



Sen. Laura Ellman

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10400SB3381sam002

LRB104 18851 TRT 35896 a

1 AMENDMENT TO SENATE BILL 3381

2 AMENDMENT NO. _____. Amend Senate Bill 3381, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Water Commission Act of 1985 is amended by
6 changing Section 2 and by adding Sections 1.5, 4.6, 4.7, 4.8,
7 4.9, 4.10, 4.11, 4.12, and 4.13 as follows:

8 (70 ILCS 3720/1.5 new)

9 Sec. 1.5. Definitions. As used in this Act:

10 "Construction-manager-at-risk delivery method" means a
11 delivery method in which the party proposing to be the
12 construction manager commits to be responsible for performance
13 of certain preconstruction services and, if the parties reach
14 agreement on key terms, becomes responsible for construction
15 of the project.

16 "Design-build delivery method" means a delivery system

1 that provides responsibility within a single contract for the
2 furnishing of architecture, engineering, land surveying, and
3 related services as required and the labor, materials,
4 equipment, and other construction services for the project.

5 "Design-build contract" means a contract for a public
6 project under this Act between a commission and a design-build
7 entity to furnish architecture, infrastructure, engineering,
8 land surveying, public art or interpretive exhibits, and
9 related services, as required, and the labor, materials,
10 equipment, and other construction services for the project.

11 "Design-build entity" means any individual, sole
12 proprietorship, firm, partnership, joint venture, corporation,
13 professional corporation, or other entity that proposes to
14 design and construct any public project under this Act.

15 "Design professional" means any individual, sole
16 proprietorship, firm, partnership, joint venture, corporation,
17 professional corporation, or other entity that offers services
18 under the Illinois Architecture Practice Act of 1989, the
19 Professional Engineering Practice Act of 1989, the Structural
20 Engineering Practice Act of 1989, or the Illinois Professional
21 Land Surveyor Act of 1989.

22 "Evaluation criteria" means the requirements for the
23 separate phases of the selection process as defined in this
24 Act and may include the specialized experience, technical
25 qualifications and competence, capacity to perform, past
26 performance, experience with similar projects, assignment of

1 personnel to the project, and other appropriate factors.

2 "Proposal" means the offer to enter into a design-build
3 contract as submitted by a design-build entity in accordance
4 with this Act.

5 "Request for proposal" means the document used by a
6 commission to solicit proposals for a design-build contract.

7 "Scope and performance criteria" means the requirements
8 for the commission project, including, but not limited to, the
9 intended usage, capacity, size, scope, quality and performance
10 standards, life-cycle costs, and other programmatic criteria
11 that are expressed in performance-oriented and quantifiable
12 specifications and drawings that can be reasonably inferred
13 and are suited to allow a design-build entity to develop a
14 proposal.

15 (70 ILCS 3720/2) (from Ch. 111 2/3, par. 252)

16 Sec. 2. The General Assembly hereby finds and declares
17 that it is necessary and in the public interest to help assure
18 a sufficient and economic supply of a source of water within
19 those county wide areas of this State where, because of a
20 growth in population and proximity to large urban centers, the
21 health, safety and welfare of the residents is threatened by
22 an ever increasing shortage of a continuing, available and
23 adequate source and supply of water on an economically
24 reasonable basis; however, it is not the intent of the General
25 Assembly to interfere with the power of municipalities to

1 provide for the retail distribution of water to their
2 residents or the customers of their water systems. Therefore,
3 in order to provide for a sufficient and economic supply of
4 water to such areas, it is hereby declared to be the law of
5 this State that:

6 (a) With respect to any water commission constituted
7 pursuant to Division 135 of the Illinois Municipal Code or
8 established by operation of law under Public Act 83-1123, as
9 amended, which water commission includes municipalities which
10 in the aggregate have within their corporate limits more than
11 50% of the population of a county (hereinafter referred to as a
12 "home county"), and such county is contiguous to a county
13 which has a population in excess of 1,000,000 inhabitants, the
14 provisions of this Act shall apply. With respect to any such
15 water commission (hereinafter referred to as a "county water
16 commission"):

17 (i) the terms of all commissioners of such commission
18 holding office at the time a water commission becomes a
19 county water commission shall terminate 30 days after such
20 time and new commissioners shall be appointed as the
21 governing board of the county water commission as
22 hereinafter provided in subsection (c); and

