

ASSEMBLY, No. 1285

STATE OF NEW JERSEY 219th LEGISLATURE

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SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 7/23/2020)

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, the Green Globes Program adopted by the
38 Green Building Initiative, or a comparable nationally recognized,
39 accepted, and appropriate sustainable development system.
40

41 4. a. The contracting unit shall adopt the following procedures
42 for awarding design-build contracts:

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

47 (2) The contracting unit shall develop, with the assistance of the
48 design professional, performance criteria and a scope of work

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

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

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

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

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

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

1 e. The technical review committee shall evaluate each second
2 proposal based on the technical submission for the proposal,
3 including design concepts or proposed solutions to requirements
4 addressed within the scope of work, and the evaluation factors,
5 including a minimum of 50% consideration based on the cost of the
6 bid.

7 f. The contracting unit shall separately evaluate the submissions
8 described above, and award the contract in accordance with section
9 8 of P.L. , c. (C.) (pending before the Legislature as this
10 bill).

11

12 5. a. Each request for proposals shall contain evaluation factors
13 prepared by a design professional as defined in section 2 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill). The
15 design professional that develops the evaluation factors shall be
16 disqualified from submitting a proposal to enter into the design-
17 build contract, and the design-builder shall not be permitted to
18 delegate services under the design-build contract to the design
19 professional that developed the evaluation factors.

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

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

32

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

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

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

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

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

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

- 1 (6) Budget limits for the design-build contract, if any;
- 2 (7) Affirmative action, disadvantaged business or set-aside goals
3 or requirements for the design-build contract, as determined by the
4 contracting unit;
- 5 (8) The required qualifications of the design-builder;
- 6 (9) Requirements for contractors to have performance bonds,
7 payment bonds, and insurance, and to meet all the qualifications of
8 the Division of Property Management and Construction in the
9 Department of the Treasury or the Department of Transportation
10 where applicable; and
- 11 (10) A statement that all employees have graduated from a
12 registered apprenticeship program, which is registered with, and
13 approved by, the United States Department of Labor, and which
14 provides each trainee with combined classroom and on-the-job
15 training under the direct and close supervision of a highly skilled
16 worker in an occupation recognized as an apprenticeable trade, and
17 meets the program performance standards of enrollment and
18 graduation under 29 C.F.R. 29.6 (2011). Every contract subject to
19 the provisions of this section shall provide that every worker
20 employed in the performance of that contract is an apprentice
21 participating in a registered apprenticeship program or has
22 completed a registered apprenticeship, unless the contractor or
23 subcontractor certifies that every worker shall be paid not less than
24 the journeyworker's rate established for the apprenticeable trade
25 performed pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).
- 26 b. The solicitation may include any other information which the
27 contracting unit in its discretion chooses to supply, including
28 without limitation, surveys, soils reports, drawings or models of
29 existing structures, environmental studies, photographs or
30 references to public records.
- 31 c. Notice of solicitations shall be advertised in the same manner
32 in which proposals generally are solicited for public projects.
- 33
- 34 7. a. Each design-build team shall include a licensed design
35 professional independent from the contracting unit's licensed
36 architect or engineer. The licensed design professional must be
37 named in any proposal submitted to the contracting unit.
- 38 b. Proposals shall be sealed and shall not be opened until
39 expiration of the time established for making proposals as set forth
40 in the solicitation.
- 41 c. Proposals shall identify each person to whom the design-
42 builder proposes to delegate obligations under the design-build
43 contract. Persons so identified will not be replaced without the
44 approval of the contracting unit.
- 45 d. Proposals shall establish the cost of the design-build contract
46 which will not be exceeded if the proposal is accepted without
47 change. Afterward, the maximum cost in the proposal may be

