

SENATE, No. 693

STATE OF NEW JERSEY

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PRE-FILED FOR INTRODUCTION IN THE 2016 SESSION

Sponsored by:

Senator ROBERT M. GORDON

District 38 (Bergen and Passaic)

Senator JAMES BEACH

District 6 (Burlington and Camden)

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 3/1/2016)

1 AN ACT establishing procedures for awarding design-build
2 contracts and supplementing Title 40A of the New Jersey
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as the “Design-
9 Build Construction Services Procurement Act.”

10
11 2. As used in this act:

12 “Acceptance” means the adoption of a law, ordinance, or
13 resolution by the State of New Jersey, any of its political
14 subdivisions, any authority created by the Legislature of the State of
15 New Jersey and any instrumentality or agency of the State of New
16 Jersey or of any of its political subdivisions, authorizing the
17 execution of a design-build contract.

18 “Delivery system” means the procedure used to develop and
19 construct a project.

20 “Design-bid-build” means the delivery system used in public
21 projects in which a registered design professional develops the
22 project design in its entirety; the contracting unit then solicits bids
23 and awards the contract to the lowest responsible bidder that
24 demonstrates the ability to complete the project specified in the
25 design.

26 “Design-build contract” means a contract between a contracting
27 unit and a design-builder to provide labor, materials, and other
28 construction services for a public project. A design-build contract
29 may be conditional upon subsequent refinements in scope and price,
30 and may permit the contracting unit to make changes in the scope of
31 the project without invalidating the design-build contract.

32 “Design-builder” means the entity, whether natural person,
33 partnership, joint stock company, corporation, trust, professional
34 corporation, business association, or other legal business entity or
35 successor, that proposes to design and construct any public project,
36 who is registered pursuant to the provisions of P.L.1999, c.238
37 (C.34:11-56.48 et seq.), and classified by the New Jersey Division
38 of Property Management and Construction or the New Jersey
39 Department of Transportation, where applicable, to perform work
40 on a design-build project.

41 “Design professional” means the entity, whether natural person,
42 partnership, joint stock company, corporation, trust, professional
43 corporation, business association, or other legal business entity or
44 successor that provides registered architectural, engineering, or
45 surveying services in accordance with R.S.45:3-1 et seq., and
46 P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be responsible
47 for planning, designing and observing the construction of the
48 project or projects.

1 “Evaluation factors” means the requirements for the first phase
2 of the selection process, and shall include, but not be limited to:
3 specialized experience, training certification of professional and
4 field workforce, technical competence, capacity to perform, safety
5 modification rating, past performance and other appropriate factors.
6 Price shall only be considered in the second phase of the selection
7 process.

8 “Proposal” means an offer to enter into a design-build contract.

9
10 3. a. If a contracting unit can demonstrate why the design-build
11 approach meets their needs better than the traditional design-bid-
12 build approach established under New Jersey public procurement
13 statutes for the project or projects under consideration, it shall be
14 the public policy of this State to permit that contracting unit to enter
15 into design-build contracts as defined in P.L. , c. (C.)
16 (pending before the Legislature as this bill), provided the following
17 conditions are met:

18 (1) The contracting unit shall, prior to issuing solicitations,
19 publish procedures consistent with regulations promulgated by the
20 Division of Property Management and Construction in the
21 Department of the Treasury or the Department of Transportation,
22 where applicable for the solicitation and award of design-build
23 contracts, and shall adhere to P.L. , c. (C.) (pending before
24 the Legislature as this bill) and those procedures; and

25 (2) The contracting unit shall, for each public project or projects
26 under this act, make a determination based on the timeliness of the
27 project or projects that it is in the best interest of the public to enter
28 into a design-build contract to complete the public project or
29 projects.

30 b. All workers employed in a design-build construction project
31 shall be paid the prevailing wage determined by the Commissioner
32 of Labor pursuant to the provisions of the "New Jersey Prevailing
33 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.).

34 c. All design-build construction projects shall be encouraged to
35 adhere to the Leadership in Energy and Environmental Design
36 Green Building Rating System as adopted by the United States
37 Green Building Council.

38
39 4. a. The contracting unit shall adopt the following procedures
40 for awarding design-build contracts:

41 (1) The contracting unit shall appoint a registered design
42 professional to provide technical advice, construction review
43 services, and professional expertise on behalf of the contracting
44 unit;

45 (2) The contracting unit shall develop, with the assistance of the
46 design professional, performance criteria and a scope of work
47 statement that defines the project and provides prospective design-
48 builders with sufficient information regarding the contracting unit's

1 requirements. The statement shall include: evaluation factor criteria
2 and preliminary design, general budget parameters, and general
3 schedule or delivery requirements to enable the design-builders to
4 submit proposals which meet the contracting unit's needs. When the
5 design-build selection procedure is used and the contracting unit
6 contracts for development of the scope of work statement, the
7 design-builder shall contract for architectural or engineering
8 services as defined by and in accordance with R.S.45:3-1 et seq.,
9 P.L.1938, c.342 (C.45:8-27 et seq.), and all other applicable
10 licensing statutes;

11 (3) Once the contracting unit has developed a scope of work
12 statement which adequately defines the contracting unit's
13 requirements for the project or projects, the contracting unit shall
14 solicit proposals from design-builders. The contracting unit shall
15 solicit proposals in accordance with the requirements of the
16 applicable public procurement laws of the State of New Jersey.

