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SPECIAL DISTRICTS**(70 ILCS 860/) Forest Preserve District and Conservation District Design-Build Authorization Act.**

(70 ILCS 860/1)

Sec. 1. Short title. This Act may be cited as the Forest Preserve District and Conservation District Design-Build Authorization Act.

(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/5)

Sec. 5. Purpose. This purpose of this Act is to authorize forest preserve districts and conservation districts to use design-build processes to increase the efficiency and effectiveness of delivering public projects.

(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/10)

Sec. 10. Definitions. As used in this Act:

"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, the competitive bidding process set forth in Section 6 of the Conservation District Act, the competitive bidding process set forth in subsection (b) of Section 8 of the Downstate Forest Preserve District Act, or the competitive bidding process set forth in Section 14 of the Cook County Forest Preserve District Act.

"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 a forest preserve district or conservation district and a design-build entity to furnish: architecture, engineering, land surveying, public art or interpretive exhibits, and related services, as required; and the labor, materials, equipment, and other construction services for the project.

"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 professionals shall conduct themselves in accordance with the relevant laws of this State and the related provisions of the Illinois Administrative Code.

"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 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.

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

"Public art designer" means any individual, sole proprietorship, firm, partnership, joint venture, corporation, professional corporation, or other entity that has demonstrated experience with the design and fabrication of public art including any media that has been planned and executed with the intention of being staged in the physical public domain outside and accessible to all or any art which is exhibited in a public space including publicly accessible buildings, or interpretive exhibits including communication media that is designed to engage, excite, inform, relate, or reveal the intrinsic nature or indispensable quality of a topic or story being presented.

"Request for proposal" means the document used by the forest preserve district or conservation 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. (Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/15)

Sec. 15. Solicitation of proposals.

(a) A forest preserve district or conservation district may enter into design-build contracts. In addition to the requirements set forth in its local ordinances, when the forest preserve district or conservation 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 the proposal. The forest preserve district or conservation district must publish the advance notice in the manner prescribed by ordinance, which shall include posting the advance notice online on its website. The forest preserve district or conservation district may publish the notice in construction industry publications or post the notice on construction industry websites. A brief description of the proposed procurement must be included in the notice. The forest preserve district or conservation 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) The name of the forest preserve district or conservation district.

(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 forest preserve district or conservation district shall include, at a minimum, its normal prequalification, licensing, registration, and other requirements; however, nothing precludes the use of additional prequalification criteria by the forest preserve district or conservation district.

(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 for business enterprises established in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act and with Section 2-105 of the Illinois Human Rights Act.

(6) The performance criteria.

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

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

(c) The forest preserve district or conservation 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 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 forest preserve district or conservation 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.

(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/20)

Sec. 20. Development of scope and performance criteria.

(a) The forest preserve district or conservation district shall develop, with the assistance of a licensed design professional or public art designer, 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 forest preserve district's or conservation 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 forest preserve district or conservation district to be produced by the design-build entities.

(c) The scope and performance criteria shall be prepared by a design professional or public art designer who is an employee of the forest preserve district or conservation district, or the forest preserve district or conservation district may contract with an independent design professional or public art designer selected under the Local Government Professional Services Selection Act to provide these services.

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

(e) The design-build contract may be conditioned upon subsequent refinements in scope and price and may allow the forest preserve district or conservation district to make modifications in the project scope without invalidating the design-build contract.

(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/25)

Sec. 25. Procedures for selection.

(a) The forest preserve district or conservation district 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 forest preserve district or conservation 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 forest preserve district or conservation 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 forest preserve district or conservation district. The forest preserve district or conservation district must maintain a record of the evaluation scoring to be disclosed in the event of a protest regarding the solicitation.

