



Rep. Thaddeus Jones

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1 AMENDMENT TO HOUSE BILL 3289

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 3289 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Innovative Project Delivery Act.

6 Section 5. Legislative policy. It is the intent of the  
7 General Assembly that school districts 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. As used in this Act,  
14 "Delivery system" means the design and construction

1 approach used to develop and construct a project.

2 "Design-bid-build" means the traditional delivery system  
3 used on public projects in this State that incorporates the  
4 Architectural, Engineering, and Land Surveying Qualifications  
5 Based Selection Act and the principles of competitive selection  
6 in the Illinois Procurement Code.

7 "Design-build" means a delivery system that provides  
8 responsibility within a single contract for the furnishing of  
9 architecture, engineering, land surveying and related services  
10 as required, and the labor, materials, equipment, and other  
11 construction services for the project.

12 "Design-build contract" means a contract for a project  
13 under this Act between the school district and a design-build  
14 entity to furnish architecture, engineering, land surveying,  
15 and related services as required, and to furnish the labor,  
16 materials, equipment, and other construction services for the  
17 project. The design-build contract may be conditioned upon  
18 subsequent refinements in scope and price and may allow the  
19 school district to make modifications in the project scope  
20 without invalidating the design-build contract.

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

1 Land Surveyor Act of 1989.

2 "Evaluation criteria" means the requirements for the  
3 separate phases of the selection process as defined in this Act  
4 and may include the specialized experience, technical  
5 qualifications and competence, capacity to perform, past  
6 performance, experience with similar projects, assignment of  
7 personnel to the project, and other appropriate factors. Price  
8 may not be used as a factor in the evaluation of Phase I  
9 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 proposal" means the document used by the  
14 school district to solicit proposals for a design-build  
15 contract.

16 "School district" means public school districts that  
17 operate under the authority of the School Code, except a school  
18 district organized under Article 34 of that Code.

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

1 Section 20. Procedures.

2 (a) It shall be the policy of the 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 and with due regard for the principles of  
7 competitive selection.

8 A school district shall, prior to issuing requests for  
9 proposals, promulgate and publish procedures for the  
10 solicitation and award of contracts pursuant 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.

17 In making that determination, the following factors shall  
18 be considered:

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; and

25 (3) the ability of the design-build entity to define

1           and provide comprehensive scope and performance criteria  
2           for the project.

3           (c) No school district may use a design-build procurement  
4           method unless the school district determines that the project  
5           will comply with the disadvantaged business and equal  
6           employment practices of the State as established in the  
7           Business Enterprise for Minorities, Females, and Persons with  
8           Disabilities Act and Section 2-105 of the Illinois Human Rights  
9           Act.

10           Section 25. Solicitation of proposals.

11           (a) When a school district elects to use the design-build  
12           delivery method under this Act, it must issue a notice of  
13           intent to receive requests for proposals for the project at  
14           least 14 days before issuing the request for the proposal. The  
15           school district must publish the advance notice in a daily  
16           newspaper of general circulation in the area where the school  
17           district is located. The school district is encouraged to use  
18           publication of the notice in related construction industry  
19           service publications. A brief description of the proposed  
20           procurement must be included in the notice. The school district  
21           must provide a copy of the request for proposal to any party  
22           requesting a copy.

23           (b) The request for proposal shall be prepared for each  
24           project and must contain, without limitation, the following  
25           information:

1 (1) The name of the school district.

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

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

7 (4) Prequalification criteria for design-build  
8 entities wishing to submit proposals. The school district  
9 shall include, at a minimum, its normal prequalification,  
10 licensing, registration, and other requirements, but  
11 nothing contained in this paragraph (4) precludes the use  
12 of additional prequalification criteria by the school  
13 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, and  
17 the entity's plan to comply with the utilization goals for  
18 business enterprise established in the Business Enterprise  
19 for Minorities, Females, and Persons with Disabilities Act  
20 and with Section 2-105 of the Illinois Human Rights Act.

21 (6) The performance criteria.

22 (7) The evaluation criteria for each phase of the  
23 solicitation.

