

[Fourth Reprint]

ASSEMBLY, No. 1285

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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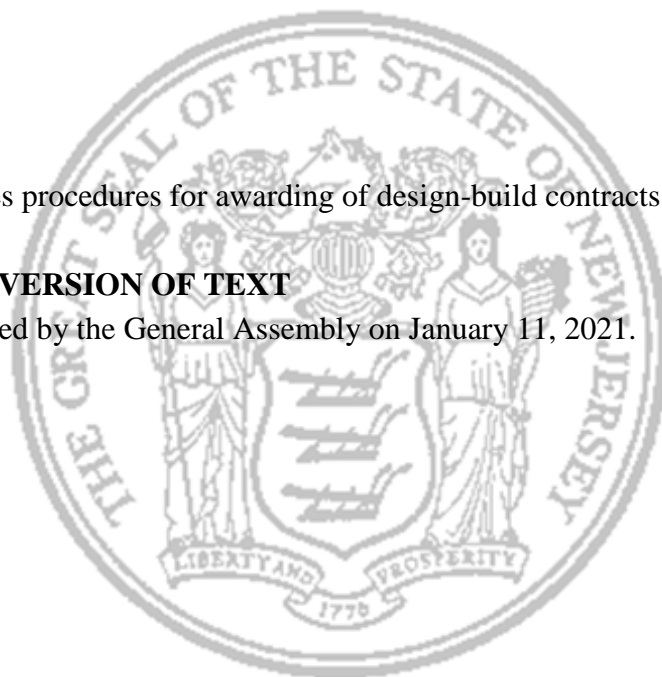
Assemblywoman Murphy and Senator Pou

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

As amended by the General Assembly on January 11, 2021.



(Sponsorship Updated As Of: 3/25/2021)

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 ⁴[registered] licensed and prequalified⁴ design
28 professional develops the project design in its entirety; the
29 contracting unit then solicits bids and awards the contract to the
30 lowest responsible bidder that demonstrates the ability to complete
31 the project specified in the 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

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.

⁴Assembly floor amendments adopted January 11, 2021.

1 of Property Management and Construction or the New Jersey
2 Department of Transportation, where applicable, to perform work
3 on a design-build project.

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

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

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

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

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

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

32
33 3. a. If a contracting unit ⁴**[can demonstrate why]** determines
34 in its discretion that⁴ the design-build approach meets their needs
35 better than the traditional design-bid-build approach established
36 under New Jersey public procurement statutes for the project or
37 projects under consideration, it shall be the public policy of this
38 State to permit that contracting unit to enter into design-build
39 contracts as defined in ³section 2 of³ P.L. , c. (C.) (pending
40 before the Legislature as this bill), provided the following
41 conditions are met:

42 (1) The contracting unit shall, prior to issuing solicitations,
43 publish procedures consistent with regulations promulgated by the
44 ⁴**[**Division of Property Management and Construction in the
45 Department of the Treasury or the Department of Transportation**]**
46 contracting unit⁴, where applicable for the solicitation and award of

- 1 design-build contracts, and shall adhere to ³sections 2 through 9 of
2 P.L. , c. (C.) (pending before the Legislature as this bill)
3 and those procedures; and
- 4 (2) The contracting unit shall, for each public project or projects
5 under ³[this act] sections 2 through 9 of P.L. , c. (C.)
6 (pending before the Legislature as this bill)³ , make a determination
7 based on the timeliness of the project or projects that it is in the best
8 interest of the public to enter into a design-build contract to
9 complete the public project or projects.
- 10 b. All workers employed in a design-build construction project
11 shall be paid the prevailing wage determined by the Commissioner
12 of Labor pursuant to the provisions of the "New Jersey Prevailing
13 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.).
- 14 c. ⁴[All] Except where the contracting unit is the Department
15 of Transportation, all⁴ design-build construction projects shall be
16 encouraged to adhere to the Leadership in Energy and
17 Environmental Design Green Building Rating System as adopted by
18 the United States Green Building Council, the Green Globes
19 Program adopted by the Green Building Initiative, or a comparable
20 nationally recognized, accepted, and appropriate sustainable
21 development system.
- 22 ⁴d. Notwithstanding the provisions of sections 2 through 9 of
23 P.L. , c. (C.) (pending before the Legislature as this bill) to
24 the contrary, an independent State transportation authority which
25 already has an established prequalification, project rating, or
26 proposal process for design-build contracts as of the effective date
27 of P.L. , c. (C.) (pending before the Legislature as this bill)
28 may continue to award design-build contracts pursuant to that
29 process.⁴
- 30
- 31 4. a. The contracting unit shall adopt the following procedures
32 for awarding design-build contracts:
- 33 (1) The contracting unit shall ³either³ appoint a ⁴[registered]
34 licensed and prequalified⁴ design professional ³, or designate an
35 employee of the contracting unit licensed to provide architectural,
36 engineering, or surveying services.³ to provide technical advice,
37 construction review services, and professional expertise on behalf
38 of the contracting unit;
- 39 (2) The contracting unit shall develop, with the assistance of the
40 design professional ³or designated employee³, performance criteria
41 and a scope of work statement that defines the project and provides
42 prospective design-builders with sufficient information regarding
43 the contracting unit's requirements. The statement shall include:
44 evaluation factor criteria and preliminary design documents, general
45 budget parameters, and general schedule or delivery requirements to
46 enable the design-builders to submit proposals which meet the

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

7 (3) Once the contracting unit has developed a scope of work
8 statement which adequately defines the contracting unit's
9 requirements for the project or projects, the contracting unit shall
10 solicit proposals ³of qualification³ from design-builders. The
11 contracting unit shall solicit proposals ³of qualification³ in
12 accordance with the requirements of the applicable public
13 procurement laws of the State of New Jersey.

14 (4) The contracting unit shall establish a technical review
15 committee, which shall consist of a representative of the contracting
16 unit, the contracting unit's project manager, ⁴and⁴ the contracting
17 unit's authorized design professional ⁴[, and the] . The⁴
18 contracting unit's attorney ⁴may advise the technical review
19 committee⁴. The technical review committee shall have the
20 responsibility to evaluate bids based on rating and scoring
21 proposals, and shall evaluate design-builders based on their
22 qualifications. ⁴A member of the technical review committee shall
23 not have a personal or financial interest in any of the design-
24 builders submitting proposals.⁴

25 b. The factors used to evaluate proposals ³of qualification³
26 shall be stated in the solicitation and shall include, but not be
27 limited to: specialized experience and technical competence,
28 training certification of professional and field workforce, principal
29 location of the company, capability to perform, safety modification
30 rating, past performance of the individual members of the design-
31 builder's team in their respective capacities, including the architect-
32 engineer and construction members of the team, and other
33 appropriate technical and qualification factors as determined by the
34 ⁴[Division of Property Management and Construction in the
35 Department of the Treasury or the Department of Transportation]
36 contracting unit⁴, where applicable ³[,] ³ Each solicitation for
37 proposals ³[must] of qualification shall³ establish the relative
38 importance assigned to the evaluation factors and sub-factors to be
39 considered.

