

SENATE, No. 2874

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator JOSEPH P. CRYAN

District 20 (Union)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/14/2020)

1 AN ACT establishing procedures for awarding design-build
2 contracts and supplementing Title 52 of the Revised Statutes.

3

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

6

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

9

10 2. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

18

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

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

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

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

43 c. All design-build construction projects shall be encouraged to
44 adhere to the Leadership in Energy and Environmental Design
45 Green Building Rating System as adopted by the United States
46 Green Building Council, the Green Globes Program adopted by the
47 Green Building Initiative, or a comparable nationally recognized,
48 accepted, and appropriate sustainable development system.

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

3 (1) The contracting unit shall appoint a registered design
4 professional to provide technical advice, construction review
5 services, and professional expertise on behalf of the contracting
6 unit;

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

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

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

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

47 c. A solicitation for proposals shall state the maximum number
48 of design-builders that are to be selected to submit proposals. The

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

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

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

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

19

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

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

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

40

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

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

45 (2) The procedures to be followed for admitting proposals, the
46 criteria for evaluation of proposals and their relative weight, and the
47 procedures for making awards, including a reference to the
48 requirements of this act and the regulations of 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 the
5 form and level of completeness of the drawings, specifications, or
6 submittals that will be acceptable;
- 7 (5) A schedule for planned commencement and completion of the
8 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, as determined by the
12 contracting unit;
- 13 (8) The required qualifications of the design-builder;
- 14 (9) Requirements for contractors to have performance bonds,
15 payment bonds, and insurance, and to meet all the qualifications of the
16 Division of Property Management and Construction in the Department
17 of the Treasury or the Department of Transportation where applicable;
18 and
- 19 (10) A statement that the prospective design-builder is in
20 compliance with all applicable laws, including the "New Jersey
21 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), "The
22 Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-
23 56.48 et seq.), and the "Construction Industry Independent Contractor
24 Act," P.L.2007, c.114 (C.34:20-1 et seq.).
- 25 b. The solicitation may include any other information which the
26 contracting unit in its discretion chooses to supply, including without
27 limitation, surveys, soils reports, drawings or models of existing
28 structures, environmental studies, photographs or references to public
29 records.
- 30 c. Notice of solicitations shall be advertised in the same manner
31 in which proposals generally are solicited for public projects.
32
- 33 7. a. Each design-build team shall include a licensed design
34 professional independent from the contracting unit's licensed
35 architect or engineer. The licensed design professional must be
36 named in any proposal submitted to the contracting unit.
- 37 b. Proposals shall be sealed and shall not be opened until
38 expiration of the time established for making proposals as set forth
39 in the solicitation.
- 40 c. Proposals shall identify each person to whom the design-
41 builder proposes to delegate obligations under the design-build
42 contract. Persons so identified will not be replaced without the
43 approval of the contracting unit.
- 44 d. Proposals shall establish the cost of the design-build contract
45 which will not be exceeded if the proposal is accepted without
46 change. Afterward, the maximum cost in the proposal may be
47 converted to fixed prices by negotiated agreement between the
48 contracting unit and the design-builder.

- 1 e. All proposals shall be received and opened at a previously
2 announced time, where they shall be publicly read and recorded.
- 3 f. Unless and until a proposal is accepted, the drawings,
4 specifications and other information in the proposal shall remain the
5 property of the person making the proposal. The contracting unit
6 shall make reasonable efforts to maintain the secrecy and
7 confidentiality of all proposals, and all information contained in the
8 proposals, and shall not disclose the proposals or the information
9 contained therein to the design-builders' competitors or the public.
10 Once a proposal is accepted, the disclosure of the proposal and the
11 information in the proposal, and the ownership of the drawings,
12 specifications, and information therein, shall be determined in
13 accordance with existing law and the terms of the design-build
14 contract.
15
- 16 8. a. Once received, proposals shall be submitted to the design
17 professional retained by the contracting unit. No proposal shall be
18 considered until certification is issued by the design professional
19 retained by the contracting unit that the proposal is consistent with
20 the evaluation factors. No proposal for a design-build contract may
21 be accepted unless the contracting unit determines that there was
22 adequate competition for such contract.
- 23 b. A contracting unit must accept the proposal which it
24