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ASSEMBLY, No. 1285

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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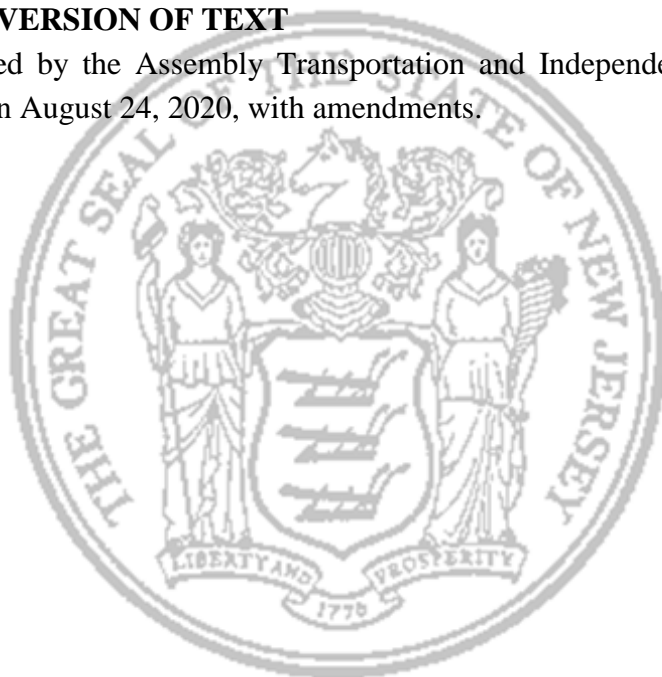
Assemblywoman Murphy

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

As reported by the Assembly Transportation and Independent Authorities Committee on August 24, 2020, with amendments.



(Sponsorship Updated As Of: 10/26/2020)

1 AN ACT establishing procedures for awarding design-build contracts
2 and supplementing Title¹ **[40A of the New Jersey]** 52 of the
3 Revised 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 subdivisions,
14 any authority created by the Legislature of the State of New Jersey and
15 any instrumentality or agency of the State of New Jersey or of any of
16 its political subdivisions, authorizing the execution of a design-build
17 contract.

18 ¹“Contracting unit” means a local contracting unit or a State
19 contracting unit.¹

20 “Delivery system” means the procedure used to develop and
21 construct a project.

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

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

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

42 “Design professional” means the entity, whether natural person,
43 partnership, joint stock company, corporation, trust, professional
44 corporation, business association, or other legal business entity or
45 successor that provides registered architectural, engineering, or
46 surveying services in accordance with R.S.45:3-1 et seq., and

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATR committee amendments adopted August 24, 2020.

1 P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be responsible for
2 planning, designing and observing the construction of the project or
3 projects.

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

11 ¹“Local contracting unit” means a government entity that enters
12 into contracts pursuant to the “Public School Contracts Law,”
13 N.J.S.18A:18A-1 et seq.; the “County College Contracts Law,”
14 P.L.1982, c.189 (C.18A:64A-25.1 et seq.); or the “Local Public
15 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.).¹

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

17 ¹“State contracting unit” means a government entity that enters into
18 contracts pursuant to the “State College Contracts Law,” P.L.1986,
19 c.43 (C.18A:64-52 et seq.); P.L.2007, c.137 (C.52:18A-235 et seq.);
20 and chapters 32, 33, and 34 of Title 52 of the Revised Statutes.¹

21

22 3. a. If a contracting unit can demonstrate why the design-build
23 approach meets their needs better than the traditional design-bid-
24 build approach established under New Jersey public procurement
25 statutes for the project or projects under consideration, it shall be
26 the public policy of this State to permit that contracting unit to enter
27 into design-build contracts as defined in P.L. , c. (C.)
28 (pending before the Legislature as this bill), provided the following
29 conditions are met:

30 (1) The contracting unit shall, prior to issuing solicitations,
31 publish procedures consistent with regulations promulgated by the
32 Division of Property Management and Construction in the
33 Department of the Treasury or the Department of Transportation,
34 where applicable for the solicitation and award of design-build
35 contracts, and shall adhere to P.L. , c. (C.) (pending before
36 the Legislature as this bill) and those procedures; and

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

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

46 c. All design-build construction projects shall be encouraged to
47 adhere to the Leadership in Energy and Environmental Design
48 Green Building Rating System as adopted by the United States

1 Green Building Council, the Green Globes Program adopted by the
2 Green Building Initiative, or a comparable nationally recognized,
3 accepted, and appropriate sustainable development system.