The forest preserve district or conservation district shall include the following criteria in every Phase I evaluation of design-build entities: (i) experience of personnel; (ii) successful experience with similar project types; (iii) financial capability; (iv) timeliness of past performance; (v) experience with similarly sized projects; (vi) successful reference checks of the firm; (vii) commitment to assign personnel for the duration of the project and qualifications of the entity's consultants; and (viii) ability or past performance in meeting or exhausting good faith efforts to meet the utilization goals for business enterprises established in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act and with Section 2-105 of the Illinois Human Rights Act. The forest preserve district or conservation district may include any additional relevant criteria in Phase I that it deems necessary for a proper qualification review.

The forest preserve district or conservation 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 forest preserve district or conservation 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 proposal shall be considered that does not include an entity's plan to comply with the requirements established in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act, for both the design and construction areas of performance, and with Section 2-105 of the Illinois Human Rights Act.

Upon completion of the qualifications evaluation, the forest preserve district or conservation district shall create a shortlist of the most highly qualified design-build entities. The forest preserve district or conservation district, in its discretion, is not required to shortlist the maximum number of entities as identified for Phase II evaluation, provided that no

less than 2 design-build entities nor more than 6 are selected to submit Phase II proposals.

The forest preserve district or conservation district 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 forest preserve district or conservation district must allow sufficient time for the shortlist entities to prepare their Phase II submittals considering the scope and detail requested by the forest preserve district or conservation district.

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

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

The forest preserve district or conservation district shall include the following criteria in every Phase II cost evaluation: the total project cost, the construction costs, and the time of completion. The forest preserve or conservation district may include any additional relevant technical evaluation factors it deems necessary for proper selection. The total project cost criteria weighting factor shall not exceed 30%.

The forest preserve or conservation district shall directly employ or retain a licensed design professional or a public art designer 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 forest preserve or conservation district may award the design-build contract to the highest overall ranked entity.

(Source: P.A. 102-460, eff. 6-1-22; 103-154, eff. 6-30-23.)

(70 ILCS 860/30)

Sec. 30. Small projects. In any case where the total overall cost of the project is estimated to be less than \$12,000,000, the forest preserve or conservation district may combine the two-phase procedure for selection described in Section 25 into one combined step, provided that all the requirements of evaluation are performed in accordance with Section 25.

(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/35)

Sec. 35. Submission of proposals. 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.

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, public art designers, 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 forest preserve or conservation district shall have the right to reject any and all proposals.

The drawings and specifications of the proposal may remain the property of the design-build entity.

The forest preserve or conservation district shall review the proposals for compliance with the performance criteria and evaluation factors.

Proposals may be withdrawn prior to evaluation for any cause. After evaluation begins by the forest preserve or conservation district, clear and convincing evidence of error is required for withdrawal.

(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/40)

Sec. 40. Award. The forest preserve or conservation district may award the contract to the highest overall ranked entity. Notice of award shall be made in writing. Unsuccessful entities shall also be notified in writing. The forest preserve or conservation district may not request a best and final offer after the receipt of proposals. The forest preserve or conservation 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.

(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/45)

Sec. 45. Reports and evaluation. At the end of every 6 month period following the contract award, and again prior to final contract payout and closure, a selected design-build entity shall detail, in a written report submitted to the forest preserve or conservation district, its efforts and success in implementing the entity's plan to comply with the utilization goals for business enterprises established in the Business Enterprise for Minorities, Women, and Persons with Disabilities Act and the provisions of Section 2-105 of the Illinois Human Rights Act.

(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/905)

Sec. 905. (Amendatory provisions; text omitted).

(Source: P.A. 102-460, eff. 6-1-22; text omitted.)

(70 ILCS 860/910)

Sec. 910. (Amendatory provisions; text omitted).

(Source: P.A. 102-460, eff. 6-1-22; text omitted.)

(70 ILCS 860/915)

Sec. 915. (Amendatory provisions; text omitted).
(Source: P.A. 102-460, eff. 6-1-22; text omitted.)

(70 ILCS 860/997)

Sec. 997. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.
(Source: P.A. 102-460, eff. 6-1-22.)

(70 ILCS 860/999)

Sec. 999. Effective date. This Act takes effect June 1, 2022.
(Source: P.A. 102-460, eff. 6-1-22.)