

[Third 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)

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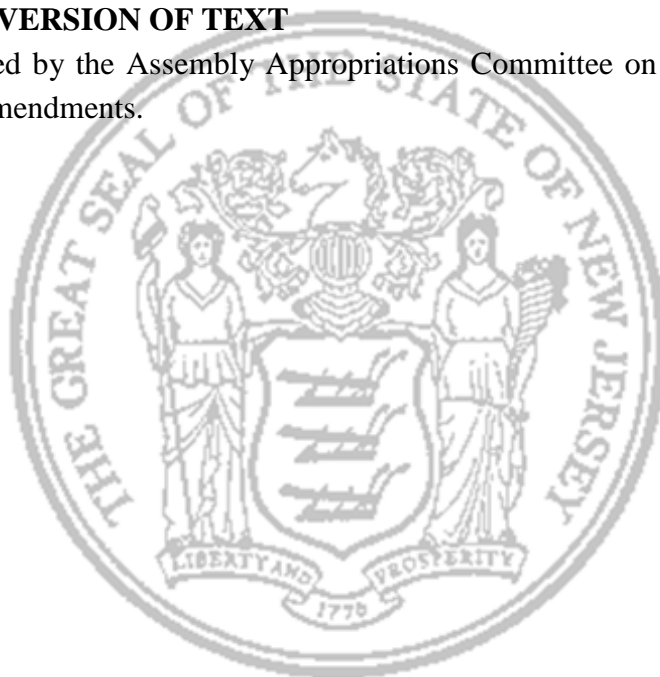
Assemblywoman Murphy

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

As reported by the Assembly Appropriations Committee on November 12, 2020, with amendments.



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

1 AN ACT establishing procedures for awarding design-build
2 contracts and supplementing ³[Title] ³ ¹[40A of the New
3 Jersey]¹ ³[52 of the Revised Statutes] various parts of the
4 statutory law³.

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

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

11
12 2. As used in ³[this act] sections 2 through 9 of P.L. _____,
13 c. (_____) (pending before the Legislature as this bill)³:

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

20 ¹“Contracting unit” means ³[a local contracting unit or a State
21 contracting unit] a government entity that enters into contracts
22 pursuant to P.L.2007, c.137 (C.52:18A-235 et seq.); or chapters 32,
23 33, or 34 of Title 52 of the Revised Statutes³ .¹

24 “Delivery system” means the procedure used to develop and
25 construct a project.

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

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

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

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.

²Assembly floor amendments adopted October 29, 2020.

³Assembly AAP committee amendments adopted November 12, 2020.

1 Department of Transportation, where applicable, to perform work
2 on a design-build project.

3 “Design professional” means the entity, whether natural person,
4 partnership, joint stock company, corporation, trust, professional
5 corporation, business association, or other legal business entity or
6 successor that provides ³**[registered]** licensed and prequalified³
7 architectural, engineering, or surveying services in accordance with
8 R.S.45:3-1 et seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that
9 shall be responsible for planning, designing and observing the
10 construction of the project or projects.

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

18 ³**[**“Local contracting unit” means a government entity that
19 enters into contracts pursuant to the “Public School Contracts Law,”
20 N.J.S.18A:18A-1 et seq.; the “County College Contracts Law,”
21 P.L.1982, c.189 (C.18A:64A-25.1 et seq.); or the “Local Public
22 Contracts Law,” P.L.1971, c.198 (C.40A:11-1 et seq.).¹³

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

24 ³**[**“State contracting unit” means a government entity that enters
25 into contracts pursuant to the “State College Contracts Law,”
26 P.L.1986, c.43 (C.18A:64-52 et seq.); P.L.2007, c.137 (C.52:18A-
27 235 et seq.); and chapters 32, 33, and 34 of Title 52 of the Revised
28 Statutes.¹³

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

31

32 3. a. If a contracting unit can demonstrate why the design-
33 build approach meets their needs better than the traditional design-
34 bid-build approach established under New Jersey public
35 procurement statutes for the project or projects under consideration,
36 it shall be the public policy of this State to permit that contracting
37 unit to enter into design-build contracts as defined in ³section 2 of³
38 P.L. , c. (C.) (pending before the Legislature as this bill),
39 provided the following conditions are met:

40 (1) The contracting unit shall, prior to issuing solicitations,
41 publish procedures consistent with regulations promulgated by the
42 Division of Property Management and Construction in the
43 Department of the Treasury or the Department of Transportation,
44 where applicable for the solicitation and award of design-build
45 contracts, and shall adhere to ³sections 2 through 9 of³ P.L. ,
46 c. (C.) (pending before the Legislature as this bill) and those
47 procedures; and

1 (2) The contracting unit shall, for each public project or projects
2 under ³[this act] sections 2 through 9 of P.L. , c. (C.)
3 (pending before the Legislature as this bill)³ , make a determination
4 based on the timeliness of the project or projects that it is in the best
5 interest of the public to enter into a design-build contract to
6 complete the public project or projects.

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

11 c. All design-build construction projects shall be encouraged
12 to adhere to the Leadership in Energy and Environmental Design
13 Green Building Rating System as adopted by the United States
14 Green Building Council, the Green Globes Program adopted by the
15 Green Building Initiative, or a comparable nationally recognized,
16 accepted, and appropriate sustainable development system.

17

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

20 (1) The contracting unit shall ³either³ appoint a registered
21 design professional ³, or designate an employee of the contracting
22 unit licensed to provide architectural, engineering, or surveying
23 services,³ to provide technical advice, construction review services,
24 and professional expertise on behalf of the contracting unit;

25 (2) The contracting unit shall develop, with the assistance of the
26 design professional ³or designated employee³, performance criteria
27 and a scope of work statement that defines the project and provides
28 prospective design-builders with sufficient information regarding
29 the contracting unit's requirements. The statement shall include:
30 evaluation factor criteria and preliminary design documents, general
31 budget parameters, and general schedule or delivery requirements to
32 enable the design-builders to submit proposals which meet the
33 contracting unit's needs. When the design-build selection procedure
34 is used and the contracting unit contracts for development of the
35 scope of work statement, the design-builder shall contract for
36 architectural or engineering services as defined by and in
37 accordance with R.S.45:3-1 et seq., P.L.1938, c.342 (C.45:8-27 et
38 seq.), and all other applicable licensing statutes;

39 (3) Once the contracting unit has developed a scope of work
40 statement which adequately defines the contracting unit's
41 requirements for the project or projects, the contracting unit shall
42 solicit proposals ³of qualification³ from design-builders. The
43 contracting unit shall solicit proposals ³of qualification³ in
44 accordance with the requirements of the applicable public
45 procurement laws of the State of New Jersey.

1 (4) The contracting unit shall establish a technical review
2 committee, which shall consist of a representative of the contracting
3 unit, the contracting unit's project manager, the contracting unit's
4 authorized design professional, and the contracting unit's attorney.
5 The technical review committee shall have the responsibility to
6 evaluate bids based on rating and scoring proposals, and shall
7 evaluate design-builders based on their qualifications.

8 b. The factors used to evaluate proposals ³of qualification³
9 shall be stated in the solicitation and shall include, but not be
10 limited to: specialized experience and technical competence,
11 training certification of professional and field workforce, principal
12 location of the company, capability to perform, safety modification
13 rating, past performance of the individual members of the design-
14 builder's team in their respective capacities, including the architect-
15 engineer and construction members of the team, and other
16 appropriate technical and qualification factors as determined by the
17 Division of Property Management and Construction in the
18 Department of the Treasury or the Department of Transportation,
19 where applicable ³[.] ³ Each solicitation for proposals ³[must] ³of
20 qualification shall³ establish the relative importance assigned to the
21 evaluation factors and sub-factors to be considered.

22 c. A solicitation for proposals ³of qualification³ shall state the
23 maximum number of design-builders that are to be selected to
24 submit ³second³ proposals. The maximum number specified in the
25 solicitation shall be at least two and shall not exceed five.