- 1 converted to fixed prices by negotiated agreement between the
2 contracting unit and the design-builder.
- 3 e. All proposals shall be received and opened at a previously
4 announced time, where they shall be publicly read and recorded.
- 5 f. Unless and until a proposal is accepted, the drawings,
6 specifications and other information in the proposal shall remain the
7 property of the person making the proposal. The contracting unit
8 shall make reasonable efforts to maintain the secrecy and
9 confidentiality of all proposals, and all information contained in the
10 proposals, and shall not disclose the proposals or the information
11 contained therein to the design-builders' competitors or the public.
12 Once a proposal is accepted, the disclosure of the proposal and the
13 information in the proposal, and the ownership of the drawings,
14 specifications, and information therein, shall be determined in
15 accordance with existing law and the terms of the design-build
16 contract.
- 17
- 18 8. a. Once received, proposals shall be submitted to the design
19 professional retained by the contracting unit. No proposal shall be
20 considered until certification is issued by the design professional
21 retained by the contracting unit that the proposal is consistent with
22 the evaluation factors. No proposal for a design-build contract may
23 be accepted unless the contracting unit determines that there was
24 adequate competition for such contract.
- 25 b. A contracting unit must accept the proposal which it
26 considers most advantageous to the contracting unit after a thorough
27 review and scoring of both parts of a design-bid proposal.
- 28 c. Acceptance of a proposal shall be made by written notice to
29 the design-builder which submitted the accepted proposal. At the
30 same time notice of acceptance is delivered, the contracting unit
31 shall also inform, in writing, the other design-builders that their
32 proposals were not accepted.
- 33 d. The contracting unit shall have the right to reject any and all
34 proposals, except for the purpose of evading the provisions and
35 policies of this chapter. The contracting unit shall solicit new
36 proposals using the same evaluation factors, budget constraints, or
37 qualifications.
- 38 e. Proposals may be withdrawn for any reason at any time prior
39 to acceptance.
- 40 f. When a design-builder receives notification from a public
41 body that the proposal, which it has submitted, has not been
42 accepted, the design-builder may, within 30 days, request from the
43 public body a written explanation of the selection process. The
44 design-builder shall submit this request in writing.
- 45
- 46 9. The State of New Jersey shall, on an annual basis, compile
47 and make public all proceedings, records, contracts and other public

1 records relating to procurement transactions authorized under
2 P.L. , c. (C.) (pending before the Legislature as this bill).

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4 10. The Division of Property Management and Construction in
5 the Department of the Treasury or the Department of
6 Transportation, where applicable, shall adopt regulations pursuant
7 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
8 1 et seq.), to effectuate the provisions of this act.

9

10 11. This act shall take effect immediately.

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STATEMENT

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15 This bill, known as the "Design-Build Construction Services
16 Procurement Act," sets forth the procedures for the awarding of
17 design-build contracts.

18 A design-build contract is a unique type of project delivery
19 system used in construction and renovation projects. Traditional
20 contracts are awarded using a design-bid-build system, where the
21 project contracting unit starts by hiring an architect. Once the
22 architect has finished the design phase, the project is put out for bid
23 to general contracting companies. The contractor with the lowest
24 bid is awarded the project, and is responsible for completing the job
25 according to the plans created by the architect.

26 With a design-build contract, the contracting unit awards the
27 entire project to a single company. It is typically awarded to a
28 contractor, though architects or engineers may be awarded a design-
29 build contract in some specialized cases. Once the contract is
30 signed, the contractor is responsible for all design and construction
31 work required to complete the project. This system allows the
32 contracting unit to deal with a single source throughout the duration
33 of the job, rather than coordinating between various parties, and is
34 intended to provide cost savings to the contracting unit.

35 When a design-build contract is awarded to a builder, he must
36 hire all architects and engineers required to complete design work.
37 The contracting unit is still given the right to approve or reject
38 design options, but is no longer responsible for coordinating or
39 managing the design team. Once the contracting unit approves the
40 design, the same contractor then oversees the construction process,
41 hiring subcontractors as needed.