

SENATE, No. 2312

STATE OF NEW JERSEY
219th LEGISLATURE

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Sponsored by:

Senator PATRICK J. DIEGNAN, JR.

District 18 (Middlesex)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Establishes procedures for awarding design-build contracts by State transportation agencies.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 6/22/2020)

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1 AN ACT establishing certain procedures for awarding design-build
2 contracts by State transportation agencies and supplementing
3 Title 52 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. As used in P.L. , c. (C.) (pending before the
9 Legislature as this bill):

10 “Contracting unit” shall only include State transportation
11 agencies.

12 “Design-bid-build” means the delivery system used in public
13 projects in which a registered design professional develops the
14 project design in its entirety, and the contracting unit then solicits
15 bids and awards the contract to the lowest responsible bidder that
16 demonstrates the ability to complete the project specified in the
17 design.

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

25 “Design-build delivery system” means a project delivery method
26 in which there is a single contract between the contracting unit and
27 a design-builder to furnish the architectural, engineering, and
28 related design services of a project in addition to the labor,
29 materials, supplies, equipment, and construction services for any
30 project.

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

40 “Request for proposal” means a document issued by a
41 contracting unit to solicit technical proposals for a project from
42 prequalified design-builders.

43 “Request for qualifications” means a document issued by a
44 contracting unit to prequalify and rank potential design-builders.

45 “State transportation agency” means the Department of
46 Transportation, the New Jersey Turnpike Authority, the South
47 Jersey Transportation Authority, or the New Jersey Transit
48 Corporation.

1 "Stipend" means the fee paid to a design-builder by the
2 contracting unit to encourage competition.

3
4 2. a. If a contracting unit demonstrates that the design-build
5 approach meets the needs of the contracting unit better than the
6 traditional design-bid-build approach established under New Jersey
7 public procurement law for a project or projects under
8 consideration, it shall be the public policy of this State to permit
9 that contracting unit to enter into design-build contracts, provided
10 the contracting unit shall, for each public project under P.L. ,
11 c. (C.) (pending before the Legislature as this bill), make a
12 determination based on the need to expedite the project and the
13 finalization of project requirements that it is in the best interest of
14 the public to enter into a design-build contract to complete the
15 public project. The contracting unit shall provide in a written
16 statement its reasons for using a design-build delivery system,
17 which shall be available to the public upon request.

18 b. After deciding to proceed with a design-build delivery
19 system, a contracting unit shall establish a competitive, two-phase
20 procedure for awarding design-build contracts as provided for in
21 sections 3 and 4 of P.L. , c. (C.) (pending before the
22 Legislature as this bill).

23 c. All workers employed in a design-build construction project
24 shall be paid the prevailing wage determined by the Commissioner
25 of Labor and Workforce Development pursuant to the provisions of
26 the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-
27 56.25 et seq.).

28
29 3. a. After the contracting unit has determined to utilize a
30 design-build delivery system pursuant to section 2 of P.L. ,
31 c. (C.) (pending before the Legislature as this bill), the
32 contracting unit shall prepare a request for qualifications to qualify
33 design-builders.

34 b. The request for qualifications shall include, but need not be
35 limited to:

- 36 (1) a scope of work statement and schedule;
37 (2) documents and reference materials made available by the
38 contracting unit defining the project requirements;
39 (3) the form of contract to be awarded;
40 (4) a description of the request for proposal requirements;
41 (5) the maximum time allowed for design and construction; and
42 (6) the contracting unit's estimated cost range for design and
43 construction.

44 c. Provided that the following evaluation requirements do not
45 unduly restrict competition, the qualifications of the responding
46 design-builders shall be evaluated and scored based on the
47 following, without limitation:

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1 (1) construction experience; design experience; financial,
2 personnel, and equipment resources available for the project; and
3 experience in other similar design-build delivery system projects;

4 (2) weighting factors for the qualifications identified; and

5 (3) any other information or criteria that the contracting unit
6 deems appropriate, provided that a design-builder shall not be
7 penalized in any way for asserting or exercising a legal right to
8 which the design-builder is entitled.

9 d. The contracting unit shall evaluate the qualifications of each
10 design-builder responding to the request for qualifications and
11 prepare a list of at least two, but no more than four, design-builders
12 with the highest qualifications based on the criteria established
13 pursuant to subsection c. of this section, and shall solicit from those
14 design-builders a request for proposals in accordance with section 4
15 of P.L. , c. (C.) (pending before the Legislature as this
16 bill). If a design-builder consists of a team of separate entities, the
17 entities that comprise the design-builder shall remain unchanged
18 unless otherwise approved by the contracting unit.

19

20 4. a. The contracting unit shall prepare and solicit a request for
21 proposals from the list of the highest qualified design-builders as
22 determined by the contracting unit pursuant to subsection d. of
23 section 3 of P.L. , c. (C.) (pending before the Legislature
24 as this bill). The request for proposals shall include, but need not
25 be limited to, the following elements:

26 (1) identification of the basic scope and needs of the project, the
27 estimated cost of the project, and any other information deemed
28 necessary by the contracting unit to inform interested parties of the
29 contracting opportunity;

30 (2) a requirement for the separate submissions of technical
31 proposals and price bids, which shall be submitted simultaneously;

32 (3) significant factors that the contracting unit reasonably
33 expects to consider in evaluating proposals, including, but not
34 limited to, cost, technical considerations, and any other non-price-
35 related factors that are identified in the request for proposals;

36 (4) an explanation of the exact weight or points assigned to
37 price and to each of the non-price-related factors of the technical
38 proposal;

39 (5) the specific methodology that will be used to evaluate the
40 technical proposals and price bids to arrive at a composite score that
41 will determine the contract award. The basis of the award shall be a
42 composite of the score awarded for the price proposal and the score
43 awarded for all of the identified elements of the technical proposal,
44 each of which shall be separately set forth in the request for
45 proposals. The price proposal and the technical proposal shall total
46 100 percent, provided that the price proposal and technical proposal
47 shall each be weighted at a minimum of 40 percent of the total
48 composite score; and

1 (6) any other information the contracting unit deems
2 appropriate.