26 d. ²The contracting unit shall offer a stipend, based upon the
27 project size and type, which shall not exceed three percent of the
28 project's estimated cost, to any design-builder providing design,
29 construction information, or materials presented in response to a
30 request for second proposals. This stipend is intended to encourage
31 the submission of proposals and to increase competition.

32 e.² On the basis of the proposal ³of qualification³, the technical
33 review committee shall select the most highly qualified number of
34 design-builders specified in the solicitation and request the selected
35 design-builders to submit a second proposal and sealed bid. Each
36 solicitation for second proposals ³[must] ³shall³ establish the
37 relative importance assigned to the evaluation factors to be
38 considered.

39 ²[e.] f.² The technical review committee shall evaluate each
40 second proposal based on the technical submission for the proposal,
41 including design concepts or proposed solutions to requirements
42 addressed within the scope of work, and the evaluation factors,
43 including a minimum of 50 percent consideration based on the cost
44 of the bid.

45 ²[f.] g.² The contracting unit shall separately evaluate the
46 submissions described above, and award the contract in accordance

1 with section 8 of P.L. , c. (C.) (pending before the
2 Legislature as this bill).

3
4 5. a. Each request for proposals shall contain evaluation
5 factors prepared by a design professional ³or designated employee³
6 as defined in section 2 of P.L. , c. (C.) (pending before the
7 Legislature as this bill). The design professional ³or designated
8 employee³ that develops the evaluation factors shall be disqualified
9 from submitting a proposal to enter into the design-build contract,
10 and the design-builder shall not be permitted to delegate services
11 under the design-build contract to the design professional ³or
12 designated employee³ that developed the evaluation factors.

13 b. The design professional ³or designated employee³ that
14 develops the evaluation factors shall be either an employee of the
15 contracting unit or shall be engaged in compliance with applicable
16 New Jersey public procurement laws, and to the extent allowed by
17 law may delegate the development of specific aspects of the design
18 criteria to other consultants.

19 c. The contracting unit, in consultation with the design
20 professional ³or designated employee³, shall determine the scope
21 and level of detail required for the evaluation factors. The
22 evaluation factors should be detailed enough to permit qualified
23 persons to submit proposals in accordance with the solicitation,
24 given the nature of the public project and the level of design to be
25 provided in the proposal.

26
27 6. a. Solicitations for each design-build contract shall include,
28 but not be limited to, the following:

29 (1) The identity of the contracting unit which shall award the
30 design-build contract;

31 (2) The procedures to be followed for ³**admitting** ³submitting³
32 proposals, the criteria for evaluation of proposals and their relative
33 weight, and the procedures for making awards, including a
34 reference to the requirements of ³**this act** sections 2 through 9 of
35 P.L. , c. (C.) (pending before the Legislature as this bill)³
36 and the regulations of the contracting unit;

37 (3) The proposed terms and conditions for the design-build
38 contract;

39 (4) A description of the drawings, specifications, or other
40 submittals to be submitted with the proposal, with guidance as to
41 the form and level of completeness of the drawings, specifications,
42 or submittals that shall be acceptable;

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

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

1 (7) Affirmative action, disadvantaged business or set-aside
2 goals or requirements for the design-build contract,² [as
3 determined] in accordance with the requirements of all rules,
4 regulations, standards, or policies adopted² by the 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 ¹[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
14 which provides each trainee with combined classroom and on-the-
15 job training under the direct and close supervision of a highly
16 skilled worker in an occupation recognized as an apprenticeable
17 trade, and meets the program performance standards of enrollment
18 and graduation under 29 C.F.R. 29.6 (2011). Every contract subject
19 to 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.)] the
26 prospective design-builder is in compliance with all applicable
27 laws, including the "New Jersey Prevailing Wage Act," P.L.1963,
28 c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor
29 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the
30 "Construction Industry Independent Contractor Act," P.L.2007,
31 c.114 (C.34:20-1 et seq.).¹

32 b. The solicitation may include any other information which the
33 contracting unit in its discretion chooses to supply, including
34 without limitation, surveys, soils reports, drawings or models of
35 existing structures, environmental studies, photographs or
36 references to public records.

37 c. Notice of solicitations shall be advertised in the same manner
38 in which proposals generally are solicited for public projects.
39

40 7. a. Each design-build team shall include a licensed ³or
41 prequalified³ design professional independent from the contracting
42 unit's licensed architect or engineer. The licensed ³or prequalified³
43 design professional ³[must] shall³ be named in any proposal
44 submitted to the contracting unit.

1 b. Proposals shall be sealed and shall not be opened until
2 expiration of the time established for making proposals as set forth
3 in the solicitation.

4 c. Proposals shall identify each person to whom the design-
5 builder proposes to delegate obligations under the design-build
6 contract. Persons so identified ³~~will~~ shall³ not be replaced
7 without the approval of the contracting unit.

8 d. Proposals shall establish the cost of the design-build contract
9 which ³~~will~~ shall³ not be exceeded if the proposal is accepted
10 without change. Afterward, the maximum cost in the proposal may
11 be converted to fixed prices by negotiated agreement between the
12 contracting unit and the design-builder.

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

15 f. Unless and until a proposal is accepted, the drawings,
16 specifications and other information in the proposal shall remain the
17 property of the person making the proposal. The contracting unit
18 shall make reasonable efforts to maintain the secrecy and
19 confidentiality of all proposals, and all information contained in the
20 proposals, and shall not disclose the proposals or the information
21 contained therein to the design-builders' competitors or the public.
22 Once a proposal is accepted, the disclosure of the proposal and the
23 information in the proposal, and the ownership of the drawings,
24 specifications, and information therein, shall be determined in
25 accordance with existing law and the terms of the design-build
26 contract.

27
28 8. a. Once received, proposals shall be submitted to the design
29 professional ³or designated employee³ retained by the contracting
30 unit. No proposal shall be considered until certification is issued by
31 the design professional ³or designated employee³ retained by the
32 contracting unit that the proposal is consistent with the evaluation
33 factors. No proposal for a design-build contract may be accepted
34 unless the contracting unit determines that there was adequate
35 competition for such contract.

36 b. ²[A contracting unit must accept the proposal which it
37 considers most advantageous to the contracting unit after a thorough
38 review and scoring of both parts of a design-bid proposal] The
39 technical review committee shall score the technical proposals
40 using the criteria and methodology set forth in the request for
41 proposals in accordance with paragraph (2) of subsection a. of
42 section 6 of P.L. , c. (C.) (pending before the legislature as
43 this bill)² ³and make an award recommendation to the head of the
44 contracting unit. The head of the contracting unit shall make the
45 design-build contract award decision, consistent with the award
46 recommendation³.

1 c. ²The contracting unit shall make public the sealed price bid
2 for each proposal submitted to the contracting unit by a design-
3 builder. The contracting unit shall evaluate the received technical
4 proposals and price bid against the published factors and weighting
5 to arrive at a composite score. The contracting unit shall make
6 public the design-builder to be awarded the contract for the project.

7 d.² Acceptance of a proposal shall be made by written notice to
8 the design-builder which submitted the accepted proposal. At the
9 same time notice of acceptance is delivered, the contracting unit
10 shall also inform, in writing, the other design-builders that their
11 proposals were not accepted.

12 ²[d.] e.² The contracting unit shall have the right to reject any
13 and all proposals, except for the purpose of evading the provisions
14 and policies of ³[this chapter] sections 2 through 9 of P.L. _____,
15 c. () (pending before the Legislature as this bill)³. The
16 contracting unit shall solicit new proposals using the same
17 evaluation factors, budget constraints, or qualifications.

18 ²[e.] f.² Proposals may be withdrawn for any reason at any
19 time prior to acceptance.

20 ²[f.] g.² When a design-builder receives notification from a
21 public body that the proposal, which it has submitted, has not been
22 accepted, the design-builder may, within 30 days, request from the
23 public body a written explanation of the selection process. The
24 design-builder shall submit this request in writing.

