



100TH GENERAL ASSEMBLY

State of Illinois

2017 and 2018

HB5593

by Rep. Thaddeus Jones

SYNOPSIS AS INTRODUCED:

New Act

Creates the Design-Build for Public Schools Act. Defines terms. Provides that a school district shall, for each public project, make a written determination as to whether it is in the best interests of the school district to enter into a design-build contract for that project. Specifies factors to be considered in making the determination. Provides that if a school district elects to use a design-build delivery method under the Act, it must issue a notice of intent to receive proposals for a project no less than 14 days before issuing the request for proposals. Specifies requirements for the request for proposals. Requires a school district that elects to use the design-build delivery method to establish a committee to evaluate and select the design-build entity, which shall consist of no less than 5 members but no more than 7 members and shall include no less than one licensed design professional. Requires a school district to use a 2-phase procedure for the selection of a design-build entity; specifies the criteria for each phase. Provides that a school district may award the contract to the highest overall ranked entity. Repeals the Act on July 1, 2023. Effective immediately.

LRB100 19685 AXK 34959 b

FISCAL NOTE ACT
MAY APPLY

STATE MANDATES
ACT MAY REQUIRE
REIMBURSEMENT

A BILL FOR

1 AN ACT concerning education.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the
5 Design-Build for Public Schools Act.

6 Section 5. Legislative intent. It is the intent of the
7 General Assembly that a school district be allowed to use the
8 design-build delivery method for public projects if it is shown
9 to be in the school district's best interest for that
10 particular project.

11 Section 10. Scope. This Act shall not apply to entities
12 subject to the Public Building Commission Act.

13 Section 15. Definitions. In this Act:

14 "Delivery system" means the design and construction
15 approach used to develop and construct a project.

16 "Design-bid-build" means the traditional delivery system
17 used on public projects in this State that incorporates the
18 Architectural, Engineering, and Land Surveying Qualifications
19 Based Selection Act and the principles of competitive selection
20 in the Illinois Procurement Code.

21 "Design-build" means a delivery system that is responsible

1 within a single contract for the furnishing of architecture,
2 engineering, land surveying, and related services, as
3 required, and the labor, materials, equipment, and other
4 construction services for the project.

5 "Design-build contract" means a contract for a project
6 between a school district and a design-build entity to furnish
7 architecture, engineering, land surveying, and related
8 services, as required, and to furnish the labor, materials,
9 equipment, and other construction services for the project.

10 "Design professional" means any individual, sole
11 proprietorship, firm, partnership, joint venture, corporation,
12 professional corporation, or other entity that offers services
13 under the Illinois Architecture Practice Act of 1989,
14 Professional Engineering Practice Act of 1989, Structural
15 Engineering Practice Act of 1989, or Illinois Professional Land
16 Surveyor Act of 1989.

17 "Evaluation criteria" means the requirements for the
18 separate phases of the selection process and may include
19 specialized experience, technical qualifications and
20 competence, capacity to perform, past performance, experience
21 with similar projects, assignment of personnel to the project,
22 and other appropriate factors.

23 "Proposal" means the offer to enter into a design-build
24 contract as submitted by a design-build entity.

25 "Request for proposals" means the document used by a school
26 district to solicit proposals for a design-build contract.

1 "School district" means a public school district that
2 operates under the authority of the School Code, except for a
3 school district organized under Article 34 of that Code.

4 "Scope and performance criteria" means the requirements
5 for the project, including, but not limited to, the intended
6 usage, capacity, size, scope, quality and performance
7 standards, life-cycle costs, and other programmatic criteria
8 that are expressed in performance-oriented and quantifiable
9 specifications and drawings that can be reasonably inferred and
10 are suited to allow a design-build entity to develop a
11 proposal.

12 Section 20. Procedures.

13 (a) It shall be the policy of a school district in the
14 procurement of design-build services to publicly announce all
15 requirements for design-build services and to procure these
16 services on the basis of demonstrated competence and
17 qualifications, with due regard for the principles of
18 competitive selection. A school district shall, prior to
19 issuing a request for proposals, promulgate and publish
20 procedures for the solicitation and award of contracts under
21 this Act.

22 (b) A school district shall, for each public project
23 permitted under this Act, make a written determination as to
24 whether it is in the best interests of the school district to
25 enter into a design-build contract for the project. In making

1 that determination, a school district shall consider all of the
2 following factors:

3 (1) The probability that the design-build procurement
4 method will be in the best interests of the school district
5 by providing a material savings of time or cost over the
6 design-bid-build or other delivery system.

7 (2) The type and size of the project and its
8 suitability to the design-build procurement method.

9 (3) The ability of the design-build entity to define
10 and provide comprehensive scope and performance criteria
11 for the project.

