

Senate Bill 411

By: Senators Williams of the 19th, Seay of the 34th, Mullis of the 53rd, Pearson of the 51st and Stoner of the 6th

AS PASSED SENATE

**A BILL TO BE ENTITLED
AN ACT**

1 To repeal Code Section 32-2-81 of the Official Code of Georgia Annotated, relating to the
2 procedure for awarding design-build contracts; to amend Chapter 2 of Title 32 of the Official
3 Code of Georgia Annotated, relating to the Department of Transportation, so as to enact the
4 "Transportation Alternative Delivery Act"; to allow for an alternative delivery method for
5 contracts; to define certain terms; to provide for the awarding of construction contracts by
6 competitive bid or competitive proposal; to authorize the promulgation of rules and
7 regulations; to require the Department of Transportation to report to the General Assembly
8 on its progress in utilizing design-build procedures; to provide for related matters; to provide
9 for an effective date; to repeal conflicting laws; and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

12 Code Section 32-2-81 of the Official Code of Georgia Annotated, relating to the procedure
13 for awarding design-build contracts, is repealed and designated as "Reserved."

14 "32-2-81.

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

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

22 ~~(c) When the department determines that it is in the best interests of the public, the~~
23 ~~department may combine any or all of the environmental services, right of way services,~~
24 ~~design services, and construction phases of a public road or other transportation purpose~~
25 ~~project into a single contract using a design-build procedure. Design-build contracts may~~
26 ~~be advertised and awarded notwithstanding the requirements of paragraph (1) of subsection~~

1 ~~(d) of Code Section 32-2-61. However, construction activities may not begin on any~~
2 ~~portion of such projects until title to the necessary rights of way and easements for the~~
3 ~~construction of that portion of the project has vested in the state or a local governmental~~
4 ~~entity and all railroad crossing and utility agreements have been executed.~~

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

7 ~~(1) Prequalification requirements;~~

8 ~~(2) Public advertisement procedures;~~

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

10 ~~(4) Letters of interest requirements;~~

11 ~~(5) Request for proposals. Requests for proposal shall include the applicable percentage~~
12 ~~to be applied to each evaluation criterion and the relative weight to be assigned to each;~~

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

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

16 ~~(A) A statement of qualifications from which the department will determine a list of~~
17 ~~qualified firms for the project; and~~

18 ~~(B) From the list of qualified firms as provided in subparagraph (A) of this paragraph,~~
19 ~~a price proposal from each firm from which the department shall select the lowest~~
20 ~~qualified bidder; provided, however, that a proposal will only be considered~~
21 ~~nonresponsive if it does not contain all the information and level of detail requested in~~
22 ~~the request for proposal. A proposal shall not be deemed to be nonresponsive solely on~~
23 ~~the basis of minor irregularities in the proposal that do not directly affect the ability to~~
24 ~~fairly evaluate the merits of the proposal. Notwithstanding the requirements of Code~~
25 ~~Section 36-91-21, under no circumstances shall the department use a 'best and final~~
26 ~~offer' standard in awarding a contract. The department may provide for a stipulated fee~~
27 ~~to be awarded to the short list of qualified proposers who provide a responsive,~~
28 ~~successful proposal. In consideration for paying the stipulated fee, the department may~~
29 ~~use any ideas or information contained in the proposals in connection with the contract~~
30 ~~awarded for the project, or in connection with a subsequent procurement, without~~
31 ~~obligation to pay any additional compensation to the unsuccessful proposers;~~

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

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

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

~~(f) In contracting for design-build projects, the department shall be limited to contracting for no more than 15 percent of the total amount of construction projects awarded in the previous fiscal year.~~

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

SECTION 2.

Chapter 2 of Title 32 of the Official Code of Georgia Annotated, relating to the Department of Transportation, is amended by adding a new article to read as follows:

"ARTICLE 5

32-2-90.

This article shall be known and may be cited as the 'Transportation Alternative Delivery Act.'

32-2-91.

As used in this article, the term:

1 (1) 'Alternative project delivery method' includes, but is not limited to, contracting
2 procedures utilizing:

3 (A) Competitive sealed bidding, a method of soliciting contracts where the award is
4 based upon the lowest responsive, responsible bid;

5 (B) Competitive sealed proposals, a method of soliciting contracts where the award is
6 based upon evaluation criteria identified in a request for proposals which may or may
7 not include price, cost, or fees as part of the evaluation criteria;

8 (C) Construction management of risk, a project delivery method in which the
9 department contracts for design and construction separately. This project delivery
10 method can accommodate overlapping of the project phases and allows for early award
11 of the construction package when the phased construction documents are complete. The
12 design risk is allocated to the designer, and the construction risk is allocated to the
13 Construction Manager/General Contractor ('CM/GC') at the time of selection; or

14 (D) Design-build construction, a project delivery method where the design builder is
15 responsible for the design and construction of the project.

16 (2) 'Design-bid-build construction' means a project delivery method in which the
17 department contracts sequentially with separate entities for the design and construction
18 of a project. The general construction contract is awarded after the design is completed.

19 32-2-92.

20 (a) The department shall be authorized to use any alternative project delivery method
21 authorized under this article for the construction of buildings, public roads, bridges, and
22 other transportation projects. This shall include the combining of any or all of the
23 environmental services, permitting, right of way services, design services, and construction
24 phases of a public road or other transportation project in order to expedite delivery of such
25 project.

26 (b) Where the use of any alternative project delivery method involves the expenditure of
27 federal assistance or funds, the receipt of which is conditioned upon compliance with
28 federal laws or regulations regarding the procedures for awarding the contract, the
29 department shall comply with such federal requirements and shall not be required to
30 comply with the provisions of this article that differ from the federal requirements. The
31 department shall provide notice that federal procedures exist for the award of such
32 contracts in the advertisement. The availability and location of such federal requirements
33 shall be provided to any person requesting such information.

1 32-2-93.

2 The department shall be authorized to promulgate rules and regulations governing the
3 alternative project delivery methods which are consistent with the purposes of this article.

4 32-2-94.

5 Beginning in fiscal year 2009, the department shall annually report to the Governor,
6 Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons
7 of the House and Senate Transportation Committees on its progress in identifying suitable
8 projects for using the design-build construction procedure or other alternative delivery
9 methods. The report shall include the progress on each of the identified projects and shall
10 be provided not later than 90 days after the end of the fiscal year."

11 **SECTION 3.**

12 This Act shall become effective on July 1, 2008.

13 **SECTION 4.**

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