23 (ii) the county water commission shall continue to be
24 a body corporate and politic, and shall bear the name of
25 the home county but shall be independent from and not a
26 part of the county government and shall itself be a

1 political subdivision and a unit of local government, and
2 upon appointment of the new commissioners as the governing
3 board of such water commission as provided in subsection
4 (c), such water commission shall remain responsible for
5 the full payment of, and shall by operation of law be
6 deemed to have assumed and shall pay when due all debts and
7 obligations of the commission as the same is constituted
8 and as such debts and obligations existed on the date such
9 water commission becomes a county water commission and
10 such additional debts and obligations as are incurred by
11 such commission after such date and prior to the
12 appointment of the new commissioners as the governing
13 board of such commission, and further shall continue to
14 have and exercise all powers and functions and duties of a
15 water commission created pursuant to Division 135 of the
16 Illinois Municipal Code, as now or hereafter amended, and
17 the county water commission may rely on that Division, as
18 modified and supplemented by the provisions of this Act,
19 as lawful authority under which it may act.

20 (b) Any county water commission shall have as its
21 territory within its corporate limits, subject to taxation for
22 its purposes, and subject to the powers and limitations as
23 conferred by this Act, (i) all of the territory of the home
24 county except that territory located within the corporate
25 limits of excluded units as hereinafter defined and (ii) also
26 all of the territory located outside the home county and

1 included within the corporate limits of an included unit as
2 hereinafter defined. As used in this Act, "excluded unit"
3 means a unit of local government having a waterworks system
4 and having within its corporate limits territory within the
5 home county and which either, at the time any commission
6 becomes a county water commission, receives, or has contracted
7 at such time for the receipt of, more than 25% of the water
8 distributed by such unit's water system from a source outside
9 of the home county, or a unit of local government that seeks a
10 change in status as provided in this Section. As used in this
11 Section, "included unit" means any unit of local government
12 having a waterworks system and having within its corporate
13 limits territory within the home county, which unit of local
14 government is not an excluded unit. No other water commission
15 shall be constituted under Division 135 of the Illinois
16 Municipal Code in any home county after the effective date of
17 this Act to provide water from any source located outside the
18 home county. A unit of local government may switch its status
19 from being an included unit to an excluded unit provided that
20 (i) it has constructed a water treatment plant prior to
21 December 31, 2006 to comply with United States Environmental
22 Protection Agency regulations regarding radium; (ii) it
23 notifies the commission in writing of its desire to become an
24 excluded unit; and (iii) it no longer demands future service
25 from the commission and shall not be reinstated as an included
26 unit. In the event a unit of local government switches status,

1 the water commission shall, from any legally available
2 sources, transfer the sums collected from that unit of local
3 government for the period of time beginning January 1, 2006 to
4 the date that this tax is no longer assessed within the
5 affected excluded unit. The transfer of funds authorized
6 herein shall be made within 90 days of the effective date of
7 this amendatory Act of the 95th General Assembly. Except as
8 authorized by a county water commission, no home county or
9 included unit shall enter into any new or renew or extend any
10 existing contract, agreement or other arrangement for the
11 acquisition or sale of water from any source located outside a
12 home county; provided, however, that any included unit may
13 contract for a supply of water in case of a temporary emergency
14 from any other unit of local government or any entity. In the
15 event that any included unit elects to serve retail customers
16 outside its corporate boundaries and to establish rates and
17 charges for such water in excess of those charged within its
18 corporate boundaries, such rates and charges shall have a
19 reasonable relationship to the actual cost of providing and
20 delivering the water; this provision is declarative of
21 existing law. It is declared to be the law of this State
22 pursuant to paragraphs (g) and (h) of Section 6 of Article VII
23 of the Illinois Constitution that in any home county, the
24 provisions of this Act and Division 135 of the Illinois
25 Municipal Code, as modified and supplemented by this Act and
26 this amendatory Act of the 93rd General Assembly, constitute a

1 limitation upon the power of any such county and upon all units
2 of local government (except excluded units) within such
3 county, including home rule units, limiting to such county,
4 units of local government and home rule units the power to
5 acquire, supply or distribute water or to establish any water
6 commission for such purposes involving water from any source
7 located outside the home county in a manner other than as
8 provided or permitted by this Act and Division 135, as
9 modified and supplemented by this Act, and further constitute
10 an exercise of exclusive State power with respect to the
11 acquisition, supply and distribution of water from any source
12 located outside the home county by any such county and by units
13 of local government (except excluded units), including home
14 rule units, within such county and with respect to the
15 establishment for such purposes of any water commission
16 therein, which power may not be exercised concurrently by any
17 unit of local government or home rule unit. Upon the request of
18 any included unit, a county water commission shall provide
19 such included unit Lake Michigan water in an amount up to the
20 then current Department of Transportation allocation of Lake
21 Michigan water for such included unit.