40 c. A solicitation for proposals ³of qualification³ shall state the
41 maximum number of design-builders that are to be selected to
42 submit ³second³ proposals. The maximum number specified in the
43 solicitation shall be at least two and shall not exceed ⁴[five] six⁴.

44 d. ²The contracting unit ⁴[shall] may⁴ offer a stipend, based
45 upon the project size and type, which shall not exceed three percent
46 of the project's estimated cost, to any design-builder providing

1 design, construction information, or materials presented in response
2 to a request for second proposals. This stipend is intended to
3 encourage the submission of proposals and to increase competition.

4 e.² On the basis of the proposal ³of qualification³, the technical
5 review committee shall select the most highly qualified number of
6 design-builders specified in the solicitation and request the selected
7 design-builders to submit a second proposal and sealed bid. Each
8 solicitation for second proposals ³**[must]** shall³ establish the
9 relative importance assigned to the evaluation factors to be
10 considered.

11 ²**[e.] f.**² The technical review committee shall evaluate each
12 second proposal based on the technical submission for the proposal,
13 including design concepts or proposed solutions to requirements
14 addressed within the scope of work, and the evaluation factors,
15 including a minimum of 50 percent consideration based on the cost
16 of the bid.

17 ²**[f.] g.**² The contracting unit shall separately evaluate the
18 submissions described above, and award the contract in accordance
19 with section 8 of P.L. , c. (C.) (pending before the
20 Legislature as this bill).

21
22 5. a. Each request for proposals shall contain evaluation
23 factors prepared by a design professional ³or designated employee³
24 as defined in section 2 of P.L. , c. (C.) (pending before the
25 Legislature as this bill). The design professional ³or designated
26 employee³ that develops the evaluation factors shall be disqualified
27 from submitting a proposal to enter into the design-build contract,
28 and the design-builder shall not be permitted to delegate services
29 under the design-build contract to the design professional ³or
30 designated employee³ that developed the evaluation factors.

31 b. The design professional ³or designated employee³ that
32 develops the evaluation factors shall be either an employee of the
33 contracting unit or shall be engaged in compliance with applicable
34 New Jersey public procurement laws, and to the extent allowed by
35 law may delegate the development of specific aspects of the design
36 criteria to other consultants.

37 c. The contracting unit, in consultation with the design
38 professional ³or designated employee³, shall determine the scope
39 and level of detail required for the evaluation factors. The
40 evaluation factors should be detailed enough to permit qualified
41 persons to submit proposals in accordance with the solicitation,
42 given the nature of the public project and the level of design to be
43 provided in the proposal.

44
45 6. a. Solicitations for each design-build contract shall include,
46 but not be limited to, the following:

- 1 (1) The identity of the contracting unit which shall award the
2 design-build contract;
- 3 (2) The procedures to be followed for ³~~admitting~~ submitting³
4 proposals, the criteria for evaluation of proposals and their relative
5 weight, and the procedures for making awards, including a
6 reference to the requirements of ³~~this act~~ sections 2 through 9 of
7 P.L. , c. (C.) (pending before the Legislature as this bill)³
8 and the regulations of the contracting unit;
- 9 (3) The proposed terms and conditions for the design-build
10 contract;
- 11 (4) A description of the drawings, specifications, or other
12 submittals to be submitted with the proposal, with guidance as to
13 the form and level of completeness of the drawings, specifications,
14 or submittals that shall be acceptable;
- 15 (5) A schedule for planned commencement and completion of
16 the design-build contract;
- 17 (6) Budget limits for the design-build contract, if any;
- 18 (7) Affirmative action, disadvantaged business or set-aside
19 goals or requirements for the design-build contract, ²~~as~~
20 ~~determined~~ in accordance with the requirements of all rules,
21 regulations, standards, or policies adopted² by the contracting unit;
- 22 (8) The required qualifications of the design-builder;
- 23 (9) Requirements for contractors ⁴~~and the design professional~~⁴
24 to have performance bonds, payment bonds, and insurance, and to
25 meet all the qualifications of the Division of Property Management
26 and Construction in the Department of the Treasury or the
27 Department of Transportation where applicable; and
- 28 (10) A statement that ¹~~all employees have graduated from a~~
29 ~~registered apprenticeship program, which is registered with, and~~
30 ~~approved by, the United States Department of Labor, and~~
31 ~~which provides each trainee with combined classroom and on-the-~~
32 ~~job training under the direct and close supervision of a highly~~
33 ~~skilled worker in an occupation recognized as an apprenticeable~~
34 ~~trade, and meets the program performance standards of enrollment~~
35 ~~and graduation under 29 C.F.R. 29.6 (2011). Every contract subject~~
36 ~~to the provisions of this section shall provide that every worker~~
37 ~~employed in the performance of that contract is an apprentice~~
38 ~~participating in a registered apprenticeship program or has~~
39 ~~completed a registered apprenticeship, unless the contractor or~~
40 ~~subcontractor certifies that every worker shall be paid not less than~~
41 ~~the journeyworker's rate established for the apprenticeable trade~~
42 ~~performed pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)~~ the
43 prospective design-builder is in compliance with all applicable
44 laws, including the "New Jersey Prevailing Wage Act," P.L.1963,
45 c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor
46 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the

1 "Construction Industry Independent Contractor Act," P.L.2007,
2 c.114 (C.34:20-1 et seq.).¹

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

8 c. Notice of solicitations shall be advertised in the same manner
9 in which proposals generally are solicited for public projects.
10

11 7. a. Each design-build team shall include a licensed ³or
12 prequalified³ design professional independent from the contracting
13 unit's licensed architect or engineer. The licensed ³or prequalified³
14 design professional ³**[must]** shall³ be named in any proposal
15 submitted to the contracting unit.

16 b. Proposals shall be sealed and shall not be opened until
17 expiration of the time established for making proposals as set forth
18 in the solicitation.

19 c. Proposals shall identify each person to whom the design-
20 builder proposes to delegate obligations under the design-build
21 contract. Persons so identified ³**[will]** shall³ not be replaced
22 without the approval of the contracting unit.

23 d. Proposals shall establish the cost of the design-build contract
24 which ³**[will]** shall³ not be exceeded if the proposal is accepted
25 without change. Afterward, the maximum cost in the proposal may
26 be converted to fixed prices by negotiated agreement between the
27 contracting unit and the design-builder.

28 e. All proposals shall be received and opened at a previously
29 announced time, where ⁴**[they]** a synopsis of each⁴ shall be
30 publicly read and recorded ⁴consistent with the provisions of
31 subsection f. of this section⁴.

