Overview

Authorizes the use of design-build contracts for state building projects, and prescribes conditions for entering into these contracts. Under a design-build contract, there is one contract that covers both design and construction. This is unlike the current customary practice in which there is a procedure for entering into the design contract and separate procedures for entering into another contract for construction services and materials.

The bill provides for both the designer selection board and the commissioner of administration to be involved in the selection of a design-builder. The bill specifies two processes for this selection, one for qualification-based selection (section 6, subdivision 9), and the other for design-based selection (section 6, subdivision 10).

1 **Design-build.** Authorizes the commissioner of administration to use a design-build method of project development and construction, and to award a design build contract on the basis of "qualification-based selection" or "design-based selection" without bids.

2 **Definition.** Defines a "design-builder as the person who proposes to design and construct a project.

3 **Designer selection board.** Provides for the Associated General Contractors, in consultation with other commercial contractor associations, to nominate an individual for consideration as a member of the designer selection board. The commissioner of administration is not bound by this nomination. Under current law, three other members of the board are nominated by organizations.

   Provides that one (instead of two) nonvoting members shall participate in interviewing and selecting designers and design-builders.

4 **Design-builder selection.** Provides for the designer selection board to select design builders as provided in this act. Prohibits selection of a design-builder in which a member of the board has a
5 **Expiration.** Provides that amendments dealing with design-build expire August 1, 2003.

6 **Design build contracts.**

**Subd. 1. Definitions.** Defines numerous terms used in this section. Among these, the term "design-build contract" means a contract between a state agency and a design builder in which one contract provides for architectural, engineering, and related design services as well as construction services and materials for a project.

**Subd. 2. Authority.** Authorizes the commissioner of administration to award a design-build contract without competitive bids, if the requirements of this subdivision are met. Requires the commissioner to adopt rules, which are exempt from APA rulemaking requirements, covering award of design-build contracts.

Provides for involvement of the capitol area architectural and planning board (CAAPB) for projects within the Capitol area.

For each design-build project, requires the commissioner of administration to make a written determination that design-build is in the best interest of the state.

Requires the designer selection board to receive proposals from at least three qualified design-builders before proceeding to "phase-two" proposals under this section. If fewer than three proposals are received, the commissioner would either seek new proposals, or use the customary methods of selecting a designer and bidding the project.

Requires the commissioner to award a stipend of at least one percent of the construction budget to each design-builder who submits a phase-two proposal. For the design-builder selected to complete the project, this stipend shall be applied to the design-build contract.

Requires the commissioner to adopt rules, exempt from APA procedures, on specified topics relating to award of design-build contracts.

**Subd. 4. Licensing.** Requires design-builders to be, employ, or subcontract with persons who have proper licenses.

**Subd. 5. Design criteria package.** Requires requests for proposal to contain performance criteria prepared by a design criteria professional. Requires involvement of the CAAPB for projects within the Capitol area.

**Subd. 6. Solicitation of proposals.** Provides that the request for proposals must provide for two phase responses, as required by subdivision 7. Specifies 11 minimum elements that must be contained in the request for proposals, including the criteria for evaluation of the proposals.

**Subd. 7. Evaluation of proposals.** Requires the designer selection board to solicit and evaluate proposals and select a design-builder in two phases. In phase one, the board will evaluate experience, technical competence, capability to perform, past performance and other facts submitted in the response. In this phase, the board will not consider cost. The board will qualify three potential design builders for phase two.

In phase two, the board will apply criteria described in subdivisions 9 and 10.

If the project is within the Capitol area, the CAAPB will participate in both phases of the evaluation process.

**Subd. 8. Acceptance of proposals.** The designer selection board will select the proposal it considers most advantageous to the public. The commissioner of administration has the right to reject all proposals and solicit new proposals. A design-build contract may not be accepted unless the board receives at least three qualifying phase-two proposals, unless the board determines that there was otherwise adequate competition for the project.

**Subd. 9. Qualification-based selection.** Specifies criteria that the designer selection board must
apply when the board is using a selection process that focuses on evaluation of phase one proposals consisting of statements of qualifications and performance data submitted by design-builders. Requires solicitation of phase-two proposals and interviews with at least three design-builders. Phase-two proposals must include written statements involving approach to design and construction. They may include graphic materials, but may not include proposed design solutions or price proposals.

Requires the commissioner of administration to negotiate a two-part design-build contract with the design-builder selected by the board. The first part must be a fixed-fee contract for preliminary design. The second part must be for final plans and construction. Provides for the board to select no fewer than three design builders, in order of preference. Specifies criteria for the board to consider in determining the most highly qualified bidders.

States that if the commissioner is unable to negotiate a satisfactory contract with the design-builder ranked highest by the designer selection board, the commissioner may undertake negotiations with the second highest-ranked firm, and if still unsuccessful, with the third. If negotiations are still unsuccessful, the commissioner may either solicit new proposals or used competitive bidding under section 16B.07.

Subd. 10. Design-based selection. Specifies criteria to be included in phase-two proposals using a design-based selection process. These include preliminary plans, a construction schedule, and price. Design proposals must be sealed and may not be opened until a time designated in the request for proposals. Provides other information to be included in the design proposals, including maximum cost if the proposal is accepted without change. After acceptance, permits this cost to be converted to fixed prices by negotiated agreement. Permits requiring cash deposit, letter of credit, or bid bond.

Requires the board to accept the proposal that best meets the requirements of the design criteria package, considering competence and qualifications, ability to meet schedules, feasibility of implementing the project as proposed, and that provides best value. The board is not required to select the lowest cost proposal.

Subd. 11. Sunset. This section expires August 1, 2003.

Effective date. Effective the day following final enactment.