

**SENATE, No. 3798**

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**STATE OF NEW JERSEY**  
**218th LEGISLATURE**

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INTRODUCED MAY 20, 2019

**Sponsored by:**

**Senator PATRICK J. DIEGNAN, JR.**

**District 18 (Middlesex)**

**Senator STEVEN V. OROHO**

**District 24 (Morris, Sussex and Warren)**

**SYNOPSIS**

Establishes procedures for awarding design-build contracts by State transportation agencies.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/18/2019)**

1 AN ACT establishing certain procedures for awarding design-build  
2 contracts by State transportation agencies and supplementing  
3 Title 52 of the Revised Statutes.

4

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

7

8 1. As used in P.L. , c. (C. ) (pending before the  
9 Legislature as this bill):

10 “Contracting unit” shall only include State transportation  
11 agencies.

12 “Design-bid-build” means the delivery system used in public  
13 projects in which a registered design professional develops the  
14 project design in its entirety, and the contracting unit then solicits  
15 bids and awards the contract to the lowest responsible bidder that  
16 demonstrates the ability to complete the project specified in the  
17 design.

18 “Design-build contract” means a contract between a contracting  
19 unit and a design-builder to provide design, labor, materials, and  
20 other construction services for a public project. A design-build  
21 contract may be conditioned upon subsequent refinements in scope  
22 and associated price, and may permit the contracting unit to make  
23 changes in the requirements and desired outcome of the project  
24 without invalidating the design-build contract.

25 “Design-build delivery system” means a project delivery method  
26 in which there is a single contract between the contracting unit and  
27 a design-builder to furnish the architectural, engineering, and  
28 related design services of a project in addition to the labor,  
29 materials, supplies, equipment, and construction services for any  
30 project.

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

40 “Request for proposal” means a document issued by a  
41 contracting unit to solicit technical proposals for a project from  
42 prequalified design-builders.

43 “Request for qualifications” means a document issued by a  
44 contracting unit to prequalify and rank potential design-builders.

45 “State transportation agency” means the Department of  
46 Transportation, the New Jersey Turnpike Authority, the South  
47 Jersey Transportation Authority, or the New Jersey Transit  
48 Corporation.

1       “Stipend” means the fee paid to a design-builder by the  
2       contracting unit to encourage competition.

3  
4       2. a. If a contracting unit demonstrates that the design-build  
5       approach meets the needs of the contracting unit better than the  
6       traditional design-bid-build approach established under New Jersey  
7       public procurement law for a project or projects under  
8       consideration, it shall be the public policy of this State to permit  
9       that contracting unit to enter into design-build contracts, provided  
10      the contracting unit shall, for each public project under P.L.     ,  
11      c. (C.     ) (pending before the Legislature as this bill), make a  
12      determination based on the need to expedite the project and the  
13      finalization of project requirements that it is in the best interest of  
14      the public to enter into a design-build contract to complete the  
15      public project. The contracting unit shall provide in a written  
16      statement its reasons for using a design-build delivery system,  
17      which shall be available to the public upon request.

18      b. After deciding to proceed with a design-build delivery  
19      system, a contracting unit shall establish a competitive, two-phase  
20      procedure for awarding design-build contracts as provided for in  
21      sections 3 and 4 of P.L.     , c. (C.     ) (pending before the  
22      Legislature as this bill).

23      c. All workers employed in a design-build construction project  
24      shall be paid the prevailing wage determined by the Commissioner  
25      of Labor and Workforce Development pursuant to the provisions of  
26      the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-  
27      56.25 et seq.).

28  
29      3. a. After the contracting unit has determined to utilize a  
30      design-build delivery system pursuant to section 2 of P.L.     ,  
31      c. (C.     ) (pending before the Legislature as this bill), the  
32      contracting unit shall prepare a request for qualifications to qualify  
33      design-builders.

34      b. The request for qualifications shall include, but need not be  
35      limited to:

- 36       (1) a scope of work statement and schedule;  
37       (2) documents and reference materials made available by the  
38       contracting unit defining the project requirements;  
39       (3) the form of contract to be awarded;  
40       (4) a description of the request for proposal requirements;  
41       (5) the maximum time allowed for design and construction; and  
42       (6) the contracting unit’s estimated cost range for design and  
43       construction.