12 Section 25. Solicitation of proposals.

13 (a) If a school district elects to use the design-build
14 delivery method under this Act, it must issue a notice of
15 intent to receive proposals for the project no less than 14
16 days before issuing the request for proposals. A school
17 district must publish the advance notice in a daily newspaper
18 of general circulation in the area where the school district is
19 located. A school district may publish the notice in related
20 construction-industry service publications. A brief
21 description of the proposed procurement must be included in the
22 notice. A school district must provide a copy of the request
23 for proposals to any party requesting a copy.

24 (b) A request for proposals under subsection (a) of this
25 Section shall be prepared for each project and must include,

1 but is not limited to, all of the following:

2 (1) The name of the school district.

3 (2) A preliminary schedule for the completion of the
4 contract.

5 (3) The proposed budget for the project, the source of
6 the required funds, and the currently available funds at
7 the time the request for proposals is submitted.

8 (4) Prequalification criteria for the design-build
9 entities that submit proposals. A school district shall
10 include, at a minimum, its normal prequalification,
11 licensing, and registration requirements. Nothing
12 contained in this paragraph (4) shall preclude the use of
13 additional prequalification criteria by a school district.

14 (5) Material requirements of the contract, including,
15 but not limited to, the proposed terms and conditions,
16 required performance and payment bonds, and insurance.

17 (6) The performance criteria.

18 (7) The evaluation criteria for each phase of the
19 solicitation. Price may not be used as a factor in the
20 evaluation of Phase I proposals.

21 (8) The number of entities that shall be considered for
22 the technical and cost evaluation phase.

23 (c) A school district may include any other relevant
24 information in the request for proposals. The design-build
25 entity shall be entitled to rely upon the accuracy of this
26 documentation in the development of its proposal.

1 (d) The date that proposals are due must be no less than 21
2 calendar days after the date of the issuance of the request for
3 proposals. If the cost of the project is estimated to exceed
4 \$10,000,000, then the proposal's due date must be no less than
5 28 calendar days after the date of the issuance of the request
6 for proposals. A school district shall include in the request
7 for proposals a minimum of 30 days to develop the Phase II
8 submissions after the selection of entities from the Phase I
9 evaluation is completed.

10 Section 30. Development of scope and performance criteria.

11 (a) A request for proposals under this Act shall include
12 scope and performance criteria. The scope and performance
13 criteria must be in sufficient detail and contain adequate
14 information to reasonably apprise the qualified design-build
15 entities of the school district's overall programmatic needs
16 and goals, including criteria and preliminary design plans,
17 general budget parameters, schedule, and delivery
18 requirements. Each request for proposals shall also include a
19 description of the level of design to be provided in the
20 proposals. This description must include the scope and type of
21 renderings, drawings, and specifications that, at a minimum,
22 shall be required by the school district to be produced by the
23 design-build entities.

24 (b) The scope and performance criteria shall be prepared by
25 a design professional who is an employee of the school district

1 or by an independent design professional selected under the
2 Architectural, Engineering, and Land Surveying Qualifications
3 Based Selection Act contracted by the school district to
4 provide these services.

5 (c) The design professional that prepares the scope and
6 performance criteria is prohibited from participating in any
7 design-build entity proposal for the project.

8 (d) The design-build contract may be conditioned upon
9 subsequent refinements in scope and price and may allow the
10 school district to make modifications in the project scope
11 without invalidating the design-build contract.

12 Section 35. Selection committee.

13 (a) A school district that elects to use the design-build
14 delivery method under this Act shall establish a committee to
15 evaluate and select the design-build entity. The committee,
16 under the discretion of the school district, shall consist of
17 no less than 5 members and no more than 7 members and shall
18 include no less than one licensed design professional.

19 (b) Each member of the selection committee must certify for
20 each request for proposals that no conflict of interest exists
21 between the member and the design-build entities submitting
22 proposals. If a conflict is discovered before proposals are
23 reviewed, the member must be replaced before any review of
24 proposals. If a conflict is discovered after proposals are
25 reviewed, the member with the conflict shall be removed and, if

1 no less than 5 members remain, the remaining committee members
2 may complete the selection process.

3 Section 40. Procedures for selection.

4 (a) A school district electing to use the design-build
5 delivery method must use a 2-phase procedure for the selection
6 of the successful design-build entity. Phase I of the procedure
7 shall evaluate and shortlist the design-build entities based on
8 qualifications and Phase II of the procedure shall evaluate the
9 technical and cost proposals.

10 (b) A school district shall include in the request for
11 proposal the evaluating factors to be used in Phase I. These
12 factors are in addition to any prequalification requirements of
13 design-build entities that the school district has set forth.
14 Each request for proposals shall establish the relative
15 importance assigned to each evaluation factor and subfactor,
16 including any weighing of criteria to be employed by the school
17 district. A school district must maintain a record of the
18 evaluation scoring to be disclosed in event of a protest
19 regarding the solicitation.