25
26 ³[9. The State of New Jersey shall, on an annual basis, compile
27 and make public all proceedings, records, contracts and other public
28 records relating to procurement transactions authorized under
29 P.L. _____, c. (C. _____) (pending before the Legislature as this
30 bill).]³

31
32 ³9. Notwithstanding the provisions of the "Administrative
33 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
34 contrary, a contracting unit shall adopt, immediately upon filing
35 with the Office of Administrative Law, regulations that the
36 contracting unit deems necessary to implement the provisions of
37 sections 2 through 9 of P.L. _____, c. (C. _____) (pending before the
38 Legislature as this bill), which regulations shall be effective for a
39 period not to exceed 180 days from the date of the filing. The
40 contracting unit shall thereafter amend, adopt, or readopt the
41 regulations pursuant to the "Administrative Procedures Act,"
42 P.L.1968, c.410 (C.52:14B-1 et seq.).³

43
44 ³[10. The Division of Property Management and Construction
45 in the Department of the Treasury or the Department of
46 Transportation, where applicable, shall adopt regulations pursuant

1 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
2 1 et seq.), to effectuate the provisions of this act. **1**³

3

4 ³10. As used in sections 10 through 17 of P.L. , c. ()
5 (pending before the Legislature as this bill):

6 "Acceptance" means the adoption of a law, ordinance, or
7 resolution by the State of New Jersey, any of its political
8 subdivisions, any authority created by the Legislature of the State of
9 New Jersey and any instrumentality or agency of the State of New
10 Jersey or of any of its political subdivisions, authorizing the
11 execution of a design-build contract.

12 "Contracting unit" means a government entity that enters into
13 contracts pursuant to the "State College Contracts Law," P.L.1986,
14 c.43 (C.18A:64-52 et seq.).

15 "Delivery system" means the procedure used to develop and
16 construct a project.

17 "Design-bid-build" means the delivery system used in public
18 projects in which a registered design professional or designated
19 employee develops the project design in its entirety; the contracting
20 unit then solicits bids and awards the contract to the lowest
21 responsible bidder that demonstrates the ability to complete the
22 project specified in the design.

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

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

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

46 "Evaluation factors" means the requirements for the first phase
47 of the selection process, and shall include, but not be limited to:

1 specialized experience, training certification of professional and
2 field workforce, technical competence, capacity to perform, safety
3 modification rating, past performance and other appropriate factors.
4 Price shall only be considered in the second phase of the selection
5 process.

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

7 “Stipend” means the fee paid to a design-builder by the
8 contracting unit to encourage competition.³

9

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

26 (2) The contracting unit shall, for each public project or projects
27 under sections 10 through 17 of P.L. , c. (C.) (pending
28 before the Legislature as this bill), make a determination based on
29 the timeliness of the project or projects that it is in the best interest
30 of the public to enter into a design-build contract to complete the
31 public project or projects.

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

36 c. All design-build construction projects shall be encouraged to
37 adhere to the Leadership in Energy and Environmental Design
38 Green Building Rating System as adopted by the United States
39 Green Building Council, the Green Globes Program adopted by the
40 Green Building Initiative, or a comparable nationally recognized,
41 accepted, and appropriate sustainable development system.³

42

43 ³12. a. The contracting unit shall adopt the following procedures
44 for awarding design-build contracts:

45 (1) The contracting unit shall either appoint a registered design
46 professional, or designate an employee of the contracting unit
47 licensed to provide architectural, engineering, or surveying services,

1 to provide technical advice, construction review services, and
2 professional expertise on behalf of the contracting unit;

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

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

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

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

45 c. A solicitation for proposals of qualification shall state the
46 maximum number of design-builders that are to be selected to

1 submit second proposals. The maximum number specified in the
2 solicitation shall be at least two and shall not exceed five.

3 d. The contracting unit shall offer a stipend, based upon the
4 project size and type, which shall not exceed three percent of the
5 project's estimated cost, to any design-builder providing design,
6 construction information, or materials presented in response to a
7 request for second proposals. This stipend is intended to encourage
8 the submission of proposals and to increase competition.

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

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

21 g. The contracting unit shall separately evaluate the
22 submissions described above, and award the contract in accordance
23 with section 16 of P.L. , c. (C.) (pending before the
24 Legislature as this bill).³

25
26 ³13. a. Each request for proposals shall contain evaluation
27 factors prepared by a design professional or designated employee as
28 defined in section 10 of P.L. , c. (C.) (pending before the
29 Legislature as this bill). The design professional or designated
30 employee that develops the evaluation factors shall be disqualified
31 from submitting a proposal to enter into the design-build contract,
32 and the design-builder shall not be permitted to delegate services
33 under the design-build contract to the design professional or
34 designated employee that developed the evaluation factors.

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

41 c. The contracting unit, in consultation with the design
42 professional or designated employee, shall determine the scope and
43 level of detail required for the evaluation factors. The evaluation
44 factors should be detailed enough to permit qualified persons to
45 submit proposals in accordance with the solicitation, given the

1 nature of the public project and the level of design to be provided in
2 the proposal.³

3

4 ³14. a. Solicitations for each design-build contract shall include,
5 but not be limited to, the following:

6 (1) The identity of the contracting unit which shall award the
7 design-build contract;

8 (2) The procedures to be followed for submitting proposals, the
9 criteria for evaluation of proposals and their relative weight, and the
10 procedures for making awards, including a reference to the
11 requirements of sections 10 through 17 of P.L. , c. (C.)
12 (pending before the Legislature as this bill) and the regulations of
13 the contracting unit;

14 (3) The proposed terms and conditions for the design-build
15 contract;

16 (4) A description of the drawings, specifications, or other
17 submittals to be submitted with the proposal, with guidance as to
18 the form and level of completeness of the drawings, specifications,
19 or submittals that shall be acceptable;

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

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

23 (7) Affirmative action, disadvantaged business or set-aside goals
24 or requirements for the design-build contract, in accordance with
25 the requirements of all rules, regulations, standards, or policies
26 adopted by the contracting unit;

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

28 (9) Requirements for contractors to have performance bonds,
29 payment bonds, and insurance, and to meet all the qualifications of
30 the Division of Property Management and Construction in the
31 Department of the Treasury or the Department of Transportation
32 where applicable; and

33 (10) A statement that the prospective design-builder is in
34 compliance with all applicable laws, including the "New Jersey
35 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
36 "The Public Works Contractor Registration Act," P.L.1999, c.238
37 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
38 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).

39 b. The solicitation may include any other information which
40 the contracting unit in its discretion chooses to supply, including
41 without limitation, surveys, soils reports, drawings or models of
42 existing structures, environmental studies, photographs or
43 references to public records.

44 c. Notice of solicitations shall be advertised in the same
45 manner in which proposals generally are solicited for public
46 projects.³

1 ³15. a. Each design-build team shall include a licensed or
2 prequalified design professional independent from the contracting
3 unit's licensed architect or engineer. The licensed or prequalified
4 design professional shall be named in any proposal submitted to the
5 contracting unit.

6 b. Proposals shall be sealed and shall not be opened until
7 expiration of the time established for making proposals as set forth
8 in the solicitation.

9 c. Proposals shall identify each person to whom the design-
10 builder proposes to delegate obligations under the design-build
11 contract. Persons so identified shall not be replaced without the
12 approval of the contracting unit.

13 d. Proposals shall establish the cost of the design-build contract
14 which shall not be exceeded if the proposal is accepted without
15 change. Afterward, the maximum cost in the proposal may be
16 converted to fixed prices by negotiated agreement between the
17 contracting unit and the design-builder.