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

26 (c) The school district may include any other relevant

1 information that it chooses to supply. The design-build entity  
2 shall be entitled to rely upon the accuracy of this  
3 documentation in the development of its proposal.

4 (d) The date that proposals are due must be at least 21  
5 calendar days after the date of the issuance of the request for  
6 proposal. If the cost of the project is estimated to exceed  
7 \$10,000,000, then the proposal due date must be at least 28  
8 calendar days after the date of the issuance of the request for  
9 proposal. The school district shall include in the request for  
10 proposal a minimum of 30 days to develop the Phase II  
11 submissions after the selection of entities from the Phase I  
12 evaluation is completed.

13 Section 30. Development of scope and performance criteria.

14 (a) When a school district elects to use the design-build  
15 delivery method, it shall develop, with the assistance of a  
16 licensed design professional, a request for proposal, which  
17 shall include scope and performance criteria. The scope and  
18 performance criteria must be in sufficient detail and contain  
19 adequate information to reasonably apprise the qualified  
20 design-build entities of the school district's overall  
21 programmatic needs and goals, including criteria and  
22 preliminary design plans, general budget parameters, schedule,  
23 and delivery requirements.

24 (b) Each request for proposal shall also include a  
25 description of the level of design to be provided in the

1 proposals. This description must include the scope and type of  
2 renderings, drawings, and specifications that, at a minimum,  
3 will be required by the school district to be produced by the  
4 design-build entities.

5 (c) The scope and performance criteria shall be prepared by  
6 a design professional who is an employee of the school  
7 district, or the school district may contract with an  
8 independent design professional selected under the  
9 Architectural, Engineering, and Land Surveying Qualification  
10 Based Selection Act to provide these services.

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

14 Section 35. Selection committee.

15 (a) When a school district elects to use the design-build  
16 delivery method, it shall establish a committee to evaluate and  
17 select the design-build entity. The committee, under the  
18 discretion of the school district, shall consist of at least 5  
19 but no more than 7 members and shall include at least one  
20 licensed design professional.

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



1 proposals.

2 If a conflict is discovered after proposals are reviewed,  
3 the member with the conflict shall be removed and, if at least  
4 5 members remain, the remaining committee members may complete  
5 the selection process.

6 Section 40. Procedures for selection.

7 (a) The school district electing to use the design-build  
8 delivery method must use a two-phase procedure for the  
9 selection of the successful design-build entity. Phase I of the  
10 procedure will evaluate and shortlist the design-build  
11 entities based on qualifications, and Phase II will evaluate  
12 the technical and cost proposals.

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

23 The school district shall include the following criteria in  
24 every Phase I evaluation of design-build entities: (1)  
25 experience of personnel; (2) successful experience with

1 similar project types; (3) financial capability; (4)  
2 timeliness of past performance; (5) experience with  
3 similarly-sized projects; (6) successful reference checks of  
4 the firm; (7) commitment to assign personnel for the duration  
5 of the project and qualifications of the entity's consultants;  
6 and (8) ability or past performance in meeting or exhausting  
7 good faith efforts to meet the utilization goals for business  
8 enterprises established in the Business Enterprise for  
9 Minorities, Females, and Persons with Disabilities Act and with  
10 Section 2-105 of the Illinois Human Rights Act. The school  
11 district may include any additional relevant criteria in Phase  
12 I that it deems necessary for a proper qualification review.

13 The school district may not consider any design-build  
14 entity for evaluation or award if the entity has any pecuniary  
15 interest in the project or has other relationships or  
16 circumstances, including, but not limited to, long-term  
17 leasehold, mutual performance, or development contracts with  
18 the school district, that may give the design-build entity a  
19 financial or tangible advantage over other design-build  
20 entities in the preparation, evaluation, or performance of the  
21 design-build contract or that create the appearance of  
22 impropriety. No proposal shall be considered that does not  
23 include an entity's plan to comply with the requirements  
24 established in the Business Enterprise for Minorities,  
25 Females, and Persons with Disabilities Act, for both the design  
26 and construction areas of performance, and with Section 2-105

1 of the Illinois Human Rights Act.