4

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

7 (1) The contracting unit shall appoint a registered design
8 professional to provide technical advice, construction review
9 services, and professional expertise on behalf of the contracting
10 unit;

11 (2) The contracting unit shall develop, with the assistance of the
12 design professional, performance criteria and a scope of work
13 statement that defines the project and provides prospective design-
14 builders with sufficient information regarding the contracting unit's
15 requirements. The statement shall include: evaluation factor criteria
16 and preliminary design, general budget parameters, and general
17 schedule or delivery requirements to enable the design-builders to
18 submit proposals which meet the contracting unit's needs. When the
19 design-build selection procedure is used and the contracting unit
20 contracts for development of the scope of work statement, the
21 design-builder shall contract for architectural or engineering
22 services as defined by and in accordance with R.S.45:3-1 et seq.,
23 P.L.1938, c.342 (C.45:8-27 et seq.), and all other applicable
24 licensing statutes;

25 (3) Once the contracting unit has developed a scope of work
26 statement which adequately defines the contracting unit's
27 requirements for the project or projects, the contracting unit shall
28 solicit proposals from design-builders. The contracting unit shall
29 solicit proposals in accordance with the requirements of the
30 applicable public procurement laws of the State of New Jersey.

31 (4) The contracting unit shall establish a technical review
32 committee, which shall consist of a representative of the contracting
33 unit, the contracting unit's project manager, the contracting unit's
34 authorized design professional, and the contracting unit's attorney.
35 The technical review committee shall have the responsibility to
36 evaluate bids based on rating and scoring proposals, and shall
37 evaluate design-builders based on their qualifications.

38 b. The factors used to evaluate proposals shall be stated in the
39 solicitation and shall include, but not be limited to: specialized
40 experience and technical competence, training certification of
41 professional and field workforce, principal location of the company,
42 capability to perform, safety modification rating, past performance
43 of the individual members of the design-builder's team in their
44 respective capacities, including the architect-engineer and
45 construction members of the team, and other appropriate technical
46 and qualification factors as determined by the Division of Property
47 Management and Construction in the Department of the Treasury or
48 the Department of Transportation, where applicable. Each

1 solicitation for proposals must establish the relative importance
2 assigned to the evaluation factors and sub-factors to be considered.

3 c. A solicitation for proposals shall state the maximum number
4 of design-builders that are to be selected to submit proposals. The
5 maximum number specified in the solicitation shall be at least two
6 and shall not exceed five.

7 d. On the basis of the proposal, the technical review committee
8 shall select the most highly qualified number of design-builders
9 specified in the solicitation and request the selected design-builders
10 to submit a second proposal and sealed bid. Each solicitation for
11 second proposals must establish the relative importance assigned to
12 the evaluation factors to be considered.

13 e. The technical review committee shall evaluate each second
14 proposal based on the technical submission for the proposal,
15 including design concepts or proposed solutions to requirements
16 addressed within the scope of work, and the evaluation factors,
17 including a minimum of 50 percent consideration based on the cost
18 of the bid.

19 f. The contracting unit shall separately evaluate the submissions
20 described above, and award the contract in accordance with section
21 8 of P.L. , c. (C.) (pending before the Legislature as this
22 bill).

23

24 5. a. Each request for proposals shall contain evaluation factors
25 prepared by a design professional as defined in section 2 of P.L. ,
26 c. (C.) (pending before the Legislature as this bill). The
27 design professional that develops the evaluation factors shall be
28 disqualified from submitting a proposal to enter into the design-
29 build contract, and the design-builder shall not be permitted to
30 delegate services under the design-build contract to the design
31 professional that developed the evaluation factors.

32 b. The design professional that develops the evaluation factors
33 shall be either an employee of the contracting unit or shall be
34 engaged in compliance with applicable New Jersey public
35 procurement laws, and to the extent allowed by law may delegate
36 the development of specific aspects of the design criteria to other
37 consultants.

38 c. The contracting unit, in consultation with the design
39 professional, shall determine the scope and level of detail required
40 for the evaluation factors. The evaluation factors should be detailed
41 enough to permit qualified persons to submit proposals in
42 accordance with the solicitation, given the nature of the public
43 project and the level of design to be provided in the proposal.

