

[Second Reprint]

**ASSEMBLY, No. 1285**

**STATE OF NEW JERSEY**  
**219th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Assemblyman LOUIS D. GREENWALD**

**District 6 (Burlington and Camden)**

**Assemblyman NICHOLAS CHIARAVALLOTI**

**District 31 (Hudson)**

**Assemblyman WILLIAM F. MOEN, JR.**

**District 5 (Camden and Gloucester)**

**Co-Sponsored by:**

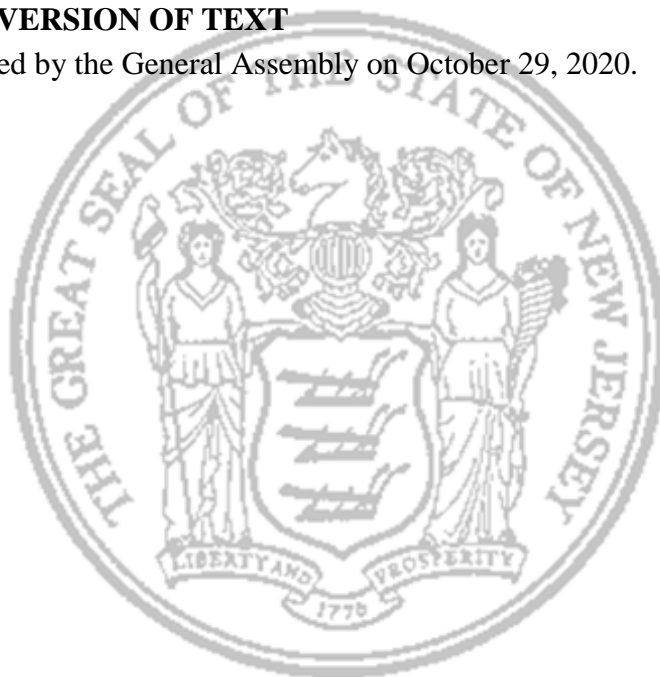
**Assemblywoman Murphy**

**SYNOPSIS**

Establishes procedures for awarding of design-build contracts.

**CURRENT VERSION OF TEXT**

As amended by the General Assembly on October 29, 2020.



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

1 AN ACT establishing procedures for awarding design-build contracts  
2 and supplementing Title<sup>1</sup> **[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  
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 <sup>1</sup>“Contracting unit” means a local contracting unit or a State  
19 contracting unit.<sup>1</sup>

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  
24 project design in its entirety; the contracting unit then solicits bids  
25 and awards the contract to the lowest responsible bidder that  
26 demonstrates the ability to complete the project specified in the  
27 design.

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

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

43 “Design professional” means the entity, whether natural person,  
44 partnership, joint stock company, corporation, trust, professional  
45 corporation, business association, or other legal business entity or

**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:

<sup>1</sup>Assembly ATR committee amendments adopted August 24, 2020.

<sup>2</sup>Assembly floor amendments adopted October 29, 2020.

1 successor that provides registered architectural, engineering, or  
2 surveying services in accordance with R.S.45:3-1 et seq., and  
3 P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be responsible  
4 for planning, designing and observing the construction of the  
5 project or projects.

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

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

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

19 <sup>1</sup>“State contracting unit” means a government entity that enters  
20 into contracts pursuant to the “State College Contracts Law,”  
21 P.L.1986, c.43 (C.18A:64-52 et seq.); P.L.2007, c.137 (C.52:18A-  
22 235 et seq.); and chapters 32, 33, and 34 of Title 52 of the Revised  
23 Statutes.<sup>1</sup>

24 <sup>2</sup>“Stipend” means the fee paid to a design-builder by the  
25 contracting unit to encourage competition.<sup>2</sup>

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

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

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

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

5       c. All design-build construction projects shall be encouraged to  
6 adhere to the Leadership in Energy and Environmental Design  
7 Green Building Rating System as adopted by the United States  
8 Green Building Council, the Green Globes Program adopted by the  
9 Green Building Initiative, or a comparable nationally recognized,  
10 accepted, and appropriate sustainable development system.

11

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

14       (1) The contracting unit shall appoint a registered design  
15 professional to provide technical advice, construction review  
16 services, and professional expertise on behalf of the contracting  
17 unit;

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

32       (3) Once the contracting unit has developed a scope of work  
33 statement which adequately defines the contracting unit's  
34 requirements for the project or projects, the contracting unit shall  
35 solicit proposals from design-builders. The contracting unit shall  
36 solicit proposals in accordance with the requirements of the  
37 applicable public procurement laws of the State of New Jersey.