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

44
45 8. a. Once received, proposals shall be submitted to the design
46 professional ³or designated employee³ retained by the contracting

1 unit. No proposal shall be considered until certification is issued by
2 the design professional ³or designated employee³ retained by the
3 contracting unit that the proposal is consistent with the evaluation
4 factors. No proposal for a design-build contract may be accepted
5 unless the contracting unit determines that there was adequate
6 competition for such contract.

7 b. ²[A contracting unit must accept the proposal which it
8 considers most advantageous to the contracting unit after a thorough
9 review and scoring of both parts of a design-bid proposal] The
10 technical review committee shall score the technical proposals
11 using the criteria and methodology set forth in the request for
12 proposals in accordance with paragraph (2) of subsection a. of
13 section 6 of P.L. , c. (C.) (pending before the legislature as
14 this bill)^{2 3}and make an award recommendation to the head of the
15 contracting unit. The head of the contracting unit shall make the
16 design-build contract award decision, consistent with the award
17 recommendation³.

18 c. ⁴²The contracting unit shall make public the sealed price
19 bid for each proposal submitted to the contracting unit by a design-
20 builder.]⁴ The contracting unit shall evaluate the received technical
21 proposals and price bid against the published factors and weighting
22 to arrive at a composite score. The contracting unit shall make
23 public the design-builder to be awarded the contract for the project.
24 ⁴After the award decision is made, the contracting unit shall make
25 public the sealed price bid for each proposal submitted to the
26 contracting unit by a design-builder.⁴

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

32 ²[d.] e.² The contracting unit shall have the right to reject any
33 and all proposals, except for the purpose of evading the provisions
34 and policies of ³[this chapter] sections 2 through 9 of P.L. ,
35 c. () (pending before the Legislature as this bill)³. The
36 contracting unit shall solicit new proposals using the same
37 evaluation factors, budget constraints, or qualifications ⁴, unless
38 there has been a material change in circumstances affecting the
39 needs of the contracting unit, including but not limited to an
40 environmental issue, natural disaster, state of emergency, or
41 unforeseen fiscal constraint⁴.

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

44 ²[f.] g.² When a design-builder receives notification from a
45 public body that the proposal, which it has submitted, has not been
46 accepted, the design-builder may, within 30 days, request ⁴[from

1 the public body a written explanation of **1** to review the design-build
2 proposals submitted, the technical review committee evaluation
3 scores from⁴ the selection process⁴, and the final recommendation
4 of award document⁴. The design-builder shall submit this request
5 in writing.

6
7 ³**[9.** 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
11 bill).**]**³

12
13 ³9. Notwithstanding the provisions of the "Administrative
14 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
15 contrary, a contracting unit shall adopt, immediately upon filing
16 with the Office of Administrative Law, regulations that the
17 contracting unit deems necessary to implement the provisions of
18 sections 2 through 9 of P.L. , c. (C.) (pending before the
19 Legislature as this bill), which regulations shall be effective for a
20 period not to exceed 180 days from the date of the filing. The
21 contracting unit shall thereafter amend, adopt, or readopt the
22 regulations pursuant to the "Administrative Procedures Act,"
23 P.L.1968, c.410 (C.52:14B-1 et seq.).³

24
25 ³**[10.** The Division of Property Management and Construction
26 in the Department of the Treasury or the Department of
27 Transportation, where applicable, shall adopt regulations pursuant
28 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
29 1 et seq.), to effectuate the provisions of this act.**]**³

30
31 ³10. As used in sections 10 through 17 of P.L. , c. ()
32 (pending before the Legislature as this bill):

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

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

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

44 "Design-bid-build" means the delivery system used in public
45 projects in which a⁴**[registered]** licensed and prequalified⁴ design
46 professional or designated employee develops the project design in

1 its entirety; the contracting unit then solicits bids and awards the
2 contract to the lowest responsible bidder that demonstrates the
3 ability to complete the project specified in the design.

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

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

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

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

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

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

37
38 ³11. a. If a contracting unit ⁴can demonstrate why determines
39 in its discretion that ⁴the design-build approach meets their needs
40 better than the traditional design-bid-build approach established
41 under New Jersey public procurement statutes for the project or
42 projects under consideration, it shall be the public policy of this
43 State to permit that contracting unit to enter into design-build
44 contracts as defined in section 10 of P.L. , c. (C.) (pending
45 before the Legislature as this bill), provided the following
46 conditions are met:

1 (1) The contracting unit shall, prior to issuing solicitations,
2 publish procedures consistent with regulations promulgated by the
3 ⁴[Division of Property Management and Construction in the
4 Department of the Treasury or the Department of Transportation]
5 Secretary of Higher Education⁴ , where applicable for the
6 solicitation and award of design-build contracts, and shall adhere to
7 sections 10 through 17 of P.L. , c. (C.) (pending before the
8 Legislature as this bill) and those procedures; and

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

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

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

25

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

28 (1) The contracting unit shall either appoint a ⁴[registered]
29 licensed and prequalified⁴ design professional, or designate an
30 employee of the contracting unit licensed to provide architectural,
31 engineering, or surveying services, to provide technical advice,
32 construction review services, and professional expertise on behalf
33 of the contracting unit;

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

1 (3) Once the contracting unit has developed a scope of work
2 statement which adequately defines the contracting unit's
3 requirements for the project or projects, the contracting unit shall
4 solicit proposals of qualification from design-builders. The
5 contracting unit shall solicit proposals of qualification in
6 accordance with the requirements of the applicable public
7 procurement laws of the State of New Jersey.

8 (4) The contracting unit shall establish a technical review
9 committee, which shall consist of a representative of the contracting
10 unit, the contracting unit's project manager, ⁴and⁴ the contracting
11 unit's authorized design professional ⁴[, and the] . The⁴
12 contracting unit's attorney ⁴may advise the technical review
13 committee⁴. The technical review committee shall have the
14 responsibility to evaluate bids based on rating and scoring
15 proposals, and shall evaluate design-builders based on their
16 qualifications. ⁴A member of the technical review committee shall
17 not have a personal or financial interest in any of the design-
18 builders submitting proposals.⁴

19 b. The factors used to evaluate proposals of qualification shall
20 be stated in the solicitation and shall include, but not be limited to:
21 specialized experience and technical competence, training
22 certification of professional and field workforce, principal location
23 of the company, capability to perform, safety modification rating,
24 past performance of the individual members of the design-builder's
25 team in their respective capacities, including the architect-engineer
26 and construction members of the team, and other appropriate
27 technical and qualification factors as determined by the ⁴[Division
28 of Property Management and Construction in the Department of the
29 Treasury or the Department of Transportation] Secretary of Higher
30 Education⁴ , where applicable ⁴[.] ⁴ Each solicitation for
31 proposals of qualification shall establish the relative importance
32 assigned to the evaluation factors and sub-factors to be considered.