20 (c) A school district shall include the following criteria
21 in every Phase I evaluation of design-build entities: (i)
22 experience of personnel; (ii) successful experience with
23 similar project types; (iii) financial capability; (iv)
24 timeliness of past performance; (v) experience with
25 similarly-sized projects; (vi) successful reference checks of

1 the entity; and (vii) commitment to assign personnel for the
2 duration of the project and qualifications of the entity's
3 consultants. A school district may include any additional
4 relevant criteria in Phase I that it deems necessary for a
5 proper qualification review.

6 (d) Upon completion of the qualifications evaluation, a
7 school district shall create a shortlist of the most highly
8 qualified design-build entities. A school district is not
9 required to shortlist the maximum number of entities as
10 identified for Phase II evaluation, provided that no less than
11 2 and no more than 6 design-build entities are selected to
12 submit Phase II proposals. A school district shall provide
13 written notification to the entities selected for the
14 shortlist. This notification shall commence the period for the
15 preparation of the Phase II technical and cost evaluations. A
16 school district must allow sufficient time for the shortlist
17 entities to prepare their Phase II submittals considering the
18 scope and detail requested by the school district.

19 (e) A school district shall include in the request for
20 proposals the evaluating factors to be used in the technical
21 and cost submission components of Phase II. Each request for
22 proposals shall establish, for both the technical and cost
23 submission components of Phase II, the relative importance
24 assigned to each evaluation factor and subfactor, including any
25 weighing of criteria to be employed by the school district. The
26 school district must maintain a record of the evaluation

1 scoring, to be disclosed in the event of a protest regarding
2 the solicitation.

3 (f) A school district shall include the following criteria
4 in every Phase II technical evaluation of design-build
5 entities: (i) compliance with objectives of the project; (ii)
6 compliance of proposed services to the request for proposals
7 requirements; (iii) quality of products or materials proposed;
8 (iv) quality of design parameters; (v) design concepts; (vi)
9 innovation in meeting the scope and performance criteria; (vii)
10 constructability of the proposed project; (viii) the total
11 project cost; (ix) the construction costs; and (x) the time of
12 completion. A school district may include any additional
13 relevant technical evaluation factors it deems necessary for
14 proper selection. The total project cost criteria weighing
15 factor shall not exceed 30%.

16 (g) A school district shall directly employ or retain a
17 licensed design professional to evaluate the technical and cost
18 submissions to determine if the technical submissions are in
19 accordance with generally accepted industry standards. Upon
20 completion of the technical submissions and cost submissions
21 evaluation, a school district may award the design-build
22 contract to the highest overall ranked entity.

23 Section 45. Small projects. In any case where the total
24 overall cost of the project is estimated to be less than
25 \$10,000,000, a school district may combine the 2-phase

1 procedure for selection under Section 40 of this Act into one
2 combined step; provided that all the requirements of evaluation
3 are performed in accordance with Section 40 of this Act.

4 Section 50. Submission of proposals.

5 (a) Proposals under this Act must be properly identified
6 and sealed. Proposals may not be reviewed until after the
7 deadline for submission has passed as set forth in the request
8 for proposals. All design-build entities submitting proposals
9 shall be disclosed after the deadline for submission, and all
10 design-build entities who are selected for Phase II evaluation
11 shall be disclosed at the time of that determination.

12 (b) Proposals shall include a bid bond in the form and
13 security as designated in the request for proposals. Proposals
14 shall also contain a separate sealed envelope with the cost
15 information within the overall proposal submission. Proposals
16 shall include a list of all design professionals and other
17 entities, in accordance with Section 30-30 of the Illinois
18 Procurement Code, to which any work may be subcontracted during
19 the performance of the contract.

20 (c) Proposals must meet all material requirements of the
21 request for proposals, or they may be rejected as
22 non-responsive. A school district shall have the right to
23 reject any and all proposals. The drawings and specifications
24 of the proposal shall remain the property of the design-build
25 entity. A school district shall review the proposals for

1 compliance with the performance criteria and evaluation
2 factors. Proposals may be withdrawn prior to evaluation for any
3 cause. After evaluation begins by a school district, clear and
4 convincing evidence of error is required for withdrawal.

5 Section 55. Award. A school district may award the contract
6 to the highest overall ranked entity. A school district shall
7 provide a written notification to the awarded entity and all
8 unsuccessful entities of its decision. A school district may
9 not request a best and final offer after the receipt of
10 proposals. A school district may negotiate with the selected
11 design-build entity after the award, but prior to contract
12 execution, for the purpose of securing better terms than
13 originally proposed; provided that the salient features of the
14 request for proposal are not diminished.

15 Section 90. Repeal. This Act is repealed on July 1, 2023.

16 Section 97. Severability. The provisions of this Act are
17 severable under Section 1.31 of the Statute on Statutes.

18 Section 99. Effective date. This Act takes effect upon
19 becoming law.