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

20 f. Unless and until a proposal is accepted, the drawings,
21 specifications and other information in the proposal shall remain the
22 property of the person making the proposal. The contracting unit
23 shall make reasonable efforts to maintain the secrecy and
24 confidentiality of all proposals, and all information contained in the
25 proposals, and shall not disclose the proposals or the information
26 contained therein to the design-builders' competitors or the public.
27 Once a proposal is accepted, the disclosure of the proposal and the
28 information in the proposal, and the ownership of the drawings,
29 specifications, and information therein, shall be determined in
30 accordance with existing law and the terms of the design-build
31 contract.³

32
33 ³16. a. Once received, proposals shall be submitted to the design
34 professional or designated employee retained by the contracting
35 unit. No proposal shall be considered until certification is issued by
36 the design professional or designated employee retained by the
37 contracting unit that the proposal is consistent with the evaluation
38 factors. No proposal for a design-build contract may be accepted
39 unless the contracting unit determines that there was adequate
40 competition for such contract.

41 b. The technical review committee shall score the technical
42 proposals using the criteria and methodology set forth in the request
43 for proposals in accordance with paragraph (2) of subsection a. of
44 section 14 of P.L. , c. (C.) (pending before the legislature
45 as this bill) and make an award recommendation to the head of the
46 contracting unit. The head of the contracting unit shall make the

1 design-build contract award decision, consistent with the award
2 recommendation.

3 c. The contracting unit shall make public the sealed price bid
4 for each proposal submitted to the contracting unit by a design-
5 builder. The contracting unit shall evaluate the received technical
6 proposals and price bid against the published factors and weighting
7 to arrive at a composite score. The contracting unit shall make
8 public the design-builder to be awarded the contract for the project.

9 d. Acceptance of a proposal shall be made by written notice to
10 the design-builder which submitted the accepted proposal. At the
11 same time notice of acceptance is delivered, the contracting unit
12 shall also inform, in writing, the other design-builders that their
13 proposals were not accepted.

14 e. The contracting unit shall have the right to reject any and all
15 proposals, except for the purpose of evading the provisions and
16 policies of sections 10 through 17 of P.L. , c. () (pending
17 before the Legislature as this bill). The contracting unit shall solicit
18 new proposals using the same evaluation factors, budget
19 constraints, or qualifications.

20 f. Proposals may be withdrawn for any reason at any time prior
21 to acceptance.

22 g. When a design-builder receives notification from a public
23 body that the proposal, which it has submitted, has not been
24 accepted, the design-builder may, within 30 days, request from the
25 public body a written explanation of the selection process. The
26 design-builder shall submit this request in writing.³

27
28 ³17. Notwithstanding the provisions of the "Administrative
29 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
30 contrary, the Secretary of Higher Education shall adopt,
31 immediately upon filing with the Office of Administrative Law,
32 regulations that the Secretary of Higher Education deems necessary
33 to implement the provisions of sections 10 through 17 of P.L. ,
34 c. (C.) (pending before the Legislature as this bill), which
35 regulations shall be effective for a period not to exceed 180 days
36 from the date of the filing. The Secretary of Higher Education shall
37 thereafter amend, adopt, or readopt the regulations pursuant to the
38 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et
39 seq.).³

40
41 ³18. As used in sections 18 through 25 of P.L. , c. ()
42 (pending before the Legislature as this bill):

43 "Acceptance" means the adoption of a law, ordinance, or
44 resolution by the State of New Jersey, any of its political
45 subdivisions, any authority created by the Legislature of the State of
46 New Jersey and any instrumentality or agency of the State of New

1 Jersey or of any of its political subdivisions, authorizing the
2 execution of a design-build contract.

3 “Contracting unit” means a government entity that enters into
4 contracts pursuant to the “County College Contracts Law,”
5 P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

6 “Delivery system” means the procedure used to develop and
7 construct a project.

8 “Design-bid-build” means the delivery system used in public
9 projects in which a registered design professional or designated
10 employee develops the project design in its entirety; the contracting
11 unit then solicits bids and awards the contract to the lowest
12 responsible bidder that demonstrates the ability to complete the
13 project specified in the design.

14 “Design-build contract” means a contract between a contracting
15 unit and a design-builder to provide labor, materials, and other
16 construction services for a public project. A design-build contract
17 may be conditional upon subsequent refinements in scope and price,
18 and may permit the contracting unit to make changes in the scope of
19 the project without invalidating the design-build contract.

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

29 “Design professional” means the entity, whether natural person,
30 partnership, joint stock company, corporation, trust, professional
31 corporation, business association, or other legal business entity or
32 successor that provides licensed and prequalified architectural,
33 engineering, or surveying services in accordance with R.S.45:3-1 et
34 seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be
35 responsible for planning, designing and observing the construction
36 of the project or projects.

37 “Evaluation factors” means the requirements for the first phase
38 of the selection process, and shall include, but not be limited to:
39 specialized experience, training certification of professional and
40 field workforce, technical competence, capacity to perform, safety
41 modification rating, past performance and other appropriate factors.
42 Price shall only be considered in the second phase of the selection
43 process.

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

45 “Stipend” means the fee paid to a design-builder by the
46 contracting unit to encourage competition.³

1 ³19. a. If a contracting unit can demonstrate why the design-
2 build approach meets their needs better than the traditional design-
3 bid-build approach established under New Jersey public
4 procurement statutes for the project or projects under consideration,
5 it shall be the public policy of this State to permit that contracting
6 unit to enter into design-build contracts as defined in section 18 of
7 P.L. , c. (C.) (pending before the Legislature as this bill),
8 provided the following conditions are met:

9 (1) The contracting unit shall, prior to issuing solicitations,
10 publish procedures consistent with regulations promulgated by the
11 Division of Property Management and Construction in the
12 Department of the Treasury or the Department of Transportation,
13 where applicable for the solicitation and award of design-build
14 contracts, and shall adhere to sections 18 through 25 of P.L. ,
15 c. (C.) (pending before the Legislature as this bill) and those
16 procedures; and

17 (2) The contracting unit shall, for each public project or projects
18 under sections 18 through 25 of P.L. , c. (C.) (pending
19 before the Legislature as this bill), make a determination based on
20 the timeliness of the project or projects that it is in the best interest
21 of the public to enter into a design-build contract to complete the
22 public project or projects.

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

27 c. All design-build construction projects shall be encouraged to
28 adhere to the Leadership in Energy and Environmental Design
29 Green Building Rating System as adopted by the United States
30 Green Building Council, the Green Globes Program adopted by the
31 Green Building Initiative, or a comparable nationally recognized,
32 accepted, and appropriate sustainable development system.³

33
34 ³20. a. The contracting unit shall adopt the following procedures
35 for awarding design-build contracts:

36 (1) The contracting unit shall either appoint a registered design
37 professional, or designate an employee of the contracting unit
38 licensed to provide architectural, engineering, or surveying services,
39 to provide technical advice, construction review services, and
40 professional expertise on behalf of the contracting unit;

41 (2) The contracting unit shall develop, with the assistance of the
42 design professional or designated employee, performance criteria
43 and a scope of work statement that defines the project and provides
44 prospective design-builders with sufficient information regarding
45 the contracting unit's requirements. The statement shall include:
46 evaluation factor criteria and preliminary design documents, general
47 budget parameters, and general schedule or delivery requirements to

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

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

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

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

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

40 d. The contracting unit shall offer a stipend, based upon the
41 project size and type, which shall not exceed three percent of the
42 project's estimated cost, to any design-builder providing design,
43 construction information, or materials presented in response to a
44 request for second proposals. This stipend is intended to encourage
45 the submission of proposals and to increase competition.

46 e. On the basis of the proposal of qualification, the technical
47 review committee shall select the most highly qualified number of

1 design-builders specified in the solicitation and request the selected
2 design-builders to submit a second proposal and sealed bid. Each
3 solicitation for second proposals shall establish the relative
4 importance assigned to the evaluation factors to be considered.

5 f. The technical review committee shall evaluate each second
6 proposal based on the technical submission for the proposal,
7 including design concepts or proposed solutions to requirements
8 addressed within the scope of work, and the evaluation factors,
9 including a minimum of 50 percent consideration based on the cost
10 of the bid.