44

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

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

- 1 (2) The procedures to be followed for admitting proposals, the
2 criteria for evaluation of proposals and their relative weight, and the
3 procedures for making awards, including a reference to the
4 requirements of this act and the regulations of the contracting unit;
- 5 (3) The proposed terms and conditions for the design-build
6 contract;
- 7 (4) A description of the drawings, specifications, or other
8 submittals to be submitted with the proposal, with guidance as to the
9 form and level of completeness of the drawings, specifications, or
10 submittals that will be acceptable;
- 11 (5) A schedule for planned commencement and completion of the
12 design-build contract;
- 13 (6) Budget limits for the design-build contract, if any;
- 14 (7) Affirmative action, disadvantaged business or set-aside goals
15 or requirements for the design-build contract, as determined by the
16 contracting unit;
- 17 (8) The required qualifications of the design-builder;
- 18 (9) Requirements for contractors to have performance bonds,
19 payment bonds, and insurance, and to meet all the qualifications of the
20 Division of Property Management and Construction in the Department
21 of the Treasury or the Department of Transportation where applicable;
22 and
- 23 (10) A statement that ¹【all employees have graduated from a
24 registered apprenticeship program, which is registered with, and
25 approved by, the United States Department of Labor, and which
26 provides each trainee with combined classroom and on-the-job training
27 under the direct and close supervision of a highly skilled worker in an
28 occupation recognized as an apprenticeable trade, and meets the
29 program performance standards of enrollment and graduation under 29
30 C.F.R. 29.6 (2011). Every contract subject to the provisions of this
31 section shall provide that every worker employed in the performance
32 of that contract is an apprentice participating in a registered
33 apprenticeship program or has completed a registered apprenticeship,
34 unless the contractor or subcontractor certifies that every worker shall
35 be paid not less than the journeyworker's rate established for the
36 apprenticeable trade performed pursuant to P.L.1963, c.150 (C.34:11-
37 56.25 et seq.)】 the prospective design-builder is in compliance with all
38 applicable laws, including the "New Jersey Prevailing Wage Act,"
39 P.L.1963, c.150 (C.34:11-56.25 et seq.), "The Public Works
40 Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.),
41 and the "Construction Industry Independent Contractor Act,"
42 P.L.2007, c.114 (C.34:20-1 et seq.).¹
- 43 b. The solicitation may include any other information which the
44 contracting unit in its discretion chooses to supply, including without
45 limitation, surveys, soils reports, drawings or models of existing
46 structures, environmental studies, photographs or references to public
47 records.

- 1 c. Notice of solicitations shall be advertised in the same manner in
2 which proposals generally are solicited for public projects.
3
- 4 7. a. Each design-build team shall include a licensed design
5 professional independent from the contracting unit's licensed
6 architect or engineer. The licensed design professional must be
7 named in any proposal submitted to the contracting unit.
- 8 b. Proposals shall be sealed and shall not be opened until
9 expiration of the time established for making proposals as set forth
10 in the solicitation.
- 11 c. Proposals shall identify each person to whom the design-
12 builder proposes to delegate obligations under the design-build
13 contract. Persons so identified will not be replaced without the
14 approval of the contracting unit.
- 15 d. Proposals shall establish the cost of the design-build contract
16 which will not be exceeded if the proposal is accepted without
17 change. Afterward, the maximum cost in the proposal may be
18 converted to fixed prices by negotiated agreement between the
19 contracting unit and the design-builder.
- 20 e. All proposals shall be received and opened at a previously
21 announced time, where they shall be publicly read and recorded.
- 22 f. Unless and until a proposal is accepted, the drawings,
23 specifications and other information in the proposal shall remain the
24 property of the person making the proposal. The contracting unit
25 shall make reasonable efforts to maintain the secrecy and
26 confidentiality of all proposals, and all information contained in the
27 proposals, and shall not disclose the proposals or the information
28 contained therein to the design-builders' competitors or the public.
29 Once a proposal is accepted, the disclosure of the proposal and the
30 information in the proposal, and the ownership of the drawings,
31 specifications, and information therein, shall be determined in
32 accordance with existing law and the terms of the design-build
33 contract.
34
- 35 8. a. Once received, proposals shall be submitted to the design
36 professional retained by the contracting unit. No proposal shall be
37 considered until certification is issued by the design professional
38 retained by the contracting unit that the proposal is consistent with
39 the evaluation factors. No proposal for a design-build contract may
40 be accepted unless the contracting unit determines that there was
41 adequate competition for such contract.
- 42 b. A contracting unit must accept the proposal which it
43 considers most advantageous to the contracting unit after a thorough
44 review and scoring of both parts of a design-bid proposal.
- 45 c. Acceptance of a proposal shall be made by written notice to
46 the design-builder which submitted the accepted proposal. At the
47 same time notice of acceptance is delivered, the contracting unit

- 1 shall also inform, in writing, the other design-builders that their
2 proposals were not accepted.
- 3 d. The contracting unit shall have the right to reject any and all
4 proposals, except for the purpose of evading the provisions and
5 policies of this chapter. The contracting unit shall solicit new
6 proposals using the same evaluation factors, budget constraints, or
7 qualifications.
- 8 e. Proposals may be withdrawn for any reason at any time prior
9 to acceptance.
- 10 f. When a design-builder receives notification from a public
11 body that the proposal, which it has submitted, has not been
12 accepted, the design-builder may, within 30 days, request from the
13 public body a written explanation of the selection process. The
14 design-builder shall submit this request in writing.
- 15
- 16 9. The State of New Jersey shall, on an annual basis, compile
17 and make public all proceedings, records, contracts and other public
18 records relating to procurement transactions authorized under
19 P.L. , c. (C.) (pending before the Legislature as this bill).
- 20
- 21 10. The Division of Property Management and Construction in
22 the Department of the Treasury or the Department of
23 Transportation, where applicable, shall adopt regulations pursuant
24 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
25 1 et seq.), to effectuate the provisions of this act.
- 26
- 27 11. This act shall take effect immediately.