

AN ACT concerning education.

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

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

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

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

Section 15. Definitions. In this Act:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 20. Procedures.

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

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

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

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

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

for the project.

Section 25. Solicitation of proposals.

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

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

(1) The name of the school district.

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

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

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

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

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

(6) The performance criteria.

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

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

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

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

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

Section 30. Development of scope and performance criteria.

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

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

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

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

Section 35. Selection committee.

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

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

Section 40. Procedures for selection.

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

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

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

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

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

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

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

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

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

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

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

Section 50. Submission of proposals.

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

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

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

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

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

(1) The firm is no longer in business.

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

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

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

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

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

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

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

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

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

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

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

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

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

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