 (a) In evaluating whether a bidder or other prequalified
12 firm qualifies as a responsible bidder on an engineering
13 professional services contract for purposes of this Code, a
14 State agency may consider, but shall not be limited to
15 considering, the following factors:

16 (1) Ability of professional personnel.

17 (2) Past record and experience.

18 (3) Performance data on file.

19 (4) Willingness to meet time requirements.

20 (5) Location.

21 (6) Workload of the firm.

22 (7) Any other qualification-based factors that the
23 State agency may determine in writing to be applicable.

24 (b) The State agency may conduct discussions with and

1 require public presentations by firms deemed to be the most
2 qualified regarding their qualifications, approach to the
3 project, and ability to furnish the required services.

4 (30 ILCS 500/32-25 new)

5 Sec. 32-25. Small purchases. Any individual procurement of
6 engineering professional services with an estimated basic
7 professional services fee of less than \$25,000 may be made
8 without competitive sealed bidding.

9 (30 ILCS 500/32-30 new)

10 Sec. 32-30. Emergency services. A procurement of
11 engineering professional services may be made without
12 competitive sealed bidding (i) when a State agency determines
13 in writing that it is in the best interest of the State to
14 proceed with the immediate selection of a firm or (ii) in
15 emergencies when immediate services are necessary to protect
16 the public health and safety, including, but not limited to,
17 earthquake, tornado, storm, or natural or man-made disaster.

18 (30 ILCS 500/32-35 new)

19 Sec. 32-35. Firm performance evaluation. Each State agency
20 shall evaluate the performance of each firm upon completion of
21 a contract. That evaluation shall be made available to the
22 firm, which may submit a written response. The evaluation and
23 response shall be a confidential record of the State agency,

1 shall not be made available to any other person or firm, and is
2 exempt from disclosure in accordance with Section 7.5 of the
3 Freedom of Information Act.

4 (30 ILCS 500/32-40 new)

5 Sec. 32-40. Certificate of compliance. Each contract for
6 engineering professional services entered into by a State
7 agency shall contain a certificate signed by a representative
8 of the State agency and the firm stating that the provisions of
9 this Article were complied with.

10 (30 ILCS 500/32-45 new)

11 Sec. 32-45. Scope. No person, corporation, or partnership
12 licensed or registered under the Professional Engineering
13 Practice Act of 1989 or the Structural Engineering Practice Act
14 of 1989 shall engage in any act or conduct or be a party to any
15 contract or agreement in violation of the provisions of this
16 Article.

17 (30 ILCS 500/32-50 new)

18 Sec. 32-50. Enforcement. Any contract or agreement made in
19 violation of this Article after the effective date of this
20 amendatory Act of the 97th General Assembly, except a
21 supplement or extension of an existing contract, is void and
22 unenforceable, and the Comptroller and Treasurer of the State
23 of Illinois shall not process any payment claims or warrants

1 for any contract or agreement made in violation of this
2 Article.

3 (30 ILCS 500/32-55 new)

4 Sec. 32-55. Design/build project. Nothing in this Article
5 shall be deemed to prohibit a State agency from contracting for
6 a design/build project.

7 (30 ILCS 500/32-60 new)

8 Sec. 32-60. Affirmative action. Nothing in this Article
9 shall be deemed to prohibit or restrict State agencies from
10 establishing or maintaining affirmative action contracting
11 goals for minorities or women, or small business setaside
12 programs, now or hereafter established by law, rule, or
13 executive order.

14 Section 15. The Architectural, Engineering, and Land
15 Surveying Qualifications Based Selection Act is amended by
16 changing the title of the Act and Sections 1, 5, 10, 15, 20,
17 25, 30, 40, 45, 50, 60, and 65 as follows:

18 (30 ILCS 535/Act title)

19 An Act concerning procurement of architectural,
20 ~~engineering,~~ and land surveying services by the State of
21 Illinois.

1 (30 ILCS 535/1) (from Ch. 127, par. 4151-1)

2 Sec. 1. Short title. This Act may be cited as the
3 Architectural,~~Engineering,~~ and Land Surveying Qualifications
4 Based Selection Act.

5 (Source: P.A. 87-673.)

