

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 to authorize up to 5 design-build
8 demonstration projects statewide where it is shown to be in a
9 school district's best interest, as determined by the State
10 Board of Education. All projects procured using this delivery
11 system shall comply with Section 2-3.12 of the School Code and
12 shall be subject to review and approval by the State Board of
13 Education.

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

16 Section 15. Definitions. In this Act:

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

19 "Design-bid-build" means the traditional delivery system
20 used on public projects in this State that incorporates the
21 Architectural, Engineering, and Land Surveying Qualifications

1 Based Selection Act and the principles of competitive selection
2 in the Illinois Procurement Code.

3 "Design-build" means a delivery system that is responsible
4 within a single contract for the furnishing of architecture,
5 engineering, land surveying, and related services, as
6 required, and the labor, materials, equipment, and other
7 construction services for the project.

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

13 "Design-build entity" means any individual, sole
14 proprietorship, firm, partnership, joint venture, corporation,
15 professional corporation, or other entity that proposes to
16 design and construct any public project under this Act. A
17 design-build entity and any associated design-build
18 professionals shall conduct themselves in accordance with the
19 laws of this State and the related provisions of the Illinois
20 Administrative Code, as referenced by the licensed design
21 professionals Acts of this State.

22 "Design professional" means any individual, sole
23 proprietorship, firm, partnership, joint venture, corporation,
24 professional corporation, or other entity that offers services
25 under the Illinois Architecture Practice Act of 1989,
26 Professional Engineering Practice Act of 1989, Structural

1 Engineering Practice Act of 1989, or Illinois Professional Land
2 Surveyor Act of 1989.

3 "Evaluation criteria" means the requirements for the
4 separate phases of the selection process and may include
5 specialized experience, technical qualifications and
6 competence, capacity to perform, past performance, experience
7 with similar projects, assignment of personnel to the project,
8 and other appropriate factors. Price may not be used as a
9 factor in the evaluation of Phase I proposals.

10 "Proposal" means the offer to enter into a design-build
11 contract as submitted by a design-build entity in accordance
12 with this Act.

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

15 "School district" means a public school district that
16 operates under the authority of the School Code, except for a
17 school district organized under Article 34 of that Code.

18 "Scope and performance criteria" means the requirements
19 for the project, including, but not limited to, the intended
20 usage, capacity, size, scope, quality and performance
21 standards, life-cycle costs, and other programmatic criteria
22 that are expressed in performance-oriented and quantifiable
23 specifications and drawings that can be reasonably inferred and
24 are suited to allow a design-build entity to develop a
25 proposal.

1 Section 20. Procedures.

2 (a) It shall be the policy of a school district in the
3 procurement of design-build services to publicly announce all
4 requirements for design-build services and to procure these
5 services on the basis of demonstrated competence and
6 qualifications, with due regard for the principles of
7 competitive selection. A school district shall, prior to
8 issuing a request for proposals, promulgate and publish
9 procedures for the solicitation and award of contracts pursuant
10 to this Act.

11 (b) A school district shall, for each project or projects
12 permitted under this Act, make a written determination,
13 including a description as to the particular advantages of the
14 design-build procurement method, that it is in the best
15 interests of the school district to enter into a design-build
16 contract for the project or projects. In making that
17 determination, a school district shall consider all of the
18 following factors:

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

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

25 (3) The ability of the design-build entity to define
26 and provide comprehensive scope and performance criteria

1 for the project.

2 Section 25. Solicitation of proposals.

3 (a) If a school district elects to use the design-build
4 delivery method under this Act, it must issue a notice of
5 intent to receive proposals for the project no less than 14
6 days before issuing the request for proposals. A school
7 district must publish the advance notice in a daily newspaper
8 of general circulation in the area where the school district is
9 located. A school district may publish the notice in related
10 construction-industry service publications. A brief
11 description of the proposed procurement must be included in the
12 notice. A school district must provide a copy of the request
13 for proposals to any party requesting a copy.

14 (b) A request for proposals under subsection (a) of this
15 Section shall be prepared for each project and must include,
16 but is not limited to, all of the following:

17 (1) The name of the school district.

18 (2) A preliminary schedule for the completion of the
19 contract.

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

23 (4) Prequalification criteria for the design-build
24 entities that submit proposals. A school district shall
25 include, at a minimum, its normal prequalification,

1 licensing, and registration requirements. Nothing
2 contained in this paragraph (4) shall preclude the use of
3 additional prequalification criteria by a school district.

