Article - Education

§4–126.

(a) In this section, "alternative financing methods" includes:

(1) Sale–leaseback arrangements, in which a county board agrees to transfer title to a property, including improvements, to a private entity that simultaneously agrees to lease the property back to the county board and, on a specified date, transfer title back to the county board;

(2) Lease–leaseback arrangements, in which a county board leases a property to a private entity that improves the property and leases the property, with the improvements, back to the county board;

(3) Public–private partnership agreements, in which a county board contracts with a private entity for the acquisition, design, construction, improvement, renovation, expansion, equipping, or financing of a public school, and may include provisions for cooperative use of the school or an adjacent property and generation of revenue to offset the cost of construction or use of the school;

(4) Performance–based contracting, in which a county board enters into an energy performance contract to obtain funding for a project with guaranteed energy savings over a specified time period;

(5) Preference–based arrangements, by which a local governing body gives preference first to business entities located in the county and then to business entities located in other counties in the State for any construction that is not subject to prevailing wage rates under Title 17, Subtitle 2 of the State Finance and Procurement Article; and

(6) Design–build arrangements, that permit a county board to contract with a design–build business entity for the combined design and construction of qualified education facilities, including financing mechanisms where the business entity assists the local governing body in obtaining project financing.

(b) Except when prohibited by local law, in order to finance or to speed delivery of, transfer risks of, or otherwise enhance the delivery of public school construction, a county may:

(1) Use alternative financing methods;

(2) Engage in competitive negotiation, rather than competitive bidding, in limited circumstances, including construction management at–risk arrangements and other alternative project delivery arrangements, as provided in regulations adopted by the Board of Public Works;

(3) Accept unsolicited proposals for the development of public schools in limited circumstances, as provided in regulations adopted by the Board of Public Works;

and

(4) Use quality–based selection, in which selection is based on a combination of qualifications and cost factors, to select developers and builders, as provided in regulations adopted by the Board of Public Works.

(c) The Board of Public Works shall adopt regulations requiring a project that qualifies for alternative financing methods under this section to meet requirements regarding the advantages of the project to the public that include provisions addressing:

(1) The probable scope, complexity, or urgency of the project;

(2) Any risk sharing, added value, education enhancements, increase in funding, or economic benefit from the project that would not otherwise be available;

(3) The public need for the project; and

(4) The estimated cost or timeliness of executing the project.

(d) Projects that qualify for alternative financing methods under this subsection:

(1) Shall meet the educational standards, design standards, and procedural requirements under this article and under regulations adopted by the Board of Public Works; and

(2) Consistent with the requirements of this article, shall be approved by:

(i) The county governing body;

(ii) The State Superintendent of Schools; or

(iii) The Interagency Committee on School Construction and the Board of Public Works.

(e) Use of alternative financing methods under this section may not be construed to prohibit the allocation of State funds for public school construction to a project under the Public School Construction Program.

(f) A county board may not use alternative financing methods under this section without the approval of the county governing body.

(g) The Board of Public Works shall adopt regulations recommended by the Interagency Committee on School Construction to implement the provisions of this section, including:

(1) Guidelines for the content of proposals, for the acceptance and evaluation of unsolicited proposals, and for accepting competing unsolicited proposals;

(2) Requirements for the content and execution of a comprehensive agreement governing an arrangement authorized under this section;

(3) Guidelines for content and issuance of solicitations;

(4) Requirements for the prequalification of bidders or offerors;

(5) Requirements for public notice of solicited and unsolicited proposals and proposed execution of a comprehensive agreement;

(6) Regulations that require compliance with requirements applicable to qualified projects that would otherwise be in effect under the State procurement law if the procurement were competitively bid; and

(7) (i) Regulations that require that contracts and subcontracts adhere to the requirements of Title 17, Subtitle 2 and Title 14 of the State Finance and Procurement Article if the requirements would otherwise be applicable; and

(ii) Regulations that specify elements to be included in any preference–based arrangement adopted by a local governing body that gives preference first to business entities located in the county and then to business entities located in other counties in the State for any construction that is not subject to prevailing wage rates under Title 17, Subtitle 2 of the State Finance and Procurement Article.