22 With respect to a water commission to which the provisions
23 of subsection (a) apply, all uninhabited territory that is
24 owned and solely occupied by such a commission and is located
25 not within its home county but within a non-home rule
26 municipality adjacent to its home county shall,

1 notwithstanding any other provision of law, be disconnected
2 from that municipality by operation of this Act on the
3 effective date of this amendatory Act of 1991, and shall
4 thereafter no longer be within the territory of the
5 municipality for any purpose; except that for the purposes of
6 any statute that requires contiguity of territory, the
7 territory of the water commission shall be disregarded and the
8 municipality shall not be deemed to be noncontiguous by virtue
9 of the disconnection of the water commission territory.

10 (c) The governing body of any water commission to which
11 the provisions of subsection (a) apply shall be a board of
12 commissioners, each to be appointed within 30 days after the
13 water commission becomes a county water commission to a term
14 commencing on such date, as follows:

15 (i) one commissioner, who shall serve as chairman, who
16 shall be a resident of the home county, to be appointed by
17 the chairman of the county board of such county with the
18 advice and consent of the county board, provided that
19 following the expiration of the term or vacancy of the
20 current chairman serving on the effective date of this
21 amendatory Act of the 93rd General Assembly, any
22 subsequent appointment as chairman shall also be subject
23 to the advice and consent of the county water commission;

24 (ii) one commissioner from each county board district
25 within the home county, to be appointed by the chairman of
26 the county board of the home county with the advice and

1 consent of the county board; and

2 (iii) one commissioner from each county board district
3 within the home county, to be appointed by the majority
4 vote of the mayors of those included units which are
5 municipalities and which have the greatest percentage of
6 their respective populations residing within such county
7 board district of the home county.

8 The mayors of the respective county board districts shall
9 meet for the purpose of making said respective appointments at
10 a time and place designated by that mayor in each county board
11 district of the included unit with the largest population
12 voting for a commissioner upon not less than 10 days' written
13 notice to each other mayor entitled to vote.

14 The commissioners so appointed shall serve for a term of 6
15 years, or until their successors have been appointed and have
16 qualified in the same manner as the original appointments,
17 except that at the first meeting of such commissioners, (A)
18 the commissioners first appointed pursuant to paragraph (ii)
19 of this subsection shall determine publicly by lot 1/3 of
20 their number to serve for terms of 2 years, 1/3 of their number
21 to serve for terms of 4 years and 1/3 of their number to serve
22 for terms of 6 years, any odd number of commissioners so
23 determined by dividing into thirds to serve 6-year ~~6-year~~
24 terms, and (B) the commissioners first appointed pursuant to
25 paragraph (iii) of this subsection shall determine publicly by
26 lot 1/3 of their number to serve for terms of 2 years, 1/3 of

1 their number to serve for terms of 4 years and 1/3 of their
2 number to serve for terms of 6 years, any odd number of
3 commissioners so determined by dividing into thirds to serve
4 6-year ~~6-year~~ terms. The commissioner first appointed pursuant
5 to paragraph (i) of this subsection, who shall serve as
6 chairman, shall serve for a term of 6 years. Any commissioner
7 may be a member of the governing board or an officer or
8 employee of such county or any unit of local government within
9 such county. A commissioner is eligible for reappointment upon
10 the expiration of his term. A vacancy in the office of a
11 commissioner shall be filled for the balance of the unexpired
12 term by appointment and qualification as to residency in the
13 same manner as the original appointment was made. Each
14 commissioner shall receive the same compensation which shall
15 not be more than \$600 per year, ~~except that no such~~
16 ~~commissioner who is a member of the governing board or an~~
17 ~~officer or employee of such county or any unit of local~~
18 ~~government within such county may receive any compensation for~~
19 ~~serving as a commissioner.~~ Each commissioner may be removed by
20 the appointing authority for any cause for which any other
21 county or municipal officer may be removed. The county water
22 commission shall determine its own rules of proceeding. A
23 quorum shall be a majority of the commissioners then in
24 office. All ordinances or resolutions shall be passed by not
25 less than a majority of a quorum. No commissioner or employee
26 of the commission, no member of the county board or other

1 official elected within such county, no mayor or president or
2 other member of the corporate authorities of any unit of local
3 government within such county, and no employee of such county
4 or any such unit of local government, shall be interested
5 directly or indirectly in any contract or job of work or
6 materials, or the profits thereof, or services to be performed
7 for or by the commission. A violation of any of the foregoing
8 provisions of this subsection is a Class C misdemeanor. A
9 conviction is cause for the removal of a person from his office
10 or employment.