4 (5) Material requirements of the contract, including,
5 but not limited to, the proposed terms and conditions,
6 required performance and payment bonds, insurance, and the
7 design-build entity's plan to comply with the utilization
8 goals established by the corporate authorities of the
9 school district for minority-owned and women-owned
10 business enterprises and to comply with Section 2-105 of
11 the Illinois Human Rights Act.

12 (6) The performance criteria.

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

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

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

22 (d) The date that proposals are due must be no less than 21
23 calendar days after the date of the issuance of the request for
24 proposals. If the cost of the project is estimated to exceed
25 \$10,000,000, then the proposal's due date must be no less than
26 28 calendar days after the date of the issuance of the request

1 for proposals. A school district shall include in the request
2 for proposals a minimum of 30 days to develop the Phase II
3 submissions after the selection of entities from the Phase I
4 evaluation is completed.

5 Section 30. Development of scope and performance criteria.

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

20 (b) The scope and performance criteria shall be prepared by
21 a design professional who is an employee of the school district
22 or by an independent design professional selected under the
23 Architectural, Engineering, and Land Surveying Qualifications
24 Based Selection Act contracted by the school district to
25 provide these services.

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

4 (d) The design-build contract may be conditioned upon
5 subsequent refinements in scope and price and may allow the
6 school district to make modifications in the project scope
7 without invalidating the design-build contract.

8 Section 35. Selection committee.

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

15 (b) Each member of the selection committee must certify for
16 each request for proposals that no conflict of interest exists
17 between the member and the design-build entities submitting
18 proposals. If a conflict is discovered before proposals are
19 reviewed, the member must be replaced before any review of
20 proposals. If a conflict is discovered after proposals are
21 reviewed, the member with the conflict shall be removed and, if
22 no less than 5 members remain, the remaining committee members
23 may complete the selection process.

24 Section 40. Procedures for selection.

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

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

17 (c) A school district shall include the following criteria
18 in every Phase I evaluation of design-build entities: (i)
19 experience of personnel; (ii) successful experience with
20 similar project types; (iii) financial capability; (iv)
21 timeliness of past performance; (v) experience with
22 similarly-sized projects; (vi) successful reference checks of
23 the entity; (vii) commitment to assign personnel for the
24 duration of the project and qualifications of the entity's
25 consultants; and (viii) ability or past performance in meeting
26 or exhausting good faith efforts to meet the utilization goals

1 for minority-owned and women-owned business enterprises
2 established by the corporate authorities of the school district
3 and in complying with Section 2-105 of the Illinois Human
4 Rights Act. A school district may include any additional
5 relevant criteria in Phase I that it deems necessary for a
6 proper qualification review. The school district may not
7 consider any design-build entity for evaluation or award if the
8 entity has any pecuniary interest in the project or has other
9 relationships or circumstances, including, but not limited to,
10 a long-term leasehold, mutual performance, or development
11 contracts with the school district that may give the
12 design-build entity a financial or tangible advantage over
13 other design-build entities in the preparation, evaluation, or
14 performance of the design-build contract or that create the
15 appearance of impropriety. No design-build proposal shall be
16 considered that does not include a design-build entity's plan
17 to comply with the utilization goals established by the
18 corporate authorities of the school district for
19 minority-owned and women-owned business enterprises and with
20 Section 2-105 of the Illinois Human Rights Act.

21 (d) Upon completion of the qualifications evaluation, a
22 school district shall create a shortlist of the most highly
23 qualified design-build entities. A school district is not
24 required to shortlist the maximum number of entities as
25 identified for Phase II evaluation, provided that no less than
26 2 and no more than 6 design-build entities are selected to

1 submit Phase II proposals. A school district shall provide
2 written notification to the entities selected for the
3 shortlist. This notification shall commence the period for the
4 preparation of the Phase II technical and cost evaluations. A
5 school district must allow sufficient time for the shortlist
6 entities to prepare their Phase II submittals considering the
7 scope and detail requested by the school district.

8 (e) A school district shall include in the request for
9 proposals the evaluating factors to be used in the technical
10 and cost submission components of Phase II. Each request for
11 proposals shall establish, for both the technical and cost
12 submission components of Phase II, the relative importance
13 assigned to each evaluation factor and subfactor, including any
14 weighing of criteria to be employed by the school district. The
15 school district must maintain a record of the evaluation
16 scoring, to be disclosed in the event of a protest regarding
17 the solicitation.