11 g. The contracting unit shall separately evaluate the
12 submissions described above, and award the contract in accordance
13 with section 24 of P.L. , c. (C.) (pending before the
14 Legislature as this bill).³

15

16 ³21. a. Each request for proposals shall contain evaluation
17 factors prepared by a design professional or designated employee as
18 defined in section 18 of P.L. , c. (C.) (pending before the
19 Legislature as this bill). The design professional or designated
20 employee that develops the evaluation factors shall be disqualified
21 from submitting a proposal to enter into the design-build contract,
22 and the design-builder shall not be permitted to delegate services
23 under the design-build contract to the design professional or
24 designated employee that developed the evaluation factors.

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

31 c. The contracting unit, in consultation with the design
32 professional or designated employee, shall determine the scope and
33 level of detail required for the evaluation factors. The evaluation
34 factors should be detailed enough to permit qualified persons to
35 submit proposals in accordance with the solicitation, given the
36 nature of the public project and the level of design to be provided in
37 the proposal.³

38

39 ³22. a. Solicitations for each design-build contract shall include,
40 but not be limited to, the following:

41 (1) The identity of the contracting unit which shall award the
42 design-build contract;

43 (2) The procedures to be followed for submitting proposals, the
44 criteria for evaluation of proposals and their relative weight, and the
45 procedures for making awards, including a reference to the
46 requirements of sections 18 through 25 of P.L. , c. (C.)

- 1 (pending before the Legislature as this bill)and the regulations of
2 the contracting unit;
- 3 (3) The proposed terms and conditions for the design-build
4 contract;
- 5 (4) A description of the drawings, specifications, or other
6 submittals to be submitted with the proposal, with guidance as to
7 the form and level of completeness of the drawings, specifications,
8 or submittals that shall be acceptable;
- 9 (5) A schedule for planned commencement and completion of
10 the design-build contract;
- 11 (6) Budget limits for the design-build contract, if any;
- 12 (7) Affirmative action, disadvantaged business or set-aside goals
13 or requirements for the design-build contract, in accordance with
14 the requirements of all rules, regulations, standards, or policies
15 adopted by the contracting unit;
- 16 (8) The required qualifications of the design-builder;
- 17 (9) Requirements for contractors to have performance bonds,
18 payment bonds, and insurance, and to meet all the qualifications of
19 the Division of Property Management and Construction in the
20 Department of the Treasury or the Department of Transportation
21 where applicable; and
- 22 (10)A statement that the prospective design-builder is in
23 compliance with all applicable laws, including the "New Jersey
24 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
25 "The Public Works Contractor Registration Act," P.L.1999, c.238
26 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
27 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).
- 28 b. The solicitation may include any other information which
29 the contracting unit in its discretion chooses to supply, including
30 without limitation, surveys, soils reports, drawings or models of
31 existing structures, environmental studies, photographs or
32 references to public records.
- 33 c. Notice of solicitations shall be advertised in the same
34 manner in which proposals generally are solicited for public
35 projects.³
- 36
- 37 ³23. a. Each design-build team shall include a licensed or
38 prequalified design professional independent from the contracting
39 unit's licensed architect or engineer. The licensed or prequalified
40 design professional shall be named in any proposal submitted to the
41 contracting unit.
- 42 b. Proposals shall be sealed and shall not be opened until
43 expiration of the time established for making proposals as set forth
44 in the solicitation.
- 45 c. Proposals shall identify each person to whom the design-
46 builder proposes to delegate obligations under the design-build

1 contract. Persons so identified shall not be replaced without the
2 approval of the contracting unit.

3 d. Proposals shall establish the cost of the design-build contract
4 which shall not be exceeded if the proposal is accepted without
5 change. Afterward, the maximum cost in the proposal may be
6 converted to fixed prices by negotiated agreement between the
7 contracting unit and the design-builder.

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

10 f. Unless and until a proposal is accepted, the drawings,
11 specifications and other information in the proposal shall remain the
12 property of the person making the proposal. The contracting unit
13 shall make reasonable efforts to maintain the secrecy and
14 confidentiality of all proposals, and all information contained in the
15 proposals, and shall not disclose the proposals or the information
16 contained therein to the design-builders' competitors or the public.
17 Once a proposal is accepted, the disclosure of the proposal and the
18 information in the proposal, and the ownership of the drawings,
19 specifications, and information therein, shall be determined in
20 accordance with existing law and the terms of the design-build
21 contract.³

22

23 ³24. a. Once received, proposals shall be submitted to the design
24 professional or designated employee retained by the contracting
25 unit. No proposal shall be considered until certification is issued by
26 the design professional or designated employee retained by the
27 contracting unit that the proposal is consistent with the evaluation
28 factors. No proposal for a design-build contract may be accepted
29 unless the contracting unit determines that there was adequate
30 competition for such contract.

31 b. The technical review committee shall score the technical
32 proposals using the criteria and methodology set forth in the request
33 for proposals in accordance with paragraph (2) of subsection a. of
34 section 22 of P.L. , c. (C.) (pending before the legislature
35 as this bill) and make an award recommendation to the head of the
36 contracting unit. The head of the contracting unit shall make the
37 design-build contract award decision, consistent with the award
38 recommendation.

39 c. The contracting unit shall make public the sealed price bid
40 for each proposal submitted to the contracting unit by a design-
41 builder. The contracting unit shall evaluate the received technical
42 proposals and price bid against the published factors and weighting
43 to arrive at a composite score. The contracting unit shall make
44 public the design-builder to be awarded the contract for the project.

45 d. 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 e. 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 sections 18 through 25 of P.L. , c. () (pending
6 before the Legislature as this bill). The contracting unit shall solicit
7 new proposals using the same evaluation factors, budget
8 constraints, or qualifications.

9 f. Proposals may be withdrawn for any reason at any time prior
10 to acceptance.

11 g. When a design-builder receives notification from a public
12 body that the proposal, which it has submitted, has not been
13 accepted, the design-builder may, within 30 days, request from the
14 public body a written explanation of the selection process. The
15 design-builder shall submit this request in writing.³

16
17 ³25. Notwithstanding the provisions of the "Administrative
18 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
19 contrary, the Secretary of Higher Education shall adopt,
20 immediately upon filing with the Office of Administrative Law,
21 regulations that the Secretary of Higher Education deems necessary
22 to implement the provisions of sections 18 through 25 of P.L. ,
23 c. (C.) (pending before the Legislature as this bill), which
24 regulations shall be effective for a period not to exceed 180 days
25 from the date of the filing. The Secretary of Higher Education shall
26 thereafter amend, adopt, or readopt the regulations pursuant to the
27 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et
28 seq.).³

29
30 ³26. As used in sections 26 through 33 of P.L. , c. ()
31 (pending before the Legislature as this bill):

32 "Acceptance" means the adoption of a law, ordinance, or
33 resolution by the State of New Jersey, any of its political
34 subdivisions, any authority created by the Legislature of the State of
35 New Jersey and any instrumentality or agency of the State of New
36 Jersey or of any of its political subdivisions, authorizing the
37 execution of a design-build contract.

38 "Contracting unit" means a government entity that enters into
39 contracts pursuant to the "Local Public Contracts Law," P.L.1971,
40 c.198 (C.40A:11-1 et seq.).

41 "Delivery system" means the procedure used to develop and
42 construct a project.

43 "Design-bid-build" means the delivery system used in public
44 projects in which a registered design professional or designated
45 employee develops the project design in its entirety; the contracting
46 unit then solicits bids and awards the contract to the lowest

1 responsible bidder that demonstrates the ability to complete the
2 project specified in the design.

3 “Design-build contract” means a contract between a contracting
4 unit and a design-builder to provide labor, materials, and other
5 construction services for a public project. A design-build contract
6 may be conditional upon subsequent refinements in scope and price,
7 and may permit the contracting unit to make changes in the scope of
8 the project without invalidating the design-build contract.

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

18 “Design professional” means the entity, whether natural person,
19 partnership, joint stock company, corporation, trust, professional
20 corporation, business association, or other legal business entity or
21 successor that provides licensed and prequalified architectural,
22 engineering, or surveying services in accordance with R.S.45:3-1 et
23 seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be
24 responsible for planning, designing and observing the construction
25 of the project or projects.

