

Senate Bill 71

By: Senators Hill of the 32nd, Gooch of the 51st, Beach of the 21st and Chance of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 4 of Chapter 2 of Title 32 of the Official Code of Georgia Annotated,
2 relating to the exercise of power by the Department of Transportation to contract, so as to
3 change certain provisions relating to procedures for utilizing design-build contracts; to
4 expand the selection process; to remove the limitation on contracting; to provide an effective
5 date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 4 of Chapter 2 of Title 32 of the Official Code of Georgia Annotated, relating to the
9 exercise of power by the Department of Transportation to contract, is amended by revising
10 Code Section 32-2-81, relating to the procedures for utilizing design-build contracts, as
11 follows:

12 "32-2-81.

13 (a) As used in this Code section, the term 'design-build procedure' means a method of
14 contracting under which the department contracts with another party for the party to both
15 design and build the structures, facilities, systems, and other items specified in the contract.

16 (b) The department may use the design-build procedure for buildings, bridges and
17 approaches, rail corridors, technology deployments, and limited or controlled access
18 projects or projects that may be constructed within existing rights of way where the scope
19 of work can be clearly defined or when a significant savings in project delivery time can
20 be attained.

21 (c) When the department determines that it is in the best interests of the public, the
22 department may combine any or all of the environmental services, utility relocation
23 services, right of way services, design services, integration services, and construction
24 phases of a public road or other transportation purpose project into a single contract using
25 a design-build procedure. Design-build contracts may be advertised and awarded
26 notwithstanding the requirements of paragraph (1) of subsection (d) of Code Section
27 32-2-61. However, construction activities may not begin on any portion of such projects

28 until title to the necessary rights of way and easements for the construction of that portion
 29 of the project has vested in the state or a local governmental entity and all railroad crossing
 30 and utility agreements have been executed.

31 (d) The department may administer the design-build procedure using a lowest qualified
 32 bid process where the lowest qualified bidder is selected or a best value bid process where
 33 the bidder of best value is selected through the weighing of requirements defined by the
 34 department. When using the best value bid process, the department shall define in the
 35 request for proposal the requirements for the selection of the best value bidder which shall
 36 include at a minimum a weighted costs component and a technical component.

37 ~~(d)~~(e) The department shall adopt by rule procedures for administering design-build
 38 contracts. Such procedures shall include, but not be limited to:

39 (1) Prequalification requirements;

40 (2) Public advertisement procedures;

41 ~~(3) Scope of service requirements;~~

42 ~~(4)~~(3) Letters of interest requirements Requirements for statements of qualifications;

43 ~~(5)~~(4) Request for proposals. Requests for proposal shall include the applicable
 44 percentage to be applied to each evaluation criterion and the relative weight to be
 45 assigned to each requirements;

46 ~~(6)~~(5) Criteria for evaluating technical information and project costs;

47 ~~(7)~~(6) Criteria for selection and award process, provided that the rules shall specify that
 48 the criteria for selection shall consist of the following minimum two components:

49 (A) A statement of qualifications from which the department will determine a list of
 50 qualified firms for the project. If the department determines it is in the best interest of
 51 the state, the department may omit this component; and all firms bidding shall be placed
 52 on the list of qualified firms for the project with such placement being pro forma,
 53 notwithstanding a firm's actual qualifications for the project; and

54 (B) From the list of qualified firms as provided in subparagraph (A) of this paragraph,
 55 a price proposal and technical proposal from each firm from which the department shall
 56 select the lowest qualified bidder if using the lowest qualified bid process for the
 57 project or the best value bidder if using the best value bid process for the project;
 58 provided, however, that a proposal will shall only be considered nonresponsive if it
 59 does not contain all the information and level of detail requested in the request for
 60 proposal. A proposal shall not be deemed to be nonresponsive solely on the basis of
 61 minor irregularities in the proposal that do not directly affect the ability to fairly
 62 evaluate the merits of the proposal. Notwithstanding the requirements of Code Section
 63 36-91-21, under no circumstances shall the department use a 'best and final offer'
 64 standard in awarding a contract. The department may provide for a stipulated fee to be

65 awarded to the short list of qualified proposers who provide a responsive, successful
 66 proposal. In consideration for paying the stipulated fee, the department may use any
 67 ideas or information contained in the proposals in connection with the contract awarded
 68 for the project, or in connection with a subsequent procurement, without obligation to
 69 pay any additional compensation to the unsuccessful proposers;

70 ~~(8)(7)~~ Identification of those projects that the department believes are candidates for
 71 design-build contracting, ~~with the understanding that in general this type of contract~~
 72 ~~should have minimal right of way or utility issues which are unresolved; provided,~~
 73 ~~however, the failure of the department to identify such projects does not prevent the~~
 74 ~~department from using design-build contracting in extraordinary circumstances including~~
 75 ~~emergency work, unscheduled projects, or where loss of funding might occur; and~~

76 ~~(9)(8)~~ Criteria for resolution of contract issues. The department may adopt a method for
 77 resolving issues and disputes through negotiations at the project level by the program
 78 manager up to and including a dispute review board procedure with final review by the
 79 commissioner or his or her designee. Regardless of the status or disposition of the issue
 80 or dispute, the design-builder and the department shall continue to perform their
 81 contractual responsibilities. The department shall have the authority to suspend or
 82 provide for the suspension of Section 108 of the department's standard specifications
 83 pending final resolution of such contract issues and disputes. This paragraph ~~does~~ shall
 84 not prevent an aggrieved party from seeking judicial review.

85 ~~(e) The department must receive at least three letters of interest in order to proceed with~~
 86 ~~a request for proposals. The department shall request proposals from no fewer than three~~
 87 ~~of the design-build firms submitting letters of interest. If a design-build firm withdraws~~
 88 ~~from consideration after the department requests proposals, the department may continue~~
 89 ~~if at least two proposals are received.~~

90 (f) In contracting for design-build projects, the department shall be limited to contracting
 91 for no more than 50 percent of the total amount of construction projects awarded in the
 92 previous fiscal year.

93 (g) Not later than 90 days after the end of the fiscal year, the department shall provide to
 94 the Governor, Lieutenant Governor, Speaker of the House of Representatives, and
 95 ~~chairmen~~ chairpersons of the House and Senate Transportation Committees a summary
 96 containing all the projects awarded during the fiscal year using the design-build contracting
 97 method. Included in the report shall be an explanation for projects awarded to other than
 98 the low bid proposal. This report shall be made available for public information."

99

SECTION 2.

100 This Act shall become effective upon its approval by the Governor or upon its becoming law
101 without such approval.

102

SECTION 3.

103 All laws and parts of laws in conflict with this Act are repealed.