2 Upon completion of the qualifications evaluation, the  
3 school district shall create a shortlist of the most highly  
4 qualified design-build entities. The school district, in its  
5 discretion, is not required to shortlist the maximum number of  
6 entities as identified for Phase II evaluation, provided  
7 however, no less than 2 design-build entities nor more than 6  
8 are selected to submit Phase II proposals.

9 The school district shall notify the entities selected for  
10 the shortlist in writing. This notification shall commence the  
11 period for the preparation of the Phase II technical and cost  
12 evaluations. The school district must allow sufficient time for  
13 the shortlist entities to prepare their Phase II submittals  
14 considering the scope and detail requested by the school  
15 district.

16 (c) The school district shall include in the request for  
17 proposal the evaluating factors to be used in the technical and  
18 cost submission components of Phase II. Each request for  
19 proposal shall establish, for both the technical and cost  
20 submission components of Phase II, the relative importance  
21 assigned to each evaluation factor and subfactor, including any  
22 weighting of criteria to be employed by the school district.  
23 The school district must maintain a record of the evaluation  
24 scoring to be disclosed in event of a protest regarding the  
25 solicitation.

26 The school district shall include the following criteria in

1 every Phase II technical evaluation of design-build entities:  
2 (1) compliance with objectives of the project; (2) compliance  
3 of proposed services to the request for proposal requirements;  
4 (3) quality of products or materials proposed; (4) quality of  
5 design parameters; (5) design concepts; (6) innovation in  
6 meeting the scope and performance criteria; and (7)  
7 constructability of the proposed project. The school district  
8 may include any additional relevant technical evaluation  
9 factors it deems necessary for proper selection.

10 The school district shall include the following criteria in  
11 every Phase II cost evaluation: the total project cost, the  
12 construction costs, and the time of completion. The school  
13 district may include any additional relevant technical  
14 evaluation factors it deems necessary for proper selection. The  
15 total project cost criteria weighing factor shall not exceed  
16 30%.

17 The school district shall directly employ or retain a  
18 licensed design professional to evaluate the technical and cost  
19 submissions to determine if the technical submissions are in  
20 accordance with generally accepted industry standards.

21 Upon completion of the technical submissions and cost  
22 submissions evaluation, the school district may award the  
23 design-build contract to the highest overall ranked entity.

24 Section 45. Small projects. In any case where the total  
25 overall cost of the project is estimated to be less than

1 \$10,000,000, the school district may combine the two-phase  
2 procedure for selection described in Section 40 into one  
3 combined step, provided that all the requirements of evaluation  
4 are performed in accordance with Section 40 of this Act.

5 Section 50. Submission of proposals. Proposals must be  
6 properly identified and sealed. Proposals may not be reviewed  
7 until after the deadline for submission has passed as set forth  
8 in the request for proposals. All design-build entities  
9 submitting proposals shall be disclosed after the deadline for  
10 submission, and all design-build entities who are selected for  
11 Phase II evaluation shall also be disclosed at the time of that  
12 determination.

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

21 Proposals must meet all material requirements of the  
22 request for proposal or they may be rejected as non-responsive.  
23 The school district shall have the right to reject any and all  
24 proposals.

25 The drawings and specifications of the proposal shall

1 remain the property of the design-build entity.

2 The school district shall review the proposals for  
3 compliance with the performance criteria and evaluation  
4 factors.

5 Proposals may be withdrawn prior to evaluation for any  
6 cause. After evaluation begins by the school district, clear  
7 and convincing evidence of error is required for withdrawal.

8 Section 55. Award. The school district may award the  
9 contract to the highest overall ranked entity. Notice of award  
10 shall be made in writing. Unsuccessful entities shall also be  
11 notified in writing. The school district may not request a best  
12 and final offer after the receipt of proposals. The school  
13 district may negotiate with the selected design-build entity  
14 after award but prior to contract execution for the purpose of  
15 securing better terms than originally proposed, provided that  
16 the salient features of the request for proposal are not  
17 diminished.

18 Section 60. Repeal. This Act is repealed on July 1, 2021.

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

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