

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

AS PASSED SENATE

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 in order to induce one proposer to bid against an offer of another proposer. The
 61 department may provide for a stipulated fee to be awarded to the short list of qualified
 62 proposers who provide a responsive, successful proposal. In consideration for paying

63 the stipulated fee, the department may use any ideas or information contained in the
 64 proposals in connection with the contract awarded for the project, or in connection with
 65 a subsequent procurement, without obligation to pay any additional compensation to the
 66 unsuccessful proposers;

67 ~~(8)(7)~~ Identification of those projects that the department believes are candidates for
 68 design-build contracting, ~~with the understanding that in general this type of contract~~
 69 ~~should have minimal right of way or utility issues which are unresolved; provided,~~
 70 ~~however, the failure of the department to identify such projects does not prevent the~~
 71 ~~department from using design-build contracting in extraordinary circumstances including~~
 72 ~~emergency work, unscheduled projects, or where loss of funding might occur; and~~

73 ~~(9)(8)~~ Criteria for resolution of contract issues. The department may adopt a method for
 74 resolving issues and disputes through negotiations at the project level by the program
 75 manager up to and including a dispute review board procedure with final review by the
 76 commissioner or his or her designee. Regardless of the status or disposition of the issue
 77 or dispute, the design-builder and the department shall continue to perform their
 78 contractual responsibilities. The department shall have the authority to suspend or provide
 79 for the suspension of Section 108 of the department's standard specifications pending final
 80 resolution of such contract issues and disputes. This paragraph ~~does~~ shall not prevent an
 81 aggrieved party from seeking judicial review.

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

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

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

96 **SECTION 2.**

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