44      c. Provided that the following evaluation requirements do not  
45      unduly restrict competition, the qualifications of the responding  
46      design-builders shall be evaluated and scored based on the  
47      following, without limitation:

1 (1) construction experience; design experience; financial,  
2 personnel, and equipment resources available for the project; and  
3 experience in other similar design-build delivery system projects;

4 (2) weighting factors for the qualifications identified; and

5 (3) any other information or criteria that the contracting unit  
6 deems appropriate, provided that a design-builder shall not be  
7 penalized in any way for asserting or exercising a legal right to  
8 which the design-builder is entitled.

9 d. The contracting unit shall evaluate the qualifications of each  
10 design-builder responding to the request for qualifications and  
11 prepare a list of at least two, but no more than four, design-builders  
12 with the highest qualifications based on the criteria established  
13 pursuant to subsection c. of this section, and shall solicit from those  
14 design-builders a request for proposals in accordance with section 4  
15 of P.L. , c. (C. ) (pending before the Legislature as this  
16 bill). If a design-builder consists of a team of separate entities, the  
17 entities that comprise the design-builder shall remain unchanged  
18 unless otherwise approved by the contracting unit.

19  
20 4. a. The contracting unit shall prepare and solicit a request for  
21 proposals from the list of the highest qualified design-builders as  
22 determined by the contracting unit pursuant to subsection d. of  
23 section 3 of P.L. , c. (C. ) (pending before the Legislature  
24 as this bill). The request for proposals shall include, but need not  
25 be limited to, the following elements:

26 (1) identification of the basic scope and needs of the project, the  
27 estimated cost of the project, and any other information deemed  
28 necessary by the contracting unit to inform interested parties of the  
29 contracting opportunity;

30 (2) a requirement for the separate submissions of technical  
31 proposals and price bids, which shall be submitted simultaneously;

32 (3) significant factors that the contracting unit reasonably  
33 expects to consider in evaluating proposals, including, but not  
34 limited to, cost, technical considerations, and any other non-price-  
35 related factors that are identified in the request for proposals;

36 (4) an explanation of the exact weight or points assigned to  
37 price and to each of the non-price-related factors of the technical  
38 proposal;

39 (5) the specific methodology that will be used to evaluate the  
40 technical proposals and price bids to arrive at a composite score that  
41 will determine the contract award. The basis of the award shall be a  
42 composite of the score awarded for the price proposal and the score  
43 awarded for all of the identified elements of the technical proposal,  
44 each of which shall be separately set forth in the request for  
45 proposals. The price proposal and the technical proposal shall total  
46 100 percent, provided that the price proposal and technical proposal  
47 shall each be weighted at a minimum of 40 percent of the total  
48 composite score; and

1 (6) any other information the contracting unit deems  
2 appropriate.

3 b. The request for proposals shall establish and provide the date  
4 on which the technical proposals and price bids are to be submitted  
5 to the contracting unit by the design-builder. The technical  
6 proposal and price bid shall be clearly identified and include the  
7 date and time of the submittal deadline. The price proposal shall be  
8 submitted in a separate sealed envelope that shall not be reviewed  
9 by the technical review committee established by the contracting  
10 unit pursuant to section 5 of P.L. , c. (C. ) (pending before the  
11 Legislature as this bill).

12 c. The contracting unit shall offer a stipend, based upon the  
13 project size and type, which shall be at least two percent but not  
14 more than three percent of the project's estimated cost, to any  
15 design-builder providing design, construction information, or  
16 materials presented in response to a request for proposals. This  
17 stipend is intended to encourage the submission of proposals and to  
18 increase competition. The contracting unit does not own the design,  
19 construction information, or materials of a design-builder not  
20 awarded the contract. Purchase of any design, construction  
21 information, or materials presented to the contracting unit by  
22 design-builders not awarded a contract may be separately negotiated  
23 between the contracting unit and the appropriate design-builder.  
24

25 5. a. The contracting unit shall create a technical review  
26 committee whose purpose and function shall be to evaluate and  
27 score the technical proposals submitted to the contracting unit by  
28 design-builders in accordance with section 4 of P.L. , c. (C. )  
29 (pending before the Legislature as this bill). The technical review  
30 committee shall have the authority to reject any technical proposal  
31 submitted by a design-builder that the committee deems incomplete  
32 for any reason.