17 (4) The contracting unit shall establish a technical review
18 committee, which shall consist of a representative of the contracting
19 unit, the contracting unit's project manager, the contracting unit's
20 authorized design professional, and the contracting unit's attorney.
21 The technical review committee shall have the responsibility to
22 evaluate bids based on rating and scoring proposals, and shall
23 evaluate design-builders based on their qualifications.

24 b. The factors used to evaluate proposals shall be stated in the
25 solicitation and shall include, but not be limited to: specialized
26 experience and technical competence, training certification of
27 professional and field workforce, principal location of the company,
28 capability to perform, safety modification rating, past performance
29 of the individual members of the design-builder's team in their
30 respective capacities, including the architect-engineer and
31 construction members of the team, and other appropriate technical
32 and qualification factors as determined by the Division of Property
33 Management and Construction in the Department of the Treasury or
34 the Department of Transportation, where applicable. Each
35 solicitation for proposals must establish the relative importance
36 assigned to the evaluation factors and sub-factors to be considered.

37 c. A solicitation for proposals shall state the maximum number
38 of design-builders that are to be selected to submit proposals. The
39 maximum number specified in the solicitation shall be at least two
40 and shall not exceed five.

41 d. On the basis of the proposal, the technical review committee
42 shall select the most highly qualified number of design-builders
43 specified in the solicitation and request the selected design-builders
44 to submit a second proposal and sealed bid. Each solicitation for
45 second proposals must establish the relative importance assigned to
46 the evaluation factors to be considered.

47 e. The technical review committee shall evaluate each second
48 proposal based on the technical submission for the proposal,

1 including design concepts or proposed solutions to requirements
2 addressed within the scope of work, and the evaluation factors,
3 including a minimum of 50% consideration based on the cost of the
4 bid.

5 f. The contracting unit shall separately evaluate the
6 submissions described above, and award the contract in accordance
7 with section 8 of P.L. , c. (C.) (pending before the
8 Legislature as this bill).

9
10 5. a. Each request for proposals shall contain evaluation
11 factors prepared by a design professional duly licensed and
12 registered under section 1 of P.L. , c. (C.) (pending before
13 the Legislature as this bill). The design professional that develops
14 the evaluation factors shall be disqualified from submitting a
15 proposal to enter into the design-build contract, and the design-
16 builder shall not be permitted to delegate services under the design-
17 build contract to the design professional that developed the
18 evaluation factors.

19 b. The design professional that develops the evaluation factors
20 shall be either an employee of the contracting unit or shall be
21 engaged in compliance with applicable New Jersey public
22 procurement laws, and to the extent allowed by law may delegate
23 the development of specific aspects of the design criteria to other
24 consultants.

25 c. The contracting unit, in consultation with the design
26 professional, shall determine the scope and level of detail required
27 for the evaluation factors. The evaluation factors should be detailed
28 enough to permit qualified persons to submit proposals in
29 accordance with the solicitation, given the nature of the public
30 project and the level of design to be provided in the proposal.

31
32 6. a. Solicitations for each design-build contract shall include,
33 but not be limited to, the following:

34 (1) The identity of the contracting unit which will award the
35 design-build contract;

36 (2) The procedures to be followed for admitting proposals, the
37 criteria for evaluation of proposals and their relative weight, and the
38 procedures for making awards, including a reference to the
39 requirements of this act and the regulations of the contracting unit;

40 (3) The proposed terms and conditions for the design-build
41 contract;

42 (4) A description of the drawings, specifications, or other
43 submittals to be submitted with the proposal, with guidance as to
44 the form and level of completeness of the drawings, specifications,
45 or submittals that will be acceptable;

46 (5) A schedule for planned commencement and completion of
47 the design-build contract;

48 (6) Budget limits for the design-build contract, if any;

1 (7) Affirmative action, disadvantaged business or set-aside goals
2 or requirements for the design-build contract, as determined by the
3 contracting unit;

4 (8) The required qualifications of the design-builder;

5 (9) Requirements for contractors to have performance bonds,
6 payment bonds, and insurance, and to meet all the qualifications of
7 the Division of Property Management and Construction in the
8 Department of the Treasury or the Department of Transportation
9 where applicable; and

10 (10) A statement that all employees have graduated from a
11 registered apprenticeship program, providing to each trainee
12 combined classroom and on-the-job training under the direct and
13 close supervision of a highly skilled worker in an occupation
14 recognized as an apprenticeable trade, and registered by the Bureau
15 of Apprenticeship and Training of the U.S. Department of Labor
16 and meeting the standards established by the bureau, or registered
17 by a State apprenticeship agency recognized by the bureau.