11 (d) Except as provided in subsection (g), subject to the
12 referendum provided for in subsection (e), a county water
13 commission may borrow money for corporate purposes on the
14 credit of the commission, and issue general obligation bonds
15 therefor, in such amounts and form and on such conditions as it
16 shall prescribe, but shall not become indebted in any manner
17 or for any purpose in an amount including existing
18 indebtedness in the aggregate to exceed 5.75% of the aggregate
19 value of the taxable property within the territorial
20 boundaries of the county water commission, as equalized and
21 assessed by the Department of Revenue and as most recently
22 available at the time of the issue of said bonds. Before or at
23 the time of incurring any indebtedness, except as provided in
24 subsection (g), the commission shall provide for the
25 collection of a direct annual tax, which shall be unlimited as
26 to rate or amount, sufficient to pay the interest on such debt

1 as it falls due and also to pay and discharge the principal
2 thereof at maturity, which shall be within 40 years after the
3 date of issue thereof. Such tax shall be levied upon and
4 collected from all of the taxable property within the
5 territory of the county water commission. Dissolution of the
6 county water commission for any reason shall not relieve the
7 taxable property within such territory of the county water
8 commission from liability for such tax. The clerk of the
9 commission shall file a certified copy of the resolution or
10 ordinance by which such bonds are authorized to be issued and
11 such tax is levied with the County Clerk of each county in
12 which any of the territory of the county water commission is
13 located and such filing shall constitute, without the doing of
14 any other act, full and complete authority for each such
15 County Clerk to extend such tax for collection upon all the
16 taxable property within the territory of the county water
17 commission subject to such tax in each and every year required
18 sufficient to pay the principal of and interest on such bonds,
19 as aforesaid, without limit as to rate or amount, and shall be
20 in addition to and in excess of all other taxes authorized to
21 be levied by the commission or any included unit. The general
22 obligation bonds shall be issued pursuant to an ordinance or
23 resolution and may be issued in one or more series, and shall
24 bear such date or dates, mature at such time or times and in
25 any event not more than 40 years from the date thereof, be sold
26 at such price at private or public sale as determined by a

1 county water commission, bear interest at such rate or rates
2 such that the net effective interest rate received upon the
3 sale of such bonds does not exceed the maximum rate determined
4 under Section 2 of the Bond Authorization Act, which rates may
5 be fixed or variable, be in such denominations, be in such
6 form, either coupon or registered, carry such conversion,
7 registration, and exchange privileges, be executed in such
8 manner, be payable in such medium of payment at such place or
9 places within or without the State of Illinois, be subject to
10 such terms of redemption, and contain or be subject to such
11 other terms as the ordinance or resolution may provide, and
12 shall not be restricted by the provisions of any other terms of
13 obligations of public agencies or private persons.

14 (e) No issue of general obligation bonds by a county water
15 commission (except bonds to refund an existing bonded
16 indebtedness) shall be authorized unless the commission
17 certifies the proposition of issuing such bonds to the proper
18 election officials, who shall submit the proposition to the
19 voters at an election in accordance with the general election
20 law, and the proposition has been approved by a majority of
21 those voting on the proposition.

22 The proposition shall be in the form provided in Section 5
23 or shall be substantially in the following form:

24 -----

25 Shall general obligation
26 bonds for the purpose of

1 (state purpose), in the YES
 2 sum of \$....(insert amount), -----
 3 be issued by the NO
 4 (insert corporate name of
 5 the county water commission)?
 6 -----

7 (f) In order to carry out and perform its powers and
 8 functions and duties under the provisions of this Act and
 9 Division 135 of the Illinois Municipal Code, as modified and
 10 supplemented by this Act, the governing body of any county
 11 water commission may by ordinance levy annually upon all
 12 taxable property within its territory a tax at a rate not to
 13 exceed .005% of the value of such property, as equalized or
 14 assessed by the Department of Revenue for the year in which the
 15 levy is made. In addition, any county water commission may by
 16 ordinance levy upon all taxable property within its territory,
 17 for one year only, an additional tax for such purposes at a
 18 rate not to exceed .20% of the value of such property, as
 19 equalized or assessed by the Department of Revenue for that
 20 year; provided, however, that such tax may not be levied more
 21 than once in any county water commission.