3 b. The request for proposals shall establish and provide the date
4 on which the technical proposals and price bids are to be submitted
5 to the contracting unit by the design-builder. The technical
6 proposal and price bid shall be clearly identified and include the
7 date and time of the submittal deadline. The price proposal shall be
8 submitted in a separate sealed envelope that shall not be reviewed
9 by the technical review committee established by the contracting
10 unit pursuant to section 5 of P.L. , c. (C.) (pending before the
11 Legislature as this bill).

12 c. The contracting unit shall offer a stipend, based upon the
13 project size and type, which shall be at least two percent but not
14 more than three percent of the project's estimated cost, to any
15 design-builder providing design, construction information, or
16 materials presented in response to a request for proposals. This
17 stipend is intended to encourage the submission of proposals and to
18 increase competition. The contracting unit does not own the design,
19 construction information, or materials of a design-builder not
20 awarded the contract. Purchase of any design, construction
21 information, or materials presented to the contracting unit by
22 design-builders not awarded a contract may be separately negotiated
23 between the contracting unit and the appropriate design-builder.
24

25 5. a. The contracting unit shall create a technical review
26 committee whose purpose and function shall be to evaluate and
27 score the technical proposals submitted to the contracting unit by
28 design-builders in accordance with section 4 of P.L. , c. (C.)
29 (pending before the Legislature as this bill). The technical review
30 committee shall have the authority to reject any technical proposal
31 submitted by a design-builder that the committee deems incomplete
32 for any reason.

33 b. The technical proposals shall be reviewed by the technical
34 review committee created by the contracting unit pursuant to
35 subsection a. of this section. This review shall include, but need not
36 be limited to, the following criteria, pre-identified in the request for
37 proposals, which shall be weighed by the technical review
38 committee in accordance with subsection a. of this section:

39 (1) the approach to the scope of the project, including, but not
40 limited to, performance and technical standards, design, and
41 functional and operational elements, which shall be prepared by a
42 registered or licensed professional engineer;

43 (2) the maximum time expected for design and construction;

44 (3) a critical path method, bar schedule of the work to be
45 performed, or similar schematic;

46 (4) design plans and specifications, technical reports, and
47 calculations;

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- 1 (5) a list of all permit requirements and applicable development
2 fees relevant to the project;
- 3 (6) copies of the contract documents that the successful design-
4 build entity will be expected to enter into;
- 5 (7) project specific qualifications and experience of the design-
6 builder and its team members;
- 7 (8) a statement of expected project implementation for the
8 project;
- 9 (9) lifecycle cost considerations of the completed project and
10 traffic approaches, with an accompanying rationale; and
- 11 (10) any other information deemed relevant to the project by the
12 contracting unit.
- 13 c. The technical review committee shall score the technical
14 proposals using the criteria and methodology set forth in the request
15 for proposals. Submitted technical proposals shall not include any
16 information on the cost of project design or delivery; inclusion of
17 price information in any portion of the technical proposal shall
18 disqualify the design-builder from bidding on the project. The
19 technical review committee shall then submit a technical proposal
20 score for each design-build entity submitting a proposal to the
21 contracting unit.
22
- 23 6. a. The price bid shall be sealed until such time after the
24 technical review committee has evaluated and scored the technical
25 proposal submitted by the design-builders. The contracting unit
26 shall then make public the technical proposal score for each design-
27 builder and shall publicly open and review the sealed price bid.
28 The priced bid shall contain all design, construction, engineering,
29 inspection, and construction costs of the project.
- 30 b. The contracting unit shall make public the sealed price bid
31 for each proposal submitted to the contracting unit by a design-
32 builder. The contracting unit shall evaluate the received technical
33 proposals and price bid against the published factors and weighting
34 to arrive at a composite score. The contracting unit shall make
35 public the design-builder to be awarded the contract for the project.
- 36 c. Until a proposal is selected, the drawings, specifications, and
37 other information in the proposal shall remain the property of the
38 design-builder making the proposal. The contracting unit shall make
39 reasonable efforts to maintain the secrecy and confidentiality of all
40 proposals and all information contained in the proposals. The
41 contracting unit shall not disclose the proposals or the information
42 contained therein to the design-builders' competitors or the public.
43 Once a proposal is selected, the disclosure of the proposal and the
44 information in the proposal, and the ownership of the drawings,
45 specifications, and information therein, shall be determined in
46 accordance with existing law and the terms of the design-build
47 contract.

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1 The bill clarifies that nothing in the bill is to be construed to
2 exempt a State transportation agency, or any design-build contract
3 entered into by a State transportation agency, from the requirements
4 of any rules, regulations, standards, or policies adopted by the
5 Department of Transportation or any other State transportation
6 agency to implement a program to create equal contracting
7 opportunities for small, socially-disadvantaged, or economically-
8 disadvantaged business enterprises.