26 “Evaluation factors” means the requirements for the first phase
27 of the selection process, and shall include, but not be limited to:
28 specialized experience, training certification of professional and
29 field workforce, technical competence, capacity to perform, safety
30 modification rating, past performance and other appropriate factors.
31 Price shall only be considered in the second phase of the selection
32 process.

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

34 “Stipend” means the fee paid to a design-builder by the
35 contracting unit to encourage competition.³

36
37 ³27. a. If a contracting unit can demonstrate why the design-
38 build approach meets their needs better than the traditional design-
39 bid-build approach established under New Jersey public
40 procurement statutes for the project or projects under consideration,
41 it shall be the public policy of this State to permit that contracting
42 unit to enter into design-build contracts as defined in section 26 of
43 P.L. , c. (C.) (pending before the Legislature as this bill),
44 provided the following conditions are met:

45 (1) The contracting unit shall, prior to issuing solicitations,
46 publish procedures consistent with regulations promulgated by the
47 Division of Property Management and Construction in the

1 Department of the Treasury or the Department of Transportation,
2 where applicable for the solicitation and award of design-build
3 contracts, and shall adhere to sections 26 through 33 of P.L. ,
4 c. (C.) (pending before the Legislature as this bill) and those
5 procedures; and

6 (2) The contracting unit shall, for each public project or projects
7 under sections 26 through 33 of P.L. , c. (C.) (pending
8 before the Legislature as this bill), make a determination based on
9 the timeliness of the project or projects that it is in the best interest
10 of the public to enter into a design-build contract to complete the
11 public project or projects.

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

16 c. All design-build construction projects shall be encouraged to
17 adhere to the Leadership in Energy and Environmental Design
18 Green Building Rating System as adopted by the United States
19 Green Building Council, the Green Globes Program adopted by the
20 Green Building Initiative, or a comparable nationally recognized,
21 accepted, and appropriate sustainable development system.³

22

23 ³28. a. The contracting unit shall adopt the following procedures
24 for awarding design-build contracts:

25 (1) The contracting unit shall either appoint a registered design
26 professional, or designate an employee of the contracting unit
27 licensed to provide architectural, engineering, or surveying services,
28 to provide technical advice, construction review services, and
29 professional expertise on behalf of the contracting unit;

30 (2) The contracting unit shall develop, with the assistance of the
31 design professional or designated employee, performance criteria
32 and a scope of work statement that defines the project and provides
33 prospective design-builders with sufficient information regarding
34 the contracting unit's requirements. The statement shall include:
35 evaluation factor criteria and preliminary design documents, general
36 budget parameters, and general schedule or delivery requirements to
37 enable the design-builders to submit proposals which meet the
38 contracting unit's needs. When the design-build selection procedure
39 is used and the contracting unit contracts for development of the
40 scope of work statement, the design-builder shall contract for
41 architectural or engineering services as defined by and in
42 accordance with R.S.45:3-1 et seq., P.L.1938, c.342 (C.45:8-27 et
43 seq.), and all other applicable licensing statutes;

44 (3) Once the contracting unit has developed a scope of work
45 statement which adequately defines the contracting unit's
46 requirements for the project or projects, the contracting unit shall
47 solicit proposals of qualification from design-builders. The

1 contracting unit shall solicit proposals of qualification in
2 accordance with the requirements of the applicable public
3 procurement laws of the State of New Jersey.

4 (4) The contracting unit shall establish a technical review
5 committee, which shall consist of a representative of the contracting
6 unit, the contracting unit's project manager, the contracting unit's
7 authorized design professional, and the contracting unit's attorney.
8 The technical review committee shall have the responsibility to
9 evaluate bids based on rating and scoring proposals, and shall
10 evaluate design-builders based on their qualifications.

11 b. The factors used to evaluate proposals of qualification shall
12 be stated in the solicitation and shall include, but not be limited to:
13 specialized experience and technical competence, training
14 certification of professional and field workforce, principal location
15 of the company, capability to perform, safety modification rating,
16 past performance of the individual members of the design-builder's
17 team in their respective capacities, including the architect-engineer
18 and construction members of the team, and other appropriate
19 technical and qualification factors as determined by the Division of
20 Property Management and Construction in the Department of the
21 Treasury or the Department of Transportation, where applicable,
22 Each solicitation for proposals of qualification shall establish the
23 relative importance assigned to the evaluation factors and sub-
24 factors to be considered.

25 c. A solicitation for proposals of qualification shall state the
26 maximum number of design-builders that are to be selected to
27 submit second proposals. The maximum number specified in the
28 solicitation shall be at least two and shall not exceed five.

29 d. The contracting unit shall offer a stipend, based upon the
30 project size and type, which shall not exceed three percent of the
31 project's estimated cost, to any design-builder providing design,
32 construction information, or materials presented in response to a
33 request for second proposals. This stipend is intended to encourage
34 the submission of proposals and to increase competition.

35 e. On the basis of the proposal of qualification, the technical
36 review committee shall select the most highly qualified number of
37 design-builders specified in the solicitation and request the selected
38 design-builders to submit a second proposal and sealed bid. Each
39 solicitation for second proposals shall establish the relative
40 importance assigned to the evaluation factors to be considered.

41 f. The technical review committee shall evaluate each second
42 proposal based on the technical submission for the proposal,
43 including design concepts or proposed solutions to requirements
44 addressed within the scope of work, and the evaluation factors,
45 including a minimum of 50 percent consideration based on the cost
46 of the bid.

1 g. The contracting unit shall separately evaluate the
2 submissions described above, and award the contract in accordance
3 with section 32 of P.L. , c. (C.) (pending before the
4 Legislature as this bill).³

5
6 ³29. a. Each request for proposals shall contain evaluation
7 factors prepared by a design professional or designated employee as
8 defined in section 26 of P.L. , c. (C.) (pending before the
9 Legislature as this bill). The design professional or designated
10 employee that develops the evaluation factors shall be disqualified
11 from submitting a proposal to enter into the design-build contract,
12 and the design-builder shall not be permitted to delegate services
13 under the design-build contract to the design professional or
14 designated employee that developed the evaluation factors.

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

21 c. The contracting unit, in consultation with the design
22 professional or designated employee, shall determine the scope and
23 level of detail required for the evaluation factors. The evaluation
24 factors should be detailed enough to permit qualified persons to
25 submit proposals in accordance with the solicitation, given the
26 nature of the public project and the level of design to be provided in
27 the proposal.³

28
29 ³30. a. Solicitations for each design-build contract shall include,
30 but not be limited to, the following:

31 (1) The identity of the contracting unit which shall award the
32 design-build contract;

33 (2) The procedures to be followed for submitting proposals, the
34 criteria for evaluation of proposals and their relative weight, and the
35 procedures for making awards, including a reference to the
36 requirements of sections 26 through 33 of P.L. , c. (C.)
37 (pending before the Legislature as this bill) and the regulations of
38 the contracting unit;

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

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

45 (5) A schedule for planned commencement and completion of
46 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, in accordance with
4 the requirements of all rules, regulations, standards, or policies
5 adopted by the contracting unit;
6 (8) The required qualifications of the design-builder;
7 (9) Requirements for contractors to have performance bonds,
8 payment bonds, and insurance, and to meet all the qualifications of
9 the Division of Property Management and Construction in the
10 Department of the Treasury or the Department of Transportation
11 where applicable; and
12 (10) A statement that the prospective design-builder is in
13 compliance with all applicable laws, including the "New Jersey
14 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
15 "The Public Works Contractor Registration Act," P.L.1999, c.238
16 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
17 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).
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.³
26
27 ³31. a. Each design-build team shall include a licensed or
28 prequalified design professional independent from the contracting
29 unit's licensed architect or engineer. The licensed or prequalified
30 design professional shall be named in any proposal submitted to the
31 contracting unit.
32 b. Proposals shall be sealed and shall not be opened until
33 expiration of the time established for making proposals as set forth
34 in the solicitation.
35 c. Proposals shall identify each person to whom the design-
36 builder proposes to delegate obligations under the design-build
37 contract. Persons so identified shall not be replaced without the
38 approval of the contracting unit.
39 d. Proposals shall establish the cost of the design-build contract
40 which shall not be exceeded if the proposal is accepted without
41 change. Afterward, the maximum cost in the proposal may be
42 converted to fixed prices by negotiated agreement between the
43 contracting unit and the design-builder.
44 e. All proposals shall be received and opened at a previously
45 announced time, where they shall be publicly read and recorded.
46 f. Unless and until a proposal is accepted, the drawings,
47 specifications and other information in the proposal shall remain the