33 b. The technical proposals shall be reviewed by the technical  
34 review committee created by the contracting unit pursuant to  
35 subsection a. of this section. This review shall include, but need not  
36 be limited to, the following criteria, pre-identified in the request for  
37 proposals, which shall be weighed by the technical review  
38 committee in accordance with subsection a. of this section:

39 (1) the approach to the scope of the project, including, but not  
40 limited to, performance and technical standards, design, and  
41 functional and operational elements, which shall be prepared by a  
42 registered or licensed professional engineer;

43 (2) the maximum time expected for design and construction;

44 (3) a critical path method, bar schedule of the work to be  
45 performed, or similar schematic;

46 (4) design plans and specifications, technical reports, and  
47 calculations;

- 1 (5) a list of all permit requirements and applicable development
- 2 fees relevant to the project;
- 3 (6) copies of the contract documents that the successful design-
- 4 build entity will be expected to enter into;
- 5 (7) project specific qualifications and experience of the design-
- 6 builder and its team members;
- 7 (8) a statement of expected project implementation for the
- 8 project;
- 9 (9) lifecycle cost considerations of the completed project and
- 10 traffic approaches, with an accompanying rationale; and
- 11 (10) any other information deemed relevant to the project by the
- 12 contracting unit.
- 13 c. The technical review committee shall score the technical
- 14 proposals using the criteria and methodology set forth in the request
- 15 for proposals. Submitted technical proposals shall not include any
- 16 information on the cost of project design or delivery; inclusion of
- 17 price information in any portion of the technical proposal shall
- 18 disqualify the design-builder from bidding on the project. The
- 19 technical review committee shall then submit a technical proposal
- 20 score for each design-build entity submitting a proposal to the
- 21 contracting unit.
- 22
- 23 6. a. The price bid shall be sealed until such time after the
- 24 technical review committee has evaluated and scored the technical
- 25 proposal submitted by the design-builders. The contracting unit
- 26 shall then make public the technical proposal score for each design-
- 27 builder and shall publicly open and review the sealed price bid.
- 28 The priced bid shall contain all design, construction, engineering,
- 29 inspection, and construction costs of the project.
- 30 b. The contracting unit shall make public the sealed price bid
- 31 for each proposal submitted to the contracting unit by a design-
- 32 builder. The contracting unit shall evaluate the received technical
- 33 proposals and price bid against the published factors and weighting
- 34 to arrive at a composite score. The contracting unit shall make
- 35 public the design-builder to be awarded the contract for the project.
- 36 c. Until a proposal is selected, the drawings, specifications, and
- 37 other information in the proposal shall remain the property of the
- 38 design-builder making the proposal. The contracting unit shall make
- 39 reasonable efforts to maintain the secrecy and confidentiality of all
- 40 proposals and all information contained in the proposals. The
- 41 contracting unit shall not disclose the proposals or the information
- 42 contained therein to the design-builders' competitors or the public.
- 43 Once a proposal is selected, the disclosure of the proposal and the
- 44 information in the proposal, and the ownership of the drawings,
- 45 specifications, and information therein, shall be determined in
- 46 accordance with existing law and the terms of the design-build
- 47 contract.



**S3798 DIEGNAN, OROHO**

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1       The bill clarifies that nothing in the bill is to be construed to  
2       exempt a State transportation agency, or any design-build contract  
3       entered into by a State transportation agency, from the requirements  
4       of any rules, regulations, standards, or policies adopted by the  
5       Department of Transportation or any other State transportation  
6       agency to implement a program to create equal contracting  
7       opportunities for small, socially-disadvantaged, or economically-  
8       disadvantaged business enterprises.