33 c. A solicitation for proposals of qualification shall state the
34 maximum number of design-builders that are to be selected to
35 submit second proposals. The maximum number specified in the
36 solicitation shall be at least two and shall not exceed ⁴[five] six⁴.

37 d. The contracting unit ⁴[shall] may⁴ offer a stipend, based
38 upon the project size and type, which shall not exceed three percent
39 of the project's estimated cost, to any design-builder providing
40 design, construction information, or materials presented in response
41 to a request for second proposals. This stipend is intended to
42 encourage the submission of proposals and to increase competition.

43 e. On the basis of the proposal of qualification, the technical
44 review committee shall select the most highly qualified number of
45 design-builders specified in the solicitation and request the selected
46 design-builders to submit a second proposal and sealed bid. Each

1 solicitation for second proposals shall establish the relative
2 importance assigned to the evaluation factors to be considered.

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

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

13
14 ³13. a. Each request for proposals shall contain evaluation
15 factors prepared by a design professional or designated employee as
16 defined in section 10 of P.L. , c. (C.) (pending before the
17 Legislature as this bill). The design professional or designated
18 employee that develops the evaluation factors shall be disqualified
19 from submitting a proposal to enter into the design-build contract,
20 and the design-builder shall not be permitted to delegate services
21 under the design-build contract to the design professional or
22 designated employee that developed the evaluation factors.

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

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

36
37 ³14. a. Solicitations for each design-build contract shall include,
38 but not be limited to, the following:

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

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

- 1 (3) The proposed terms and conditions for the design-build
2 contract;
- 3 (4) A description of the drawings, specifications, or other
4 submittals to be submitted with the proposal, with guidance as to
5 the form and level of completeness of the drawings, specifications,
6 or submittals that shall be acceptable;
- 7 (5) A schedule for planned commencement and completion of
8 the design-build contract;
- 9 (6) Budget limits for the design-build contract, if any;
- 10 (7) Affirmative action, disadvantaged business or set-aside goals
11 or requirements for the design-build contract, in accordance with
12 the requirements of all rules, regulations, standards, or policies
13 adopted by the contracting unit;
- 14 (8) The required qualifications of the design-builder;
- 15 (9) Requirements for contractors ⁴and the design professional⁴
16 to have performance bonds, payment bonds, and insurance, and to
17 meet all the qualifications of the Division of Property Management
18 and Construction in the Department of the Treasury or the
19 Department of Transportation where applicable; and
- 20 (10) A statement that the prospective design-builder is in
21 compliance with all applicable laws, including the "New Jersey
22 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
23 "The Public Works Contractor Registration Act," P.L.1999, c.238
24 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
25 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).
- 26 b. The solicitation may include any other information which
27 the contracting unit in its discretion chooses to supply, including
28 without limitation, surveys, soils reports, drawings or models of
29 existing structures, environmental studies, photographs or
30 references to public records.
- 31 c. Notice of solicitations shall be advertised in the same
32 manner in which proposals generally are solicited for public
33 projects.³
- 34
- 35 ³15. a. Each design-build team shall include a licensed or
36 prequalified design professional independent from the contracting
37 unit's licensed architect or engineer. The licensed or prequalified
38 design professional shall be named in any proposal submitted to the
39 contracting unit.
- 40 b. Proposals shall be sealed and shall not be opened until
41 expiration of the time established for making proposals as set forth
42 in the solicitation.
- 43 c. Proposals shall identify each person to whom the design-
44 builder proposes to delegate obligations under the design-build
45 contract. Persons so identified shall not be replaced without the
46 approval of the contracting unit.

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

6 e. All proposals shall be received and opened at a previously
7 announced time, where ⁴[they] a synopsis of each⁴ shall be
8 publicly read and recorded ⁴consistent with the provisions of
9 subsection f. of this section⁴.

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
23 ³16. 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 14 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. ⁴[The contracting unit shall make public the sealed price bid
40 for each proposal submitted to the contracting unit by a design-
41 builder.]⁴ 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 ⁴After the award decision is made, the contracting unit shall make
46 public the sealed price bid for each proposal submitted to the
47 contracting unit by a design-builder.⁴

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

6 e. The contracting unit shall have the right to reject any and all
7 proposals, except for the purpose of evading the provisions and
8 policies of sections 10 through 17 of P.L. , c. () (pending
9 before the Legislature as this bill). The contracting unit shall solicit
10 new proposals using the same evaluation factors, budget
11 constraints, or qualifications ⁴, unless there has been a material
12 change in circumstances affecting the needs of the contracting unit,
13 including but not limited to an environmental issue, natural disaster,
14 state of emergency, or unforeseen fiscal constraint⁴.

15 f. Proposals may be withdrawn for any reason at any time prior
16 to acceptance.

17 g. When a design-builder receives notification from a public
18 body that the proposal, which it has submitted, has not been
19 accepted, the design-builder may, within 30 days, request ⁴[from
20 the public body a written explanation of] to review the design-build
21 proposals submitted, the technical review committee evaluation
22 scores from⁴ the selection process ⁴, and the final recommendation
23 of award document⁴. The design-builder shall submit this request
24 in writing.³

25
26 ³17. Notwithstanding the provisions of the "Administrative
27 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
28 contrary, the Secretary of Higher Education shall adopt,
29 immediately upon filing with the Office of Administrative Law,
30 regulations that the Secretary of Higher Education deems necessary
31 to implement the provisions of sections 10 through 17 of P.L. ,
32 c. (C.) (pending before the Legislature as this bill), which
33 regulations shall be effective for a period not to exceed 180 days
34 from the date of the filing. The Secretary of Higher Education shall
35 thereafter amend, adopt, or readopt the regulations pursuant to the
36 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et
37 seq.).³

38
39 ³18. As used in sections 18 through 25 of P.L. , c. ()
40 (pending before the Legislature as this bill):

41 "Acceptance" means the adoption of a law, ordinance, or
42 resolution by the State of New Jersey, any of its political
43 subdivisions, any authority created by the Legislature of the State of
44 New Jersey and any instrumentality or agency of the State of New
45 Jersey or of any of its political subdivisions, authorizing the
46 execution of a design-build contract.

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

4 “Delivery system” means the procedure used to develop and
5 construct a project.

6 “Design-bid-build” means the delivery system used in public
7 projects in which a ⁴**[registered]** licensed and prequalified⁴ design
8 professional or designated employee develops the project design in
9 its entirety; the contracting unit then solicits bids and awards the
10 contract to the lowest responsible bidder that demonstrates the
11 ability to complete the project specified in the design.

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

18 “Design-builder” 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 proposes to design and construct any public project,
22 who is registered pursuant to the provisions of P.L.1999, c.238
23 (C.34:11-56.48 et seq.), and classified by the New Jersey Division
24 of Property Management and Construction or the New Jersey
25 Department of Transportation, where applicable, to perform work
26 on a design-build project.