18 (f) A school district shall include the following criteria
19 in every Phase II technical evaluation of design-build
20 entities: (i) compliance with objectives of the project; (ii)
21 compliance of proposed services to the request for proposals
22 requirements; (iii) quality of products or materials proposed;
23 (iv) quality of design parameters; (v) design concepts; (vi)
24 innovation in meeting the scope and performance criteria; and
25 (vii) constructability of the proposed project. A school
26 district may include any additional relevant technical

1 evaluation factors it deems necessary for proper selection. A
2 school district shall include the following criteria in every
3 Phase II cost evaluation: (I) the total project cost; (II) the
4 construction costs; and (III) the time of completion. A school
5 district may include any additional relevant evaluation
6 factors it deems necessary for proper selection. The total
7 project cost criteria weighing factor shall not exceed 30%.

8 (g) A school district shall directly employ or retain a
9 licensed design professional to evaluate the technical and cost
10 submissions to determine if the technical submissions are in
11 accordance with generally accepted industry standards. Upon
12 completion of the technical submissions and cost submissions
13 evaluation, a school district may award the design-build
14 contract to the highest overall ranked entity.

15 Section 45. Small projects. In any case where the total
16 overall cost of the project is estimated to be less than
17 \$10,000,000, a school district may combine the 2-phase
18 procedure for selection under Section 40 of this Act into one
19 combined step; provided that all the requirements of evaluation
20 are performed in accordance with Section 40 of this Act.

21 Section 50. Submission of proposals.

22 (a) Proposals under this Act must be properly identified
23 and sealed. Proposals may not be reviewed until after the
24 deadline for submission has passed as set forth in the request

1 for proposals. All design-build entities submitting proposals
2 shall be disclosed after the deadline for submission, and all
3 design-build entities who are selected for Phase II evaluation
4 shall be disclosed at the time of that determination.

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

13 (c) Proposals must meet all material requirements of the
14 request for proposals, or they may be rejected as
15 non-responsive. A school district shall have the right to
16 reject any and all proposals. The drawings and specifications
17 of the proposal shall remain the property of the design-build
18 entity. A school district shall review the proposals for
19 compliance with the performance criteria and evaluation
20 factors. Proposals may be withdrawn prior to evaluation for any
21 cause. After evaluation begins by a school district, clear and
22 convincing evidence of error is required for withdrawal.

23 (d) After a proposal has been submitted in accordance with
24 this Act, a design-build entity may not replace, remove, or
25 otherwise modify any firm identified as a member of the
26 design-build team unless one of the following criteria is met:

1 (1) The firm is no longer in business.

2 (2) The firm is unable to fulfill its legal, financial,
3 or business obligations.

4 (3) The firm no longer meets the terms of the agreement
5 with the design-build entity.

6 (4) The firm voluntarily removes itself from the
7 design-build entity.

8 (5) The firm fails to provide a sufficient number of
9 qualified personnel to fulfill the duties identified in the
10 proposal.

11 (6) The firm fails to negotiate in good faith and in a
12 timely manner in accordance with the provisions
13 established in the agreement with the design-build entity.

14 If the design-build entity modifies the team, any cost
15 savings shall accrue to the school district and not to the
16 design-build entity. If a design-build entity is modified at
17 any time during the term of a design-build contract, the
18 design-build entity shall notify the State Board of Education
19 and the school district in writing within 15 calendar days of
20 making the change.

21 Section 55. Award. A school district may award the contract
22 to the highest overall ranked entity. A school district shall
23 provide a written notification to the awarded entity and all
24 unsuccessful entities of its decision. A school district may
25 not request a best and final offer after the receipt of

1 proposals. A school district may negotiate with the selected
2 design-build entity after the award, but prior to contract
3 execution, for the purpose of securing better terms than
4 originally proposed; provided that the salient features of the
5 request for proposal are not diminished.

6 Section 60. Reports. The design-build entity, regional
7 superintendent of schools, and State Board of Education shall
8 annually submit a detailed report to the General Assembly on
9 the status of projects procured under this Act, including
10 estimated and actual project costs, estimated and actual
11 project delivery schedules, estimated cost differences
12 resulting from the design-build delivery system over the
13 traditional design-bid-build delivery system, and any other
14 impacts resulting from the use of the design-build delivery
15 system. The report shall also document the design-build
16 entity's success in complying with the utilization goals
17 established by the corporate authorities of the school district
18 for minority-owned and women-owned business enterprises and
19 Section 2-105 of the Illinois Human Rights Act. The report
20 shall be filed with the Clerk of the House of Representatives
21 and the Secretary of the Senate in electronic form only, in the
22 manner that the Clerk and the Secretary shall direct.

23 Section 65. Compliance. All projects procured under this
24 Act using the design-build delivery method shall comply with

1 Section 2-3.12 of the School Code and shall be subject to
2 review and approval by the State Board of Education.

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

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

6 Section 99. Effective date. This Act takes effect upon
7 becoming law.