

Senate Bill 70

By: Senators Gooch of the 51st, Hill of the 32nd, Beach of the 21st, Mullis of the 53rd, Chance of the 16th and others

**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 Department of Transportation's power to contract generally, so as to change
3 the type of projects eligible for design-build contracts and the procurement process for such
4 contracts; to provide for related matters; to repeal conflicting laws; and for other purposes.

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

6 **SECTION 1.**

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

11 "32-2-81.

12 (a) As used in this Code section, the term 'design-build procedure' means a method of
13 contracting under which the department contracts with another party for the party to both
14 design and build the structures, facilities, systems, and other items specified in the contract.
15 (b) The department may use the design-build procedure for buildings, bridges and
16 approaches, rail corridors, technology deployments, and limited or controlled access
17 projects or projects that may be constructed within existing rights of way where the scope
18 of work can be clearly defined or when a significant savings in project delivery time can
19 be attained.

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

28 vested in the state or a local governmental entity and all railroad crossing and utility
29 agreements have been executed.

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

32 (1) Prequalification requirements;

33 (2) Public advertisement procedures;

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

35 (4) ~~Letters of interest Request for qualification~~ requirements;

36 (5) ~~(4) Request for proposals requirements. Requests for proposal shall include the~~
37 ~~applicable percentage to be applied to each evaluation criterion and the relative weight~~
38 ~~to be assigned to each;~~

39 (6) ~~(5) Criteria for evaluating technical information and project costs;~~

40 (7) ~~(6) Criteria for selection and award process, provided that the rules shall specify that~~
41 ~~the criteria for selection shall consist of the following minimum two components for any~~
42 ~~two-step procurement process:~~

43 (A) A statement of qualifications from which the department will determine a list of
44 qualified firms for the project, ~~provided that, if the department determines it is in the~~
45 ~~state's best interest, it may omit this requirement and move directly to a one-step~~
46 ~~procurement process through the issuance of a request for proposal from which the~~
47 ~~department may select the lowest qualified bidder;~~ and

48 (B) From the list of qualified firms as provided in subparagraph (A) of this paragraph,
49 a ~~technical proposal and a price proposal from each firm from which the department~~
50 ~~shall select the lowest qualified bidder; provided, however, that a or, in the event the~~
51 ~~department uses the best value procurement process, the request for proposal shall~~
52 ~~specify the requirements necessary for the selection of the best value proposer which~~
53 ~~shall include, at a minimum, a weighted cost component and a technical component.~~ A
54 ~~proposal will shall~~ only be considered nonresponsive if it does not contain all the
55 information and level of detail requested in the request for proposal. A proposal shall
56 not be deemed to be nonresponsive solely on the basis of minor irregularities in the
57 proposal that do not directly affect the ability to fairly evaluate the merits of the
58 proposal. ~~Notwithstanding the requirements of Code Section 36-91-21, under no~~
59 ~~circumstances shall the department use a "best and final offer" standard in awarding a~~
60 ~~contract.~~ The department may provide for a stipulated fee to be awarded to the short list
61 of qualified proposers who provide a responsive, successful proposal. In consideration
62 for paying the stipulated fee, the department may use any ideas or information contained
63 in the proposals in connection with the contract awarded for the project, or in connection

with a subsequent procurement, without obligation to pay any additional compensation to the unsuccessful proposers;

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

(9)(8) 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~~ shall 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 50 percent of the total amount of construction projects awarded in the previous fiscal year.

(g)(f) 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 chairpersons 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."

SECTION 2.

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