1 property of the person making the proposal. The contracting unit
2 shall make reasonable efforts to maintain the secrecy and
3 confidentiality of all proposals, and all information contained in the
4 proposals, and shall not disclose the proposals or the information
5 contained therein to the design-builders' competitors or the public.
6 Once a proposal is accepted, the disclosure of the proposal and the
7 information in the proposal, and the ownership of the drawings,
8 specifications, and information therein, shall be determined in
9 accordance with existing law and the terms of the design-build
10 contract.³
11

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

20 b. The technical review committee shall score the technical
21 proposals using the criteria and methodology set forth in the request
22 for proposals in accordance with paragraph (2) of subsection a. of
23 section 30 of P.L. , c. (C.) (pending before the legislature
24 as this bill) and make an award recommendation to the head of the
25 contracting unit. The head of the contracting unit shall make the
26 design-build contract award decision, consistent with the award
27 recommendation.

28 c. The contracting unit shall make public the sealed price bid
29 for each proposal submitted to the contracting unit by a design-
30 builder. The contracting unit shall evaluate the received technical
31 proposals and price bid against the published factors and weighting
32 to arrive at a composite score. The contracting unit shall make
33 public the design-builder to be awarded the contract for the project.

34 d. Acceptance of a proposal shall be made by written notice to
35 the design-builder which submitted the accepted proposal. At the
36 same time notice of acceptance is delivered, the contracting unit
37 shall also inform, in writing, the other design-builders that their
38 proposals were not accepted.

39 e. The contracting unit shall have the right to reject any and all
40 proposals, except for the purpose of evading the provisions and
41 policies of sections 26 through 33 of P.L. , c. () (pending
42 before the Legislature as this bill). The contracting unit shall solicit
43 new proposals using the same evaluation factors, budget
44 constraints, or qualifications.

45 f. Proposals may be withdrawn for any reason at any time prior
46 to acceptance.

1 g. When a design-builder receives notification from a public
2 body that the proposal, which it has submitted, has not been
3 accepted, the design-builder may, within 30 days, request from the
4 public body a written explanation of the selection process. The
5 design-builder shall submit this request in writing.³

6
7 ³33. Notwithstanding the provisions of the "Administrative
8 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
9 contrary, the Department of Community Affairs shall adopt,
10 immediately upon filing with the Office of Administrative Law,
11 regulations that the Department of Community Affairs deems
12 necessary to implement the provisions of sections 26 through 30 of
13 P.L. , c. (C.) (pending before the Legislature as this bill),
14 which regulations shall be effective for a period not to exceed 180
15 days from the date of the filing. The Department of Community
16 Affairs shall thereafter amend, adopt, or readopt the regulations
17 pursuant to the "Administrative Procedures Act," P.L.1968, c.410
18 (C.52:14B-1 et seq.).³

19
20 ³34. As used in sections 34 through 41 of P.L. , c. ()
21 (pending before the Legislature as this bill):

22 "Acceptance" means the adoption of a law, ordinance, or
23 resolution by the State of New Jersey, any of its political
24 subdivisions, any authority created by the Legislature of the State of
25 New Jersey and any instrumentality or agency of the State of New
26 Jersey or of any of its political subdivisions, authorizing the
27 execution of a design-build contract.

28 "Contracting unit" means a government entity that enters into
29 contracts pursuant to the "Public School Contracts Law,"
30 N.J.S.18A:18A-1 et seq.

31 "Delivery system" means the procedure used to develop and
32 construct a project.

33 "Design-bid-build" means the delivery system used in public
34 projects in which a registered design professional or designated
35 employee develops the project design in its entirety; the contracting
36 unit then solicits bids and awards the contract to the lowest
37 responsible bidder that demonstrates the ability to complete the
38 project specified in the design.

39 "Design-build contract" means a contract between a contracting
40 unit and a design-builder to provide labor, materials, and other
41 construction services for a public project. A design-build contract
42 may be conditional upon subsequent refinements in scope and price,
43 and may permit the contracting unit to make changes in the scope of
44 the project without invalidating the design-build contract.

45 "Design-builder" means the entity, whether natural person,
46 partnership, joint stock company, corporation, trust, professional
47 corporation, business association, or other legal business entity or

1 successor, that proposes to design and construct any public project,
2 who is registered pursuant to the provisions of P.L.1999, c.238
3 (C.34:11-56.48 et seq.), and classified by the New Jersey Division
4 of Property Management and Construction or the New Jersey
5 Department of Transportation, where applicable, to perform work
6 on a design-build project.

7 “Design professional” means the entity, whether natural person,
8 partnership, joint stock company, corporation, trust, professional
9 corporation, business association, or other legal business entity or
10 successor that provides licensed and prequalified architectural,
11 engineering, or surveying services in accordance with R.S.45:3-1 et
12 seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be
13 responsible for planning, designing and observing the construction
14 of the project or projects.

15 “Evaluation factors” means the requirements for the first phase
16 of the selection process, and shall include, but not be limited to:
17 specialized experience, training certification of professional and
18 field workforce, technical competence, capacity to perform, safety
19 modification rating, past performance and other appropriate factors.
20 Price shall only be considered in the second phase of the selection
21 process.

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

23 “Stipend” means the fee paid to a design-builder by the
24 contracting unit to encourage competition.³

25
26 ³35. a. If a contracting unit can demonstrate why the design-
27 build approach meets their needs better than the traditional design-
28 bid-build approach established under New Jersey public
29 procurement statutes for the project or projects under consideration,
30 it shall be the public policy of this State to permit that contracting
31 unit to enter into design-build contracts as defined in section 34 of
32 P.L. , c. (C.) (pending before the Legislature as this bill),
33 provided the following conditions are met:

34 (1) The contracting unit shall, prior to issuing solicitations,
35 publish procedures consistent with regulations promulgated by the
36 Division of Property Management and Construction in the
37 Department of the Treasury or the Department of Transportation,
38 where applicable for the solicitation and award of design-build
39 contracts, and shall adhere to sections 34 through 41 of P.L. ,
40 c. (C.) (pending before the Legislature as this bill) and those
41 procedures; and

42 (2) The contracting unit shall, for each public project or projects
43 under sections 34 through 41 of P.L. , c. (C.) (pending
44 before the Legislature as this bill), make a determination based on
45 the timeliness of the project or projects that it is in the best interest
46 of the public to enter into a design-build contract to complete the
47 public project or 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.³

11
12 ³36. a. The contracting unit shall adopt the following procedures
13 for awarding design-build contracts:

14 (1) The contracting unit shall either appoint a registered design
15 professional, or designate an employee of the contracting unit
16 licensed to provide architectural, engineering, or surveying services,
17 to provide technical advice, construction review services, and
18 professional expertise on behalf of the contracting unit;

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

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

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

1 b. The factors used to evaluate proposals of qualification shall
2 be stated in the solicitation and shall include, but not be limited to:
3 specialized experience and technical competence, training
4 certification of professional and field workforce, principal location
5 of the company, capability to perform, safety modification rating,
6 past performance of the individual members of the design-builder's
7 team in their respective capacities, including the architect-engineer
8 and construction members of the team, and other appropriate
9 technical and qualification factors as determined by the Division of
10 Property Management and Construction in the Department of the
11 Treasury or the Department of Transportation, where applicable,
12 Each solicitation for proposals of qualification shall establish the
13 relative importance assigned to the evaluation factors and sub-
14 factors to be considered.