38       (4) The contracting unit shall establish a technical review  
39 committee, which shall consist of a representative of the contracting  
40 unit, the contracting unit's project manager, the contracting unit's  
41 authorized design professional, and the contracting unit's attorney.  
42 The technical review committee shall have the responsibility to  
43 evaluate bids based on rating and scoring proposals, and shall  
44 evaluate design-builders based on their qualifications.

45       b. The factors used to evaluate proposals shall be stated in the  
46 solicitation and shall include, but not be limited to: specialized  
47 experience and technical competence, training certification of

1 professional and field workforce, principal location of the company,  
2 capability to perform, safety modification rating, past performance  
3 of the individual members of the design-builder's team in their  
4 respective capacities, including the architect-engineer and  
5 construction members of the team, and other appropriate technical  
6 and qualification factors as determined by the Division of Property  
7 Management and Construction in the Department of the Treasury or  
8 the Department of Transportation, where applicable. Each  
9 solicitation for proposals must establish the relative importance  
10 assigned to the evaluation factors and sub-factors to be considered.

11 c. A solicitation for proposals shall state the maximum number  
12 of design-builders that are to be selected to submit proposals. The  
13 maximum number specified in the solicitation shall be at least two  
14 and shall not exceed five.

15 d. <sup>2</sup>The contracting unit shall offer a stipend, based upon the  
16 project size and type, which shall not exceed three percent of the  
17 project's estimated cost, to any design-builder providing design,  
18 construction information, or materials presented in response to a  
19 request for second proposals. This stipend is intended to encourage  
20 the submission of proposals and to increase competition.

21 e.<sup>2</sup> On the basis of the proposal, the technical review committee  
22 shall select the most highly qualified number of design-builders  
23 specified in the solicitation and request the selected design-builders  
24 to submit a second proposal and sealed bid. Each solicitation for  
25 second proposals must establish the relative importance assigned to  
26 the evaluation factors to be considered.

27 <sup>2</sup>[e.] f.<sup>2</sup> The technical review committee shall evaluate each  
28 second proposal based on the technical submission for the proposal,  
29 including design concepts or proposed solutions to requirements  
30 addressed within the scope of work, and the evaluation factors,  
31 including a minimum of 50 percent consideration based on the cost  
32 of the bid.

33 <sup>2</sup>[f.] g.<sup>2</sup> The contracting unit shall separately evaluate the  
34 submissions described above, and award the contract in accordance  
35 with section 8 of P.L. , c. (C. ) (pending before the  
36 Legislature as this bill).

37  
38 5. a. Each request for proposals shall contain evaluation  
39 factors prepared by a design professional as defined in section 2 of  
40 P.L. , c. (C. ) (pending before the Legislature as this bill).  
41 The design professional that develops the evaluation factors shall be  
42 disqualified from submitting a proposal to enter into the design-  
43 build contract, and the design-builder shall not be permitted to  
44 delegate services under the design-build contract to the design  
45 professional that developed the evaluation factors.

46 b. The design professional that develops the evaluation factors  
47 shall be either an employee of the contracting unit or shall be

1 engaged in compliance with applicable New Jersey public  
2 procurement laws, and to the extent allowed by law may delegate  
3 the development of specific aspects of the design criteria to other  
4 consultants.

5 c. The contracting unit, in consultation with the design  
6 professional, shall determine the scope and level of detail required  
7 for the evaluation factors. The evaluation factors should be detailed  
8 enough to permit qualified persons to submit proposals in  
9 accordance with the solicitation, given the nature of the public  
10 project and the level of design to be provided in the proposal.

11

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

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

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

20 (3) The proposed terms and conditions for the design-build  
21 contract;

22 (4) A description of the drawings, specifications, or other  
23 submittals to be submitted with the proposal, with guidance as to  
24 the form and level of completeness of the drawings, specifications,  
25 or submittals that will be acceptable;

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

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

29 (7) Affirmative action, disadvantaged business or set-aside goals  
30 or requirements for the design-build contract, <sup>2</sup>as determined in  
31 accordance with the requirements of all rules, regulations,  
32 standards, or policies adopted<sup>2</sup> by the contracting unit;

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

34 (9) Requirements for contractors to have performance bonds,  
35 payment bonds, and insurance, and to meet all the qualifications of  
36 the Division of Property Management and Construction in the  
37 Department of the Treasury or the Department of Transportation  
38 where applicable; and

39 (10) A statement that <sup>1</sup>all employees have graduated from a  
40 registered apprenticeship program, which is registered with, and  
41 approved by, the United States Department of Labor, and which  
42 provides each trainee with combined classroom and on-the-job  
43 training under the direct and close supervision of a highly skilled  
44 worker in an occupation recognized as an apprenticeable trade, and  
45 meets the program performance standards of enrollment and  
46 graduation under 29 C.F.R. 29.6 (2011). Every contract subject to  
47 the provisions of this section shall provide that every worker

