

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 reenacting and changing Sections 2.5, 20.3, 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25 and adding Section 23.6 as follows:

(50 ILCS 20/2.5)

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This Section is repealed on June 1, 2023 ~~2018~~; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

(Source: P.A. 98-299, eff. 8-9-13; reenacted by P.A. 98-619, eff. 1-7-14.)

(50 ILCS 20/20.3)

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 on June 1, 2023 ~~2018~~; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

(Source: P.A. 98-299, eff. 8-9-13; reenacted by P.A. 98-619, eff. 1-7-14.)

(50 ILCS 20/20.4)

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 on June 1, 2023 ~~2018~~; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

(Source: P.A. 98-299, eff. 8-9-13; reenacted by P.A. 98-619, eff. 1-7-14.)

(50 ILCS 20/20.5)

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 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 on June 1, 2023 ~~2018~~; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

(Source: P.A. 100-201, eff. 8-18-17.)

(50 ILCS 20/20.10)

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 on June 1, 2023 ~~2018~~; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

(Source: P.A. 98-299, eff. 8-9-13; reenacted by P.A. 98-619,

eff. 1-7-14.)

(50 ILCS 20/20.15)

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 on June 1, 2023 ~~2018~~; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

(Source: P.A. 98-299, eff. 8-9-13; reenacted by P.A. 98-619, eff. 1-7-14.)

(50 ILCS 20/20.20)

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 on June 1, 2023 ~~2018~~; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

(Source: P.A. 98-299, eff. 8-9-13; reenacted by P.A. 98-619, eff. 1-7-14.)

(50 ILCS 20/20.25)

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 50% of the moneys spent on construction projects during the same fiscal year.

(c) This Section is repealed on June 1, 2023 ~~2018~~; provided that any design-build contracts entered into before such date or any procurement of a project under this Act commenced before such date, and the contracts resulting from those procurements, shall remain effective.

(Source: P.A. 98-299, eff. 8-9-13; reenacted by P.A. 98-619,

eff. 1-7-14.)

(50 ILCS 20/23.6 new)

Sec. 23.6. Continuation of Sections 2.5, 20.3, 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25; validation under this amendatory Act of the 101st General Assembly.

(a) The General Assembly finds and declares all of the following:

(1) Public Act 100-736, which took effect on January 1, 2019, changed the repeal dates of Sections 2.5, 20.3, 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25 of this Act from June 1, 2018 to June 1, 2023.

(2) The Statute on Statutes sets forth general rules on the repeal of statutes and the construction of multiple amendments, but Section 1 of that Act also states that these rules will not be observed when the result would be "inconsistent with the manifest intent of the General Assembly or repugnant to the context of the statute".

(3) This amendatory Act of the 101st General Assembly manifests the intention of the General Assembly to extend the repeal of Sections 2.5, 20.3, 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25 of this Act and have those Sections continue in effect until they are otherwise lawfully repealed.

(4) Sections 2.5, 20.3, 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25 of this Act were originally enacted to

protect, promote, and preserve the general welfare. Any construction of this Act that results in the repeal of those Sections on June 1, 2018 would be inconsistent with the manifest intent of the General Assembly and repugnant to the context of this Act.

(b) It is declared to have been the intent of the General Assembly that Sections 2.5, 20.3, 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25 of this Act not be subject to repeal on June 1, 2018.

(c) Sections 2.5, 20.3, 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25 of this Act shall be deemed to have been in continuous effect since June 1, 2018, and they shall continue to be in effect until they are otherwise lawfully repealed. All previously enacted amendments to those Sections taking effect on or after June 1, 2018 are validated. All actions taken in reliance on or under those Sections by any person or entity are validated.

(d) In order to ensure the continuing effectiveness of Sections 2.5, 20.3, 20.4, 20.5, 20.10, 20.15, 20.20, and 20.25 of this Act, those Sections are set forth in full and reenacted by this amendatory Act of the 101st General Assembly. Striking and underscoring are used only to show changes being made to the base text. This reenactment is intended as a continuation of those Sections. It is not intended to supersede any amendment to those Sections that is enacted by the 101st General Assembly. This reenactment applies to all claims, civil

Public Act 101-0479

HB2639 Enrolled

LRB101 08629 AWJ 53713 b

actions, and proceedings pending on or filed on or before the effective date of this amendatory Act of the 101st General Assembly.

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