

AN ACT concerning local government.

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

Section 5. The Park District Code is amended by adding Sections 8-50, 8-51, 8-52, 8-53, 8-54, 8-55, 8-56, and 8-57 as follows:

(70 ILCS 1205/8-50 new)

Sec. 8-50. Definitions. For the purposes of Sections 8-50 through 8-57, the following terms shall have the following meanings, unless the context requires a different meaning:

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

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

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

"Design-build contract" means a contract for a public project under this Act between any park district and a

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

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

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

"Evaluation criteria" means the requirements for the separate phases of the selection process for design-build

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

"Landscape architect design professional" means any person, sole proprietorship, or entity including, but not limited to, a partnership, professional service corporation, or corporation that offers services under the Illinois Landscape Architecture Act of 1989.

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

"Request for proposal" means the document used by the park district to solicit proposals for a design-build contract.

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

Sec. 8-51. Authorization for design-build; advertisement.

(a) A park district shall have the power to enter into design-build contracts. In addition to the requirements set forth in its ordinances, the park district shall advertise a design-build solicitation at least once in a daily newspaper of general circulation within the county in which the park district is located. The date that Phase I submissions by design-build entities are due must be at least 14 calendar days after the date the newspaper advertisement for design-build proposals is first published. The advertisement shall identify the design-build project, the due date, the place and time for Phase I submissions, and the place where proposers may obtain a complete copy of the request for design-build proposals, including the criteria for evaluation and the scope and performance criteria. The park district is not precluded from using other media or from placing advertisements in addition to the one required under this subsection.

(b) A park district may reject any and all bids and proposals received and may readvertise for bids or issue a new request for design-build proposals.

(70 ILCS 1205/8-52 new)

Sec. 8-52. Solicitation of design-build proposals.

(a) When a park district 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 proposal. The park district shall publish notice of the request for the design-build proposal in a newspaper of general circulation within the county in which the park district is located. The park district shall, if possible, post plans and specifications in a related construction industry service publication. A brief description of the proposed procurement must be included in the notice. The park district 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) A preliminary schedule for the completion of the contract.

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

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

(4) 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 park district for minority and women business enterprises and to comply with Section 2-105 of the Illinois Human Rights Act.

(5) The performance criteria.

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

(7) The number of entities to be considered for the technical and cost evaluation phase.

(c) The park district 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 construction portion of 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 park district 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.

(70 ILCS 1205/8-53 new)

Sec. 8-53. Development of design-build scope and performance criteria.

(a) The park district shall develop, with the assistance of a licensed design professional or a landscape architect design professional, as appropriate, 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 park district'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 park district to be produced by the design-build entities.

(c) The scope and performance criteria shall be prepared by a design professional or a landscape architect design professional, as appropriate, who is an employee of the park district, or the park district may contract with an independent design professional selected under the Local Government Professional Services Selection Act to provide these services.

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

(70 ILCS 1205/8-54 new)

Sec. 8-54. Procedures for design-build selection.

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

(b) The park district 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 park district 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 park district. The park district must maintain a record of the evaluation scoring to be disclosed in the event of a protest regarding the solicitation. The park district 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;

(8) qualifications of the entity's consultants; and

(9) 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 park district and in complying with Section 2-105 of the Illinois Human Rights Act.

The park district may include any additional relevant criteria in Phase I that it deems necessary for a proper qualification review.

The park district 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 park district, 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 concerning minority and women business enterprises and economically disadvantaged firms established by the corporate authorities of the park district and with

Section 2-105 of the Illinois Human Rights Act.

Upon completion of the qualifications evaluation, the park district shall create a shortlist of the most highly qualified design-build entities. The park district, in its discretion, is not required to shortlist the maximum number of entities as identified for Phase II evaluation, except that no less than 2 design-build entities nor more than 6 may be selected to submit Phase II proposals. The park district shall notify the entities selected for the shortlist in writing. This notification shall commence the period for the preparation of Phase II technical and cost evaluations. The park district must allow sufficient time for the shortlist entities to prepare their Phase II submittals considering the scope and detail requested by the park district.

(c) The park district 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 park district. The park district must maintain a record of the evaluation scoring to be disclosed in the event of a protest regarding the solicitation.

The park district 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 park district may include any additional relevant technical evaluation factors it deems necessary for proper selection.

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

The park district shall directly employ or retain a licensed design professional or landscape architect design professional, as appropriate, 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 park district may award the design-build contract to the highest overall ranked entity.

(70 ILCS 1205/8-55 new)

Sec. 8-55. 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 park district may combine the two-phase procedure for design-build selection described in Section 8-50 into one combined step, provided that all the requirements of evaluation are performed in accordance with Section 8-50.

(70 ILCS 1205/8-56 new)

Sec. 8-56. 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, landscape architect design professionals, and other entities to which any 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 park district 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 park district shall review the proposals for compliance with the performance criteria and evaluation factors set forth in this Act.

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

(70 ILCS 1205/8-57 new)

Sec. 8-57. Design-build award. The park district 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 park district may not request a best and final offer after the receipt of proposals. The park district 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.

Public Act 097-0349

HB3458 Enrolled

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