1 employed in the performance of that contract is an apprentice  
2 participating in a registered apprenticeship program or has  
3 completed a registered apprenticeship, unless the contractor or  
4 subcontractor certifies that every worker shall be paid not less than  
5 the journeyworker's rate established for the apprenticeable trade  
6 performed pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)**】** the  
7 prospective design-builder is in compliance with all applicable  
8 laws, including the "New Jersey Prevailing Wage Act," P.L.1963,  
9 c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor  
10 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the  
11 "Construction Industry Independent Contractor Act," P.L.2007,  
12 c.114 (C.34:20-1 et seq.).<sup>1</sup>

13 b. The solicitation may include any other information which  
14 the contracting unit in its discretion chooses to supply, including  
15 without limitation, surveys, soils reports, drawings or models of  
16 existing structures, environmental studies, photographs or  
17 references to public records.

18 c. Notice of solicitations shall be advertised in the same  
19 manner in which proposals generally are solicited for public  
20 projects.

21

22 7. a. Each design-build team shall include a licensed design  
23 professional independent from the contracting unit's licensed  
24 architect or engineer. The licensed design professional must be  
25 named in any proposal submitted to the contracting unit.

26 b. Proposals shall be sealed and shall not be opened until  
27 expiration of the time established for making proposals as set forth  
28 in the solicitation.

29 c. Proposals shall identify each person to whom the design-  
30 builder proposes to delegate obligations under the design-build  
31 contract. Persons so identified will not be replaced without the  
32 approval of the contracting unit.

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

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

40 f. Unless and until a proposal is accepted, the drawings,  
41 specifications and other information in the proposal shall remain the  
42 property of the person making the proposal. The contracting unit  
43 shall make reasonable efforts to maintain the secrecy and  
44 confidentiality of all proposals, and all information contained in the  
45 proposals, and shall not disclose the proposals or the information  
46 contained therein to the design-builders' competitors or the public.  
47 Once a proposal is accepted, the disclosure of the proposal and the

1 information in the proposal, and the ownership of the drawings,  
2 specifications, and information therein, shall be determined in  
3 accordance with existing law and the terms of the design-build  
4 contract.

5  
6 8. a. Once received, proposals shall be submitted to the design  
7 professional retained by the contracting unit. No proposal shall be  
8 considered until certification is issued by the design professional  
9 retained by the contracting unit that the proposal is consistent with  
10 the evaluation factors. No proposal for a design-build contract may  
11 be accepted unless the contracting unit determines that there was  
12 adequate competition for such contract.

13 b. <sup>2</sup>[A contracting unit must accept the proposal which it  
14 considers most advantageous to the contracting unit after a thorough  
15 review and scoring of both parts of a design-bid proposal] The  
16 technical review committee shall score the technical proposals  
17 using the criteria and methodology set forth in the request for  
18 proposals in accordance with paragraph (2) of subsection a. of  
19 section 6 of P.L. , c. (C. ) (pending before the legislature as  
20 this bill).<sup>2</sup>

21 c. <sup>2</sup>The contracting unit shall make public the sealed price bid  
22 for each proposal submitted to the contracting unit by a design-  
23 builder. The contracting unit shall evaluate the received technical  
24 proposals and price bid against the published factors and weighting  
25 to arrive at a composite score. The contracting unit shall make  
26 public the design-builder to be awarded the contract for the project.

27 d.<sup>2</sup> Acceptance of a proposal shall be made by written notice to  
28 the design-builder which submitted the accepted proposal. At the  
29 same time notice of acceptance is delivered, the contracting unit  
30 shall also inform, in writing, the other design-builders that their  
31 proposals were not accepted.

32 <sup>2</sup>[d.] e.<sup>2</sup> The contracting unit shall have the right to reject any  
33 and all proposals, except for the purpose of evading the provisions  
34 and policies of this chapter. The contracting unit shall solicit new  
35 proposals using the same evaluation factors, budget constraints, or  
36 qualifications.

37 <sup>2</sup>[e.] f.<sup>2</sup> Proposals may be withdrawn for any reason at any time  
38 prior to acceptance.

39 <sup>2</sup>[f.] g.<sup>2</sup> When a design-builder receives notification from a  
40 public body that the proposal, which it has submitted, has not been  
41 accepted, the design-builder may, within 30 days, request from the  
42 public body a written explanation of the selection process. The  
43 design-builder shall submit this request in writing.

44  
45 9. The State of New Jersey shall, on an annual basis, compile  
46 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).

3

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.