22 (g) Any county water commission shall have the power to
 23 borrow money, subject to the indebtedness limitation provided
 24 in subsection (d), from the home county or included units, in
 25 such amounts and in such terms as agreed by the governing
 26 bodies of the commission and the home county or included

1 units.

2 (h) No county water commission constituted pursuant to the
3 Act shall engage in the retail sale or distribution of water to
4 residents or customers of any municipality.

5 (i) Nothing in the Section requires any municipality to
6 contract with a county water commission for a supply of water.

7 (j) The State of Illinois recognizes that any such
8 contract for the supply of water executed by a unit of local
9 government and a county water commission may contain terms and
10 conditions intended by the parties thereto to be absolute
11 conditions thereof. The State of Illinois also recognizes that
12 persons may loan funds to a county water commission
13 (including, without limitation, the purchase of revenue or
14 general obligation bonds of such commission) in reliance upon
15 the terms and conditions of any such contract for the supply of
16 water. Therefore, the State of Illinois pledges and agrees to
17 those parties and persons which make loans of funds to a county
18 water commission that it will not impair or limit the power or
19 ability of a county water commission or a unit of local
20 government fully to carry out the financial obligations and
21 obligation to furnish water pursuant to the terms of any
22 contract for the supply of water entered into by such county
23 water commission or unit of local government for the term of
24 such contracts or loans. All other terms and conditions of
25 such contracts and intergovernmental agreements shall be
26 binding to the extent that they are not inconsistent with this

1 amendatory Act of the 93rd General Assembly.

2 (Source: P.A. 95-114, eff. 1-1-08.)

3 (70 ILCS 3720/4.6 new)

4 Sec. 4.6. Construction contracts.

5 (a) All or any portion of a waterworks system or other
6 public improvement of a commission, when the expense thereof
7 will exceed the greater of (i) \$25,000 or (ii) the amount of
8 expense above which a work or public improvement by a
9 municipality must be let to the lowest responsible bidder
10 after advertising for bids under Section 8-9-1 of the Illinois
11 Municipal Code, shall be constructed, maintained, or repaired
12 either: (1) by a contract let to the lowest responsible bidder
13 after advertising for bids, in the manner prescribed by the
14 commission's bylaws, rules, and regulations and by the vote
15 required as established in the water purchase and sale
16 contract; or (2) without advertising for bids, if authorized
17 by a vote of greater than a majority of all the commissioners
18 as established in an intergovernmental agreement. The
19 commission's bylaws, rules, and regulations shall provide for
20 an alternative procedure for emergency procurement if an
21 emergency makes it impracticable to follow the procedures in
22 this subsection.

23 (b) A commission may use alternative project delivery
24 methods if the commission determines it to be in the
25 commission's best interest for a particular project. An

1 alternative project delivery method may include, without
2 limitation, any design-build delivery methods or
3 construction-manager-at-risk delivery methods. All notices for
4 the procurement of goods, services, or work to be provided
5 pursuant to an alternate delivery method shall include all
6 requirements for the goods, services, or work to be procured.
7 All awards of contracts or agreements for the procurement of
8 goods, services, or work to be provided pursuant to an
9 alternate delivery method shall be made on the basis of
10 demonstrated competence and qualifications and with due regard
11 for the principles of competitive selection. As part of an
12 alternate project delivery procurement process, prior to
13 submission of proposals, the commission may conduct meetings
14 and exchange confidential information with proposers to
15 promote understanding of the request for proposals, review
16 alternative design concepts, or discuss other issues related
17 to the procurement.

18 (c) A commission may establish goals or requirements for
19 the procurement of goods and services and for construction
20 contracts to promote and encourage the continuing economic
21 development of (i) businesses that are owned and operated by
22 minorities, women, persons with disabilities, or veterans;
23 (ii) businesses that are located within the territory of one
24 or more of the municipalities that are members of the
25 commission; (iii) businesses that employ persons who reside in
26 the territory of one or more of the municipalities that are

1 members of the commission. A commission may also establish
2 other goals or requirements that result in the award to a
3 responsible bidder other than the lowest responsible bidder if
4 the commission determines that the award is in the
5 commission's best interests, notwithstanding the requirements
6 of subsection (a). Goals or requirements that are set by a
7 commission that result in a preference being applied to a
8 bidder or proposer, who has met those goals or requirements,
9 in a commission's process for awarding construction contracts
10 and for the procurement of goods and services must comply with
11 the constitutional standards applicable to the preferences.