6 (30 ILCS 535/5) (from Ch. 127, par. 4151-5)

7 Sec. 5. State policy on procurement of architectural,~~en-~~
8 ~~gineering,~~ and land surveying services. It is the policy of
9 State agencies of this State to publicly announce all
10 requirements for architectural,~~engineering,~~ and land
11 surveying services, to procure these services on the basis of
12 demonstrated competence and qualifications, to negotiate
13 contracts at fair and reasonable prices, and to authorize the
14 Department of Professional Regulation to enforce the
15 provisions of Section 65 of this Act.

16 (Source: P.A. 87-673.)

17 (30 ILCS 535/10) (from Ch. 127, par. 4151-10)

18 Sec. 10. Federal requirements. In the procurement of
19 architectural,~~engineering,~~ and land surveying services and in
20 the awarding of contracts, a State agency may comply with
21 federal law and regulations including, but not limited to,
22 Public Law 92-582 (Federal Architect-Engineer Selection Law,
23 Brooks Law, 40 U.S.C. 541) and take all necessary steps to
24 adapt its rules, specifications, policies, and procedures

1 accordingly to remain eligible for federal aid.

2 (Source: P.A. 87-673.)

3 (30 ILCS 535/15) (from Ch. 127, par. 4151-15)

4 Sec. 15. Definitions. As used in this Act:

5 "Architectural services" means any professional service as
6 defined in Section 5 of the Illinois Architecture Practice Act
7 of 1989.

8 ~~"Engineering services" means any professional service as~~
9 ~~defined in Section 4 of the Professional Engineering Practice~~
10 ~~Act of 1989 or Section 5 of the Structural Engineering Practice~~
11 ~~Act of 1989.~~

12 "Firm" means any individual, sole proprietorship, firm,
13 partnership, corporation, association, or other legal entity
14 permitted by law to practice the profession of architecture,
15 ~~engineering,~~ or land surveying and provide those services.

16 "Land surveying services" means any professional service
17 as defined in Section 5 of the Illinois Professional Land
18 Surveyor Act of 1989.

19 "Project" means any capital improvement project or any
20 design, study, plan, survey, or new or existing program
21 activity of a State agency, including development of new or
22 existing programs that require architectural,
23 ~~engineering,~~ or land surveying services.

24 "State agency" means any department, commission, council,
25 board, bureau, committee, institution, agency, university,

1 government corporation, authority, or other establishment or
2 official of this State.

3 (Source: P.A. 91-91, eff. 1-1-00.)

4 (30 ILCS 535/20) (from Ch. 127, par. 4151-20)

5 Sec. 20. Prequalification. A State agency shall establish
6 procedures to prequalify firms seeking to provide
7 architectural,~~engineering,~~ and land surveying services or may
8 use prequalification lists from other State agencies to meet
9 the requirements of this Section.

10 (Source: P.A. 87-673.)

11 (30 ILCS 535/25) (from Ch. 127, par. 4151-25)

12 Sec. 25. Public notice. Whenever a project requiring
13 architectural,~~engineering,~~ or land surveying services is
14 proposed for a State agency, the State agency shall provide no
15 less than a 14 day advance notice published in a professional
16 services bulletin or advertised within the official State
17 newspaper setting forth the projects and services to be
18 procured. The professional services bulletin shall be
19 available electronically and may be available in print. The
20 professional services bulletin shall include a description of
21 each project and shall state the time and place for interested
22 firms to submit a letter of interest and, if required by the
23 public notice, a statement of qualifications.

24 (Source: P.A. 92-345, eff. 8-10-01.)

1 (30 ILCS 535/30) (from Ch. 127, par. 4151-30)

2 Sec. 30. Evaluation procedure. A State agency shall
3 evaluate the firms submitting letters of interest and other
4 prequalified firms, taking into account qualifications; and
5 the State agency may consider, but shall not be limited to
6 considering, ability of professional personnel, past record
7 and experience, performance data on file, willingness to meet
8 time requirements, location, workload of the firm and any other
9 qualifications based factors as the State agency may determine
10 in writing are applicable. The State agency may conduct
11 discussions with and require public presentations by firms
12 deemed to be the most qualified regarding their qualifications,
13 approach to the project and ability to furnish the required
14 services.

15 A State agency shall establish a committee to select firms
16 to provide architectural,~~engineering,~~ and land surveying
17 services. A selection committee may include at least one public
18 member nominated by a statewide association of the profession
19 affected. The public member may not be employed or associated
20 with any firm holding a contract with the State agency nor may
21 the public member's firm be considered for a contract with that
22 State agency while he or she is serving as a public member of
23 the committee.