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

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

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

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

45
46 ³19. a. If a contracting unit ⁴**[can demonstrate why]** determines
47 in its discretion that⁴ the design-build approach meets their needs

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

8 (1) The contracting unit shall, prior to issuing solicitations,
9 publish procedures consistent with regulations promulgated by the
10 ⁴[Division of Property Management and Construction in the
11 Department of the Treasury or the Department of Transportation]
12 Secretary of Higher Education⁴ , where applicable for the
13 solicitation and award of design-build contracts, and shall adhere to
14 sections 18 through 25 of P.L. , c. (C.) (pending before the
15 Legislature as this bill) and those procedures; and

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

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

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

32
33 ³20. a. The contracting unit shall adopt the following procedures
34 for awarding design-build contracts:

35 (1) The contracting unit shall either appoint a ⁴[registered]
36 licensed and prequalified⁴ design professional, or designate an
37 employee of the contracting unit licensed to provide architectural,
38 engineering, or surveying services, to provide technical advice,
39 construction review services, and professional expertise on behalf
40 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, ⁴and⁴ the contracting
18 unit's authorized design professional ⁴[, and the] . The⁴
19 contracting unit's attorney ⁴may advise the technical review
20 committee⁴. The technical review committee shall have the
21 responsibility to evaluate bids based on rating and scoring
22 proposals, and shall evaluate design-builders based on their
23 qualifications. ⁴A member of the technical review committee shall
24 not have a personal or financial interest in any of the design-
25 builders submitting proposals.⁴

26 b. The factors used to evaluate proposals of qualification shall
27 be stated in the solicitation and shall include, but not be limited to:
28 specialized experience and technical competence, training
29 certification of professional and field workforce, principal location
30 of the company, capability to perform, safety modification rating,
31 past performance of the individual members of the design-builder's
32 team in their respective capacities, including the architect-engineer
33 and construction members of the team, and other appropriate
34 technical and qualification factors as determined by the ⁴[Division
35 of Property Management and Construction in the Department of the
36 Treasury or the Department of Transportation] Secretary of Higher
37 Education⁴ , where applicable ⁴[,] ⁴. Each solicitation for
38 proposals of qualification shall establish the relative importance
39 assigned to the evaluation factors and sub-factors to be considered.

40 c. A solicitation for proposals of qualification shall state the
41 maximum number of design-builders that are to be selected to
42 submit second proposals. The maximum number specified in the
43 solicitation shall be at least two and shall not exceed ⁴[five] six⁴.

44 d. The contracting unit ⁴[shall] may⁴ offer a stipend, based
45 upon the project size and type, which shall not exceed three percent
46 of the project's estimated cost, to any design-builder providing

1 design, construction information, or materials presented in response
2 to a request for second proposals. This stipend is intended to
3 encourage the submission of proposals and to increase competition.

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

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

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

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

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

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

43
44 ³22. a. Solicitations for each design-build contract shall include,
45 but not be limited to, the following:

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

1 (2) The procedures to be followed for submitting proposals, the
2 criteria for evaluation of proposals and their relative weight, and the
3 procedures for making awards, including a reference to the
4 requirements of sections 18 through 25 of P.L. , c. (C.)
5 (pending before the Legislature as this bill)and the regulations of
6 the contracting unit;

7 (3) The proposed terms and conditions for the design-build
8 contract;

9 (4) A description of the drawings, specifications, or other
10 submittals to be submitted with the proposal, with guidance as to
11 the form and level of completeness of the drawings, specifications,
12 or submittals that shall be acceptable;

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

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

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

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

21 (9) Requirements for contractors ⁴and the design professional⁴
22 to have performance bonds, payment bonds, and insurance, and to
23 meet all the qualifications of the Division of Property Management
24 and Construction in the Department of the Treasury or the
25 Department of Transportation where applicable; and

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

32 b. The solicitation may include any other information which
33 the 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
38 manner in which proposals generally are solicited for public
39 projects.³

40
41 ³23. a. Each design-build team shall include a licensed or
42 prequalified design professional independent from the contracting
43 unit's licensed architect or engineer. The licensed or prequalified
44 design professional shall be named in any proposal submitted to the
45 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 shall not be replaced without the
7 approval of the contracting unit.

8 d. Proposals shall establish the cost of the design-build contract
9 which shall not be exceeded if the proposal is accepted without
10 change. Afterward, the maximum cost in the proposal may be
11 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 ⁴【they】 a synopsis of each⁴ shall be
15 publicly read and recorded ⁴consistent with the provisions of
16 subsection f. of this section⁴.

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

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

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

46 c. ⁴【The contracting unit shall make public the sealed price bid
47 for each proposal submitted to the contracting unit by a design-

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

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

13 e. The contracting unit shall have the right to reject any and all
14 proposals, except for the purpose of evading the provisions and
15 policies of sections 18 through 25 of P.L. , c. () (pending
16 before the Legislature as this bill). The contracting unit shall solicit
17 new proposals using the same evaluation factors, budget
18 constraints, or qualifications ⁴, unless there has been a material
19 change in circumstances affecting the needs of the contracting unit,
20 including but not limited to an environmental issue, natural disaster,
21 state of emergency, or unforeseen fiscal constraint⁴.

22 f. Proposals may be withdrawn for any reason at any time prior
23 to acceptance.

24 g. When a design-builder receives notification from a public
25 body that the proposal, which it has submitted, has not been
26 accepted, the design-builder may, within 30 days, request ⁴[from
27 the public body a written explanation of] to review the design-build
28 proposals submitted, the technical review committee evaluation
29 scores from⁴ the selection process ⁴, and the final recommendation
30 of award document⁴. The design-builder shall submit this request
31 in writing.³

32

33 ³25. Notwithstanding the provisions of the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
35 contrary, the Secretary of Higher Education shall adopt,
36 immediately upon filing with the Office of Administrative Law,
37 regulations that the Secretary of Higher Education deems necessary
38 to implement the provisions of sections 18 through 25 of P.L. ,
39 c. (C.) (pending before the Legislature as this bill), which
40 regulations shall be effective for a period not to exceed 180 days
41 from the date of the filing. The Secretary of Higher Education shall
42 thereafter amend, adopt, or readopt the regulations pursuant to the
43 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et
44 seq.).³

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

3 “Acceptance” means the adoption of a law, ordinance, or
4 resolution by the State of New Jersey, any of its political
5 subdivisions, any authority created by the Legislature of the State of
6 New Jersey and any instrumentality or agency of the State of New
7 Jersey or of any of its political subdivisions, authorizing the
8 execution of a design-build contract.

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

12 “Delivery system” means the procedure used to develop and
13 construct a project.