12 (d) A customer municipality may enter into a contract for
13 any portion of a waterworks system or other public improvement
14 of a commission pursuant to a contracting method that is
15 consistent with the requirements applicable to the
16 municipality and generally consistent with the principles in
17 subsection (a) or (b). The commission may accept assignment of
18 such a contract and of payment obligations under that
19 contract.

20 (e) In connection with a contract by a commission for the
21 construction of all or any portion of a waterworks system or
22 other public improvement of the commission for which the
23 commission issues bonds, the commission must enter into a
24 project labor agreement with the applicable local building
25 trades council prior to the commencement of any and all
26 construction, building, renovation, demolition, or any

1 material change to the structure or land.

2 (70 ILCS 3720/4.7 new)

3 Sec. 4.7. Solicitation of proposals.

4 (a) A commission may enter into design-build contracts. In
5 addition to the requirements set forth in its local
6 ordinances, when the commission elects to use the design-build
7 delivery method, it must issue a notice of intent to receive
8 proposals for the project at least 14 days before issuing the
9 request for the proposal. The commission must publish the
10 advance notice online on its website. The commission may
11 publish the notice in construction industry publications or
12 post the notice on construction industry websites. A brief
13 description of the proposed procurement must be included in
14 the notice. The commission must provide a copy of the request
15 for proposal to any party requesting a copy.

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

19 (1) The name of the commission.

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

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

25 (4) Prequalification criteria for design-build

1 entities wishing to submit proposals. The commission shall
2 include, at a minimum, its normal prequalification,
3 licensing, registration, and other requirements; however,
4 nothing precludes the use of additional prequalification
5 criteria by the commission.

6 (5) Material requirements of the contract, including,
7 but not limited to, the proposed terms and conditions,
8 required performance and payment bonds, and insurance.

9 (6) The performance criteria.

10 (7) The evaluation criteria for each phase of the
11 solicitation. Price may not be used as a factor in the
12 evaluation of Phase I proposals.

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

15 (c) The commission may include any other relevant
16 information that it chooses to supply. The design-build entity
17 shall be entitled to rely upon the accuracy of this
18 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. If the cost of the project is estimated to exceed
22 \$12,000,000, then the proposal due date must be at least 28
23 calendar days after the date of the issuance of the request for
24 proposal. The commission shall include in the request for
25 proposal a minimum of 30 days to develop the Phase II
26 submissions after the selection of entities from the Phase I

1 evaluation is completed.

2 (70 ILCS 3720/4.8 new)

3 Sec. 4.8. Development of scope and performance criteria.

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

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

19 (c) The scope and performance criteria shall be prepared
20 by a licensed professional engineer who is an employee of the
21 commission, or the commission may contract with an independent
22 licensed professional engineer or engineering firm selected
23 under the Local Government Professional Services Selection Act
24 to provide these services.

25 (d) The design professional that prepares the scope and

1 performance criteria is prohibited from participating in any
2 design-build entity proposal for the project.

3 (e) The design-build contract may be conditioned upon
4 subsequent refinements in scope and price and may allow the
5 commission to make modifications in the project scope without
6 invalidating the design-build contract.

7 (70 ILCS 3720/4.9 new)

8 Sec. 4.9. Procedures for selection.

9 (a) The commission must use a 2-phase procedure for the
10 selection of the successful design-build entity. Phase I of
11 the procedure will evaluate and shortlist the design-build
12 entities based on qualifications, and Phase II will evaluate
13 the technical and cost proposals.

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

24 The commission shall include the following criteria in
25 every Phase I evaluation of design-build entities: (i)

1 experience of personnel; (ii) successful experience with
2 similar project types; (iii) financial capability; (iv)
3 timeliness of past performance; (v) experience with similarly
4 sized projects; (vi) successful reference checks of the firm;
5 and (vii) commitment to assign personnel for the duration of
6 the project and qualifications of the entity's consultants.