24 In addition, the Department of Transportation may appoint
25 public members to selection committees that represent the

1 geographic, ethnic, and cultural diversity of the population of
2 the State, including persons nominated by associations
3 representing minority and female-owned business associations.
4 Public members shall be licensed in or have received a degree
5 from an accredited college or university in one of the
6 professions affected and shall not be employed by, associated
7 with, or have an ownership interest in any firm holding or
8 seeking to hold a contract while serving as a public member of
9 the committee.

10 In no case shall a State agency, prior to selecting a firm
11 for negotiation under Section 40, seek formal or informal
12 submission of verbal or written estimates of costs or proposals
13 in terms of dollars, hours required, percentage of construction
14 cost, or any other measure of compensation.

15 (Source: P.A. 96-37, eff. 7-13-09; 96-849, eff. 12-23-09.)

16 (30 ILCS 535/40) (from Ch. 127, par. 4151-40)

17 Sec. 40. Contract negotiation.

18 (a) The State agency shall prepare a written description of
19 the scope of the proposed services to be used as a basis for
20 negotiations and shall negotiate a contract with the highest
21 qualified firm at compensation that the State agency determines
22 in writing to be fair and reasonable. In making this decision,
23 the State agency shall take into account the estimated value,
24 scope, complexity, and professional nature of the services to
25 be rendered. In no case may a State agency establish a maximum

1 overhead rate or other payment formula designed to eliminate
2 firms from contention or restrict competition or negotiation of
3 fees.

4 (b) If the State agency is unable to negotiate a
5 satisfactory contract with the firm that is most preferred,
6 negotiations with that firm shall be terminated. The State
7 agency shall then begin negotiations with the firm that is next
8 preferred. If the State agency is unable to negotiate a
9 satisfactory contract with that firm, negotiations with that
10 firm shall be terminated. The State agency shall then begin
11 negotiations with the firm that is next preferred.

12 (c) If the State agency is unable to negotiate a
13 satisfactory contract with any of the selected firms, the State
14 agency shall re-evaluate the architectural, ~~engineering,~~ or
15 land surveying services requested, including the estimated
16 value, scope, complexity, and fee requirements. The State
17 agency shall then compile a second list of not less than 3
18 qualified firms and proceed in accordance with the provisions
19 of this Act.

20 (d) A firm negotiating a contract with a State agency shall
21 negotiate subcontracts for architectural, ~~engineering,~~ and
22 land surveying services at compensation that the firm
23 determines in writing to be fair and reasonable based upon a
24 written description of the scope of the proposed services.

25 (Source: P.A. 87-673.)

1 (30 ILCS 535/45) (from Ch. 127, par. 4151-45)

2 Sec. 45. Small contracts. The provisions of Sections 25,
3 30, and 35 do not apply to architectural,~~engineering,~~ and land
4 surveying contracts with an estimated basic professional
5 services fee of less than \$25,000.

6 (Source: P.A. 92-861, eff. 1-3-03.)

7 (30 ILCS 535/50) (from Ch. 127, par. 4151-50)

8 Sec. 50. Emergency services. Sections 25, 30, and 35 do not
9 apply in the procurement of architectural,~~engineering,~~ and
10 land surveying services by State agencies (i) when an agency
11 determines in writing that it is in the best interest of the
12 State to proceed with the immediate selection of a firm or (ii)
13 in emergencies when immediate services are necessary to protect
14 the public health and safety, including, but not limited to,
15 earthquake, tornado, storm, or natural or man-made disaster.

16 (Source: P.A. 87-673.)

17 (30 ILCS 535/60) (from Ch. 127, par. 4151-60)

18 Sec. 60. Certificate of compliance. Each contract for
19 architectural,~~engineering,~~ and land surveying services by a
20 State agency shall contain a certificate signed by a
21 representative of the State agency and the firm that the
22 provisions of this Act were complied with.

23 (Source: P.A. 87-673.)

1 (30 ILCS 535/65) (from Ch. 127, par. 4151-65)

2 Sec. 65. Scope. No person, corporation, or partnership
3 licensed or registered under the Illinois Architecture
4 Practice Act of 1989, ~~the Professional Engineering Practice Act~~
5 ~~of 1989, the Structural Engineering Practice Act of 1989,~~ or
6 the Illinois Professional Land Surveyor Act of 1989 shall
7 engage in any act or conduct, or be a party to any contract, or
8 agreement, in violation of the provisions of this Act.

9 (Source: P.A. 91-91, eff. 1-1-00.)

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