14 “Design-bid-build” means the delivery system used in public
15 projects in which a ⁴[registered] licensed and prequalified⁴ design
16 professional or designated employee develops the project design in
17 its entirety; the contracting unit then solicits bids and awards the
18 contract to the lowest responsible bidder that demonstrates the
19 ability to complete the project specified in the design.

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

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

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

43 “Evaluation factors” means the requirements for the first phase
44 of the selection process, and shall include, but not be limited to:
45 specialized experience, training certification of professional and
46 field workforce, technical competence, capacity to perform, safety
47 modification rating, past performance and other appropriate factors.

1 Price shall only be considered in the second phase of the selection
2 process.

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

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

6

7 ³27. a. If a contracting unit ⁴[can demonstrate why] determines
8 in its discretion that⁴ the design-build approach meets their needs
9 better than the traditional design-bid-build approach established
10 under New Jersey public procurement statutes for the project or
11 projects under consideration, it shall be the public policy of this
12 State to permit that contracting unit to enter into design-build
13 contracts as defined in section 26 of P.L. , c. (C.) (pending
14 before the Legislature as this bill), provided the following
15 conditions are met:

16 (1) ⁴The project or projects under consideration have a cost equal
17 to or exceeding \$5,000,000.

18 (2)⁴ The contracting unit shall, prior to issuing solicitations,
19 publish procedures consistent with regulations promulgated by the
20 ⁴[Division of Property Management and Construction in the
21 Department of the Treasury or the]⁴ Department of
22 ⁴[Transportation] Community Affairs⁴ , where applicable for the
23 solicitation and award of design-build contracts, and shall adhere to
24 sections 26 through 33 of P.L. , c. (C.) (pending before the
25 Legislature as this bill) and those procedures; and

26 ⁴[(2)] (3)⁴ The contracting unit shall, for each public project or
27 projects under sections 26 through 33 of P.L. , c. (C.)
28 (pending before the Legislature as this bill), make a determination
29 based on the timeliness of the project or projects that it is in the best
30 interest of the public to enter into a design-build contract to
31 complete the 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 ⁴d. Any design-build contract awarded pursuant to sections 26
43 through 33 of P.L. , c. () (pending before the Legislature as
44 this bill) may be reviewed by the Office of the State Comptroller.⁴

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

3 (1) The contracting unit shall either appoint a ⁴[registered]
4 licensed and prequalified⁴ design professional, or designate an
5 employee of the contracting unit licensed to provide architectural,
6 engineering, or surveying services, to provide technical advice,
7 construction review services, and professional expertise on behalf
8 of the contracting unit;

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

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

30 (4) The contracting unit shall establish a technical review
31 committee, which shall consist of a representative of the contracting
32 unit, the contracting unit's project manager, ⁴and⁴ the contracting
33 unit's authorized design professional ⁴[, and the] . The⁴
34 contracting unit's attorney ⁴may advise the technical review
35 committee⁴. The technical review committee shall have the
36 responsibility to evaluate bids based on rating and scoring
37 proposals, and shall evaluate design-builders based on their
38 qualifications. ⁴A member of the technical review committee shall
39 not have a personal or financial interest in any of the design-
40 builders submitting proposals.⁴

41 b. The factors used to evaluate proposals of qualification shall
42 be stated in the solicitation and shall include, but not be limited to:
43 specialized experience and technical competence, training
44 certification of professional and field workforce, principal location
45 of the company, capability to perform, safety modification rating,
46 past performance of the individual members of the design-builder's
47 team in their respective capacities, including the architect-engineer

1 and construction members of the team, and other appropriate
2 technical and qualification factors as determined by the ⁴ [Division
3 of Property Management and Construction in the Department of the
4 Treasury or the] ⁴ Department of ⁴ [Transportation] Community
5 Affairs ⁴ , where applicable ⁴ [.] ⁴ Each solicitation for proposals
6 of qualification shall establish the relative importance assigned to
7 the evaluation factors and sub-factors to be considered.

8 c. A solicitation for proposals of qualification shall state the
9 maximum number of design-builders that are to be selected to
10 submit second proposals. The maximum number specified in the
11 solicitation shall be at least two and shall not exceed ⁴ [five] six ⁴.

12 d. The contracting unit ⁴ [shall] may ⁴ offer a stipend, based
13 upon the project size and type, which shall not exceed three percent
14 of the project's estimated cost, to any design-builder providing
15 design, construction information, or materials presented in response
16 to a request for second proposals. This stipend is intended to
17 encourage the submission of proposals and to increase competition.

18 e. On the basis of the proposal of qualification, the technical
19 review committee shall select the most highly qualified number of
20 design-builders specified in the solicitation and request the selected
21 design-builders to submit a second proposal and sealed bid. Each
22 solicitation for second proposals shall establish the relative
23 importance assigned to the evaluation factors to be considered.

24 f. The technical review committee shall evaluate each second
25 proposal based on the technical submission for the proposal,
26 including design concepts or proposed solutions to requirements
27 addressed within the scope of work, and the evaluation factors,
28 including a minimum of 50 percent consideration based on the cost
29 of the bid.

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

34
35 ³29. a. Each request for proposals shall contain evaluation
36 factors prepared by a design professional or designated employee as
37 defined in section 26 of P.L. , c. (C.) (pending before the
38 Legislature as this bill). The design professional or designated
39 employee that develops the evaluation factors shall be disqualified
40 from submitting a proposal to enter into the design-build contract,
41 and the design-builder shall not be permitted to delegate services
42 under the design-build contract to the design professional or
43 designated employee that developed the evaluation factors.

44 b. The design professional or designated employee that
45 develops the evaluation factors shall be either an employee of the
46 contracting unit or shall be engaged in compliance with applicable
47 New Jersey public procurement laws, and to the extent allowed by

1 law may delegate the development of specific aspects of the design
2 criteria to other consultants.

3 c. The contracting unit, in consultation with the design
4 professional or designated employee, shall determine the scope and
5 level of detail required for the evaluation factors. The evaluation
6 factors should be detailed enough to permit qualified persons to
7 submit proposals in accordance with the solicitation, given the
8 nature of the public project and the level of design to be provided in
9 the proposal.³

10
11 ³30. a. Solicitations for each design-build contract shall include,
12 but not be limited to, the following:

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

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

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

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

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

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

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

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

35 (9) Requirements for contractors ⁴and the design professional⁴
36 to have performance bonds, payment bonds, and insurance, and to
37 meet all the qualifications of the Division of Property Management
38 and Construction in the Department of the Treasury or the
39 Department of Transportation where applicable; and

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

46 b. The solicitation may include any other information which
47 the contracting unit in its discretion chooses to supply, including

1 without limitation, surveys, soils reports, drawings or models of
2 existing structures, environmental studies, photographs or
3 references to public records.