15 c. A solicitation for proposals of qualification shall state the
16 maximum number of design-builders that are to be selected to
17 submit second proposals. The maximum number specified in the
18 solicitation shall be at least two and shall not exceed five.

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

25 e. On the basis of the proposal of qualification, the technical
26 review committee shall select the most highly qualified number of
27 design-builders specified in the solicitation and request the selected
28 design-builders to submit a second proposal and sealed bid. Each
29 solicitation for second proposals shall establish the relative
30 importance assigned to the evaluation factors to be considered.

31 f. The technical review committee shall evaluate each second
32 proposal based on the technical submission for the proposal,
33 including design concepts or proposed solutions to requirements
34 addressed within the scope of work, and the evaluation factors,
35 including a minimum of 50 percent consideration based on the cost
36 of the bid.

37 g. The contracting unit shall separately evaluate the
38 submissions described above, and award the contract in accordance
39 with section 40 of P.L. , c. (C.) (pending before the
40 Legislature as this bill).³

41
42 ³37. a. Each request for proposals shall contain evaluation
43 factors prepared by a design professional or designated employee as
44 defined in section 34 of P.L. , c. (C.) (pending before the
45 Legislature as this bill). The design professional or designated
46 employee that develops the evaluation factors shall be disqualified
47 from submitting a proposal to enter into the design-build contract,

1 and the design-builder shall not be permitted to delegate services
2 under the design-build contract to the design professional or
3 designated employee that developed the evaluation factors.

4 b. The design professional or designated employee that
5 develops the evaluation factors shall be either an employee of the
6 contracting unit or shall be engaged in compliance with applicable
7 New Jersey public procurement laws, and to the extent allowed by
8 law may delegate the development of specific aspects of the design
9 criteria to other consultants.

10 c. The contracting unit, in consultation with the design
11 professional or designated employee, shall determine the scope and
12 level of detail required for the evaluation factors. The evaluation
13 factors should be detailed enough to permit qualified persons to
14 submit proposals in accordance with the solicitation, given the
15 nature of the public project and the level of design to be provided in
16 the proposal.³

17

18 ³38. a. Solicitations for each design-build contract shall include,
19 but not be limited to, the following:

20 (1) The identity of the contracting unit which shall award the
21 design-build contract;

22 (2) The procedures to be followed for submitting proposals, the
23 criteria for evaluation of proposals and their relative weight, and the
24 procedures for making awards, including a reference to the
25 requirements of sections 34 through 41 of P.L. , c. (C.)
26 (pending before the Legislature as this bill) and the regulations of
27 the contracting unit;

28 (3) The proposed terms and conditions for the design-build
29 contract;

30 (4) A description of the drawings, specifications, or other
31 submittals to be submitted with the proposal, with guidance as to
32 the form and level of completeness of the drawings, specifications,
33 or submittals that shall be acceptable;

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

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

37 (7) Affirmative action, disadvantaged business or set-aside goals
38 or requirements for the design-build contract, in accordance with
39 the requirements of all rules, regulations, standards, or policies
40 adopted by the contracting unit;

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

42 (9) Requirements for contractors to have performance bonds,
43 payment bonds, and insurance, and to meet all the qualifications of
44 the Division of Property Management and Construction in the
45 Department of the Treasury or the Department of Transportation
46 where applicable; and

1 (10)A statement that the prospective design-builder is in
2 compliance with all applicable laws, including the "New Jersey
3 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
4 "The Public Works Contractor Registration Act," P.L.1999, c.238
5 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
6 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).

7 b. The solicitation may include any other information which
8 the contracting unit in its discretion chooses to supply, including
9 without limitation, surveys, soils reports, drawings or models of
10 existing structures, environmental studies, photographs or
11 references to public records.

12 c. Notice of solicitations shall be advertised in the same
13 manner in which proposals generally are solicited for public
14 projects.³

15
16 ³39. a. Each design-build team shall include a licensed or
17 prequalified design professional or independent from the
18 contracting unit's licensed architect or engineer. The licensed or
19 prequalified design professional or designated employee shall be
20 named in any proposal submitted to the contracting unit.

21 b. Proposals shall be sealed and shall not be opened until
22 expiration of the time established for making proposals as set forth
23 in the solicitation.

24 c. Proposals shall identify each person to whom the design-
25 builder proposes to delegate obligations under the design-build
26 contract. Persons so identified shall not be replaced without the
27 approval of the contracting unit.

28 d. Proposals shall establish the cost of the design-build contract
29 which shall not be exceeded if the proposal is accepted without
30 change. Afterward, the maximum cost in the proposal may be
31 converted to fixed prices by negotiated agreement between the
32 contracting unit and the design-builder.

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

35 f. Unless and until a proposal is accepted, the drawings,
36 specifications and other information in the proposal shall remain the
37 property of the person making the proposal. The contracting unit
38 shall make reasonable efforts to maintain the secrecy and
39 confidentiality of all proposals, and all information contained in the
40 proposals, and shall not disclose the proposals or the information
41 contained therein to the design-builders' competitors or the public.
42 Once a proposal is accepted, the disclosure of the proposal and the
43 information in the proposal, and the ownership of the drawings,
44 specifications, and information therein, shall be determined in
45 accordance with existing law and the terms of the design-build
46 contract.³

1 ³40. a. Once received, proposals shall be submitted to the design
2 professional or designated employee retained by the contracting
3 unit. No proposal shall be considered until certification is issued by
4 the design professional or designated employee retained by the
5 contracting unit that the proposal is consistent with the evaluation
6 factors. No proposal for a design-build contract may be accepted
7 unless the contracting unit determines that there was adequate
8 competition for such contract.

9 b. The technical review committee shall score the technical
10 proposals using the criteria and methodology set forth in the request
11 for proposals in accordance with paragraph (2) of subsection a. of
12 section 38 of P.L. , c. (C.) (pending before the legislature
13 as this bill) and make an award recommendation to the head of the
14 contracting unit. The head of the contracting unit shall make the
15 design-build contract award decision, consistent with the award
16 recommendation.

17 c. The contracting unit shall make public the sealed price bid
18 for each proposal submitted to the contracting unit by a design-
19 builder. The contracting unit shall evaluate the received technical
20 proposals and price bid against the published factors and weighting
21 to arrive at a composite score. The contracting unit shall make
22 public the design-builder to be awarded the contract for the project.

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

28 e. The contracting unit shall have the right to reject any and all
29 proposals, except for the purpose of evading the provisions and
30 policies of sections 34 through 41 of P.L. , c. () (pending
31 before the Legislature as this bill). The contracting unit shall solicit
32 new proposals using the same evaluation factors, budget
33 constraints, or qualifications.

34 f. Proposals may be withdrawn for any reason at any time
35 prior to acceptance.

36 g. When a design-builder receives notification from a public
37 body that the proposal, which it has submitted, has not been
38 accepted, the design-builder may, within 30 days, request from the
39 public body a written explanation of the selection process. The
40 design-builder shall submit this request in writing.³

41
42 ³41. Notwithstanding the provisions of the "Administrative
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
44 contrary, the Department of Education shall adopt, immediately
45 upon filing with the Office of Administrative Law, regulations that
46 the Department of Education deems necessary to implement the
47 provisions of sections 34 through 41 of P.L. , c. (C.)

1 (pending before the Legislature as this bill), which regulations shall
2 be effective for a period not to exceed 180 days from the date of the
3 filing. The Department of Education shall thereafter amend, adopt,
4 or readopt the regulations pursuant to the "Administrative
5 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³
6

7 ³42. The State of New Jersey shall, on an annual basis, compile
8 and make public all proceedings, records, contracts and other public
9 records relating to procurement transactions authorized under
10 P.L. , c. (C.) (pending before the Legislature as this bill).³
11

12 ³[11.] ³43.³ This act shall take effect immediately.