

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.