4 c. Notice of solicitations shall be advertised in the same
5 manner in which proposals generally are solicited for public
6 projects.³

7
8 ³31. a. Each design-build team shall include a licensed or
9 prequalified design professional independent from the contracting
10 unit's licensed architect or engineer. The licensed or prequalified
11 design professional shall be named in any proposal submitted to the
12 contracting unit.

13 b. Proposals shall be sealed and shall not be opened until
14 expiration of the time established for making proposals as set forth
15 in the solicitation.

16 c. Proposals shall identify each person to whom the design-
17 builder proposes to delegate obligations under the design-build
18 contract. Persons so identified shall not be replaced without the
19 approval of the contracting unit.

20 d. Proposals shall establish the cost of the design-build contract
21 which shall not be exceeded if the proposal is accepted without
22 change. Afterward, the maximum cost in the proposal may be
23 converted to fixed prices by negotiated agreement between the
24 contracting unit and the design-builder.

25 e. All proposals shall be received and opened at a previously
26 announced time, where ⁴[they] a synopsis of each⁴ shall be
27 publicly read and recorded ⁴consistent with the provisions of
28 subsection f. of this section⁴.

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

41
42 ³32. a. Once received, proposals shall be submitted to the design
43 professional or designated employee retained by the contracting
44 unit. No proposal shall be considered until certification is issued by
45 the design professional or designated employee retained by the
46 contracting unit that the proposal is consistent with the evaluation
47 factors. No proposal for a design-build contract may be accepted

1 unless the contracting unit determines that there was adequate
2 competition for such contract.

3 b. The technical review committee shall score the technical
4 proposals using the criteria and methodology set forth in the request
5 for proposals in accordance with paragraph (2) of subsection a. of
6 section 30 of P.L. , c. (C.) (pending before the legislature
7 as this bill) and make an award recommendation to the ⁴**[head]**
8 governing body⁴ of the contracting unit. The ⁴**[head]** governing
9 body⁴ of the contracting unit shall make the design-build contract
10 award decision, consistent with the award recommendation.

11 c. ⁴**[The contracting unit shall make public the sealed price bid**
12 for each proposal submitted to the contracting unit by a design-
13 builder.]⁴ The contracting unit shall evaluate the received technical
14 proposals and price bid against the published factors and weighting
15 to arrive at a composite score. The contracting unit shall make
16 public the design-builder to be awarded the contract for the project.
17 ⁴After the award decision is made, the contracting unit shall make
18 public the sealed price bid for each proposal submitted to the
19 contracting unit by a design-builder.⁴

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

25 e. The contracting unit shall have the right to reject any and all
26 proposals, except for the purpose of evading the provisions and
27 policies of sections 26 through 33 of P.L. , c. () (pending
28 before the Legislature as this bill). The contracting unit shall solicit
29 new proposals using the same evaluation factors, budget
30 constraints, or qualifications ⁴, unless there has been a material
31 change in circumstances affecting the needs of the contracting unit,
32 including but not limited to an environmental issue, natural disaster,
33 state of emergency, or unforeseen fiscal constraint⁴.

34 f. Proposals may be withdrawn for any reason at any time prior
35 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 ⁴**[from**
39 the public body a written explanation of] to review the design-build
40 proposals submitted, the technical review committee evaluation
41 scores from⁴ the selection process ⁴, and the final recommendation
42 of award document⁴. The design-builder shall submit this request
43 in writing.³

44
45 ³33. Notwithstanding the provisions of the "Administrative
46 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the

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

11

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

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

23 "Delivery system" means the procedure used to develop and
24 construct a project.

25 "Design-bid-build" means the delivery system used in public
26 projects in which a ⁴[registered] licensed and prequalified⁴ design
27 professional or designated employee develops the project design in
28 its entirety; the contracting unit then solicits bids and awards the
29 contract to the lowest responsible bidder that demonstrates the
30 ability to complete the project specified in the design.

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

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

46 "Design professional" means the entity, whether natural person,
47 partnership, joint stock company, corporation, trust, professional

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

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

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

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

17
18 ³35. a. If a contracting unit ⁴[can demonstrate why] determines
19 in its discretion that⁴ the design-build approach meets their needs
20 better than the traditional design-bid-build approach established
21 under New Jersey public procurement statutes for the project or
22 projects under consideration, it shall be the public policy of this
23 State to permit that contracting unit to enter into design-build
24 contracts as defined in section 34 of P.L. , c. (C.) (pending
25 before the Legislature as this bill), provided the following
26 conditions are met:

27 (1) ⁴The project or projects under consideration have a cost
28 equal to or exceeding \$5,000,000.

29 (2)⁴ The contracting unit shall, prior to issuing solicitations,
30 publish procedures consistent with regulations promulgated by the
31 ⁴[Division of Property Management and Construction in the
32 Department of the Treasury or the]⁴ Department of
33 ⁴[Transportation] Community Affairs, in consultation with the
34 Department of Education⁴, where applicable for the solicitation and
35 award of design-build contracts, and shall adhere to sections 34
36 through 41 of P.L. , c. (C.) (pending before the Legislature
37 as this bill) and those procedures; and

38 ⁴[(2)] (3)⁴ The contracting unit shall, for each public project or
39 projects under sections 34 through 41 of P.L. , c. (C.)
40 (pending before the Legislature as this bill), make a determination
41 based on the timeliness of the project or projects that it is in the best
42 interest of the public to enter into a design-build contract to
43 complete the public project or projects.

44 b. All workers employed in a design-build construction project
45 shall be paid the prevailing wage determined by the Commissioner

1 of Labor pursuant to the provisions of the "New Jersey Prevailing
2 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.).

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

9 ⁴d. Any design-build contract awarded pursuant to sections 34
10 through 41 of P.L. , c. () (pending before the Legislature as
11 this bill) may be reviewed by the Office of the State Comptroller.⁴

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

15 (1) The contracting unit shall either appoint a ⁴[registered]
16 licensed and prequalified⁴ design professional, or designate an
17 employee of the contracting unit licensed to provide architectural,
18 engineering, or surveying services, to provide technical advice,
19 construction review services, and professional expertise on behalf
20 of the contracting unit;

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

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

42 (4) The contracting unit shall establish a technical review
43 committee, which shall consist of a representative of the contracting
44 unit, the contracting unit's project manager, ⁴and⁴ the contracting
45 unit's authorized design professional ⁴[, and the] . The⁴
46 contracting unit's attorney ⁴may advise the technical review