7 The commission may include any additional relevant
8 criteria in Phase I that it deems necessary for a proper
9 qualification review. The commission may not consider any
10 design-build entity for evaluation or award if the entity has
11 any pecuniary interest in the project or has other
12 relationships or circumstances, including, but not limited to,
13 long-term leasehold, mutual performance, or development
14 contracts with the commission, that may give the design-build
15 entity a financial or tangible advantage over other
16 design-build entities in the preparation, evaluation, or
17 performance of the design-build contract or that create the
18 appearance of impropriety.

19 Upon completion of the qualifications evaluation, the
20 commission shall create a shortlist of the most highly
21 qualified design-build entities. The commission, in its
22 discretion, is not required to shortlist the maximum number of
23 entities as identified for Phase II evaluation, provided that
24 no less than 2 design-build entities nor more than 6 are
25 selected to submit Phase II proposals. The commission shall
26 notify the entities selected for the shortlist in writing.

1 This notification shall commence the period for the
2 preparation of the Phase II technical and cost evaluations.
3 The commission must allow sufficient time for the shortlist
4 entities to prepare their Phase II submittals considering the
5 scope and detail requested by the commission.

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

16 The commission shall include the following criteria in
17 every Phase II technical evaluation of design-build entities:
18 (i) compliance with objectives of the project; (ii) compliance
19 of proposed services to the request for proposal requirements;
20 (iii) quality of products or materials proposed; (iv) quality
21 of design parameters; (v) design concepts; (vi) innovation in
22 meeting the scope and performance criteria; and (vii)
23 constructability of the proposed project. The commission may
24 include any additional relevant technical evaluation factors
25 it deems necessary for proper selection.

26 The commission may include the following criteria in every

1 Phase II cost evaluation: the total project cost; the
2 construction costs; and the time of completion. The commission
3 may include any additional relevant technical evaluation
4 factors it deems necessary for proper selection. The total
5 project cost criteria weighting factor shall not exceed 30%.

6 The commission shall directly employ or retain a licensed
7 professional engineer to evaluate the technical and cost
8 submissions to determine if the technical submissions are in
9 accordance with generally accepted industry standards.

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

13 (70 ILCS 3720/4.10 new)

14 Sec. 4.10. Small projects. In any case where the total
15 overall cost of the project is estimated to be less than
16 \$12,000,000, the commission may combine the 2-phase procedure
17 for selection described in Section 10 into one combined
18 procedure, provided that all the requirements of evaluation
19 are performed in accordance with Section 11.

20 (70 ILCS 3720/4.11 new)

21 Sec. 4.11. Submission of proposals.

22 (a) Proposals must be properly identified and sealed.
23 Proposals may not be reviewed until after the deadline for
24 submission has passed as set forth in the request for

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

5 (b) Proposals may include a bid bond in the form and
6 security as designated in the request for proposals. Proposals
7 shall also contain a separate sealed envelope with the cost
8 information within the overall proposal submission. Proposals
9 shall include a list of all design professionals and other
10 entities to which any work may be subcontracted during the
11 performance of the contract.

12 (c) Proposals must meet all material requirements of the
13 request for proposal or they may be rejected as
14 non-responsive. The commission has the right to reject any and
15 all proposals.

16 (d) The drawings and specifications of the proposal may
17 remain the property of the design-build entity.

18 (e) The commission shall review the proposals for
19 compliance with the performance criteria and evaluation
20 factors.

21 (f) Proposals may be withdrawn prior to evaluation for any
22 cause. After evaluation begins by the commission, clear and
23 convincing evidence of error is required for withdrawal.

24 (70 ILCS 3720/4.12 new)

25 Sec. 4.12. Award; performance. The commission may award

1 the contract to the highest overall ranked entity. Notice of
2 award shall be made in writing. Unsuccessful entities shall
3 also be notified in writing. The commission may not request a
4 best and final offer after the receipt of proposals. The
5 commission may negotiate with the selected design-build entity
6 after award for the purpose of securing better terms than
7 originally proposed, provided that the salient features of the
8 request for proposal are not diminished.

9 A design-build entity and associated design professionals
10 shall conduct themselves in accordance with the relevant laws
11 of this State and the related provisions of the Illinois
12 Administrative Code.

13 (70 ILCS 3720/4.13 new)

14 Sec. 4.13. Applicability. Sections 4.7 through 4.12 of
15 this Act shall apply notwithstanding anything to the contrary
16 in Division 135 of Article 11 of the Illinois Municipal
17 Code."