18 b. The solicitation may include any other information which
19 the contracting unit in its discretion chooses to supply, including
20 without limitation, surveys, soils reports, drawings or models of
21 existing structures, environmental studies, photographs or
22 references to public records.

23 c. Notice of solicitations shall be advertised in the same
24 manner in which proposals generally are solicited for public
25 projects.

26
27 7. a. Each design-build team shall include a licensed design
28 professional independent from the contracting unit's licensed
29 architect or engineer. The licensed design professional must be
30 named in any proposal submitted to the contracting unit.

31 b. Proposals shall be sealed and shall not be opened until
32 expiration of the time established for making proposals as set forth
33 in the solicitation.

34 c. Proposals shall identify each person to whom the design-
35 builder proposes to delegate obligations under the design-build
36 contract. Persons so identified will not be replaced without the
37 approval of the contracting unit.

38 d. Proposals shall establish the cost of the design-build contract
39 which will not be exceeded if the proposal is accepted without
40 change. Afterward, the maximum cost in the proposal may be
41 converted to fixed prices by negotiated agreement between the
42 contracting unit and the design-builder.

43 e. All proposals shall be received and opened at a previously
44 announced time, where they shall be publicly read and recorded.

45 f. Unless and until a proposal is accepted, the drawings,
46 specifications and other information in the proposal shall remain the
47 property of the person making the proposal. The contracting unit
48 shall make reasonable efforts to maintain the secrecy and

1 confidentiality of all proposals, and all information contained in the
2 proposals, and shall not disclose the proposals or the information
3 contained therein to the design-builders' competitors or the public.
4 Once a proposal is accepted, the disclosure of the proposal and the
5 information in the proposal, and the ownership of the drawings,
6 specifications, and information therein, shall be determined in
7 accordance with existing law and the terms of the design-build
8 contract.

9
10 8. a. Once received, proposals shall be submitted to the design
11 professional retained by the contracting unit. No proposal shall be
12 considered until certification is issued by the design professional
13 retained by the contracting unit that the proposal is consistent with
14 the evaluation factors. No proposal for a design-build contract may
15 be accepted unless the contracting unit determines that there was
16 adequate competition for such contract.

17 b. A contracting unit must accept the proposal which it
18 considers most advantageous to the contracting unit after a thorough
19 review and scoring of both parts of a design-bid proposal.

20 c. Acceptance of a proposal shall be made by written notice to
21 the design-builder which submitted the accepted proposal. At the
22 same time notice of acceptance is delivered, the contracting unit
23 shall also inform, in writing, the other design-builders that their
24 proposals were not accepted.

25 d. The contracting unit shall have the right to reject any and all
26 proposals, except for the purpose of evading the provisions and
27 policies of this chapter. The contracting unit shall solicit new
28 proposals using the same evaluation factors, budget constraints, or
29 qualifications.

30 e. Proposals may be withdrawn for any reason at any time prior
31 to acceptance.

32 f. When a design-builder receives notification from a public
33 body that the proposal, which it has submitted, has not been
34 accepted, the design-builder may, within 30 days, request from the
35 public body a written explanation of the selection process. The
36 design-builder shall submit this request in writing.

37
38 9. The State of New Jersey shall, on an annual basis, compile
39 and make public all proceedings, records, contracts and other public
40 records relating to procurement transactions authorized under
41 P.L. , c. (C.) (pending before the Legislature as this bill).

42
43 10. The Division of Property Management and Construction in
44 the Department of the Treasury or the Department of
45 Transportation, where applicable, shall adopt regulations pursuant
46 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
47 1 et seq.), to effectuate the provisions of this act.

1 11. This act shall take effect immediately.

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STATEMENT

5

6 This bill, known as the “Design-Build Construction Services
7 Procurement Act,” sets forth the procedures for the awarding of
8 design-build contracts.

9 A design-build contract is a unique type of project delivery
10 system used in construction and renovation projects. Traditional
11 contracts are awarded using a design-bid-build system, where the
12 project contracting unit starts by hiring an architect. Once the
13 architect has finished the design phase, the project is put out for bid
14 to general contracting companies. The contractor with the lowest
15 bid is awarded the project, and is responsible for completing the job
16 according to the plans created by the architect.

17 With a design-build contract, the contracting unit awards the
18 entire project to a single company. It is typically awarded to a
19 contractor, though architects or engineers may be awarded a design-
20 build contract in some specialized cases. Once the contract is
21 signed, the contractor is responsible for all design and construction
22 work required to complete the project. This system allows the
23 contracting unit to deal with a single source throughout the duration
24 of the job, rather than coordinating between various parties, and is
25 intended to provide cost savings to the contracting unit.

26 When a design-build contract is awarded to a builder, he must
27 hire all architects and engineers required to complete design work.
28 The contracting unit is still given the right to approve or reject
29 design options, but is no longer responsible for coordinating or
30 managing the design team. Once the contracting unit approves the
31 design, the same contractor then oversees the construction process,
32 hiring subcontractors as needed.