- 1 committee⁴. The technical review committee shall have the
2 responsibility to evaluate bids based on rating and scoring
3 proposals, and shall evaluate design-builders based on their
4 qualifications. ⁴A member of the technical review committee shall
5 not have a personal or financial interest in any of the design-
6 builders submitting proposals.⁴
- 7 b. The factors used to evaluate proposals of qualification shall
8 be stated in the solicitation and shall include, but not be limited to:
9 specialized experience and technical competence, training
10 certification of professional and field workforce, principal location
11 of the company, capability to perform, safety modification rating,
12 past performance of the individual members of the design-builder's
13 team in their respective capacities, including the architect-engineer
14 and construction members of the team, and other appropriate
15 technical and qualification factors as determined by the ⁴~~Division~~
16 of Property Management and Construction in the Department of the
17 Treasury or the⁴ Department of ⁴~~Transportation~~ Community
18 Affairs, in consultation with the Department of Education⁴, where
19 applicable ⁴~~.~~ ⁴ Each solicitation for proposals of qualification
20 shall establish the relative importance assigned to the evaluation
21 factors and sub-factors to be considered.
- 22 c. A solicitation for proposals of qualification shall state the
23 maximum number of design-builders that are to be selected to
24 submit second proposals. The maximum number specified in the
25 solicitation shall be at least two and shall not exceed ⁴~~five~~ six⁴.
- 26 d. The contracting unit ⁴~~shall~~ may⁴ offer a stipend, based
27 upon the project size and type, which shall not exceed three percent
28 of the project's estimated cost, to any design-builder providing
29 design, construction information, or materials presented in response
30 to a request for second proposals. This stipend is intended to
31 encourage the submission of proposals and to increase competition.
- 32 e. On the basis of the proposal of qualification, 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 shall establish the relative
37 importance assigned to the evaluation factors to be considered.
- 38 f. The technical review committee shall evaluate each second
39 proposal based on the technical submission for the proposal,
40 including design concepts or proposed solutions to requirements
41 addressed within the scope of work, and the evaluation factors,
42 including a minimum of 50 percent consideration based on the cost
43 of the bid.
- 44 g. The contracting unit shall separately evaluate the
45 submissions described above, and award the contract in accordance

1 with section 40 of P.L. , c. (C.) (pending before the
2 Legislature as this bill).³

3
4 ³37. a. Each request for proposals shall contain evaluation
5 factors prepared by a design professional or designated employee as
6 defined in section 34 of P.L. , c. (C.) (pending before the
7 Legislature as this bill). The design professional or designated
8 employee 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 or
12 designated employee that developed the evaluation factors.

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

26
27 ³38. 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 submitting proposals, the
32 criteria for evaluation of proposals and their relative weight, and the
33 procedures for making awards, including a reference to the
34 requirements of sections 34 through 41 of P.L. , c. (C.)
35 (pending before the Legislature as this bill) and the regulations of
36 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;

46 (7) Affirmative action, disadvantaged business or set-aside goals
47 or requirements for the design-build contract, in accordance with

1 the requirements of all rules, regulations, standards, or policies
2 adopted by the contracting unit;

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

4 (9) Requirements for contractors ⁴and the design professional⁴
5 to have performance bonds, payment bonds, and insurance, and to
6 meet all the qualifications of the Division of Property Management
7 and Construction in the Department of the Treasury or the
8 Department of Transportation where applicable; and

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

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

20 c. Notice of solicitations shall be advertised in the same
21 manner in which proposals generally are solicited for public
22 projects.³

23

24 ³39. a. Each design-build team shall include a licensed or
25 prequalified design professional or independent from the
26 contracting unit's licensed architect or engineer. The licensed or
27 prequalified design professional or designated employee shall be
28 named in any proposal submitted to the contracting unit.

29 b. Proposals shall be sealed and shall not be opened until
30 expiration of the time established for making proposals as set forth
31 in the solicitation.

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

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

41 e. All proposals shall be received and opened at a previously
42 announced time, where ⁴[they] a synopsis of each⁴ shall be
43 publicly read and recorded ⁴consistent with the provisions of
44 subsection f. of this section⁴.

45 f. Unless and until a proposal is accepted, the drawings,
46 specifications and other information in the proposal shall remain the
47 property of the person making the proposal. The contracting unit

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

10

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

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

27 c. ⁴【The contracting unit shall make public the sealed price bid
28 for each proposal submitted to the contracting unit by a design-
29 builder.】⁴ The contracting unit shall evaluate the received technical
30 proposals and price bid against the published factors and weighting
31 to arrive at a composite score. The contracting unit shall make
32 public the design-builder to be awarded the contract for the project.

33 ⁴After the award decision is made, the contracting unit shall make
34 public the sealed price bid for each proposal submitted to the
35 contracting unit by a design-builder.⁴

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

41 e. The contracting unit shall have the right to reject any and all
42 proposals, except for the purpose of evading the provisions and
43 policies of sections 34 through 41 of P.L. , c. () (pending
44 before the Legislature as this bill). The contracting unit shall solicit
45 new proposals using the same evaluation factors, budget
46 constraints, or qualifications ⁴, unless there has been a material
47 change in circumstances affecting the needs of the contracting unit,

1 including but not limited to an environmental issue, natural disaster,
2 state of emergency, or unforeseen fiscal constraint⁴.

3 f. Proposals may be withdrawn for any reason at any time
4 prior to acceptance.

5 g. When a design-builder receives notification from a public
6 body that the proposal, which it has submitted, has not been
7 accepted, the design-builder may, within 30 days, request ⁴[from
8 the public body a written explanation of] to review the design-build
9 proposals submitted, the technical review committee evaluation
10 scores from⁴ the selection process ⁴, and the final recommendation
11 of award document⁴. The design-builder shall submit this request
12 in writing.³

13
14 ³41. Notwithstanding the provisions of the "Administrative
15 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
16 contrary, the ⁴Department of Community Affairs, in consultation
17 with the⁴ Department of Education ^{4,4} shall adopt, immediately
18 upon filing with the Office of Administrative Law, regulations that
19 the ⁴Department of Community Affairs, in consultation with the⁴
20 Department of Education ^{4,4} deems necessary to implement the
21 provisions of sections 34 through 41 of P.L. , c. (C.)
22 (pending before the Legislature as this bill), which regulations shall
23 be effective for a period not to exceed 180 days from the date of the
24 filing. The ⁴Department of Community Affairs, in consultation
25 with the⁴ Department of Education ^{4,4} shall thereafter amend,
26 adopt, or readopt the regulations pursuant to the "Administrative
27 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³

28
29 ³42. ⁴[The State of New Jersey shall, on an annual basis,
30 compile and make public all] All⁴ proceedings, records, contracts
31 ^{4,4} and other public records relating to procurement transactions
32 authorized under P.L. , c. (C.) (pending before the
33 Legislature as this bill) ⁴shall be accessible to the public pursuant to
34 P.L.1963, c.73 (C.47:1A-1 et seq.), except as otherwise may be
35 provided under P.L. , c. (C.) (pending before the
36 Legislature as this bill)^{4,3}

37
38 ³[11.] 43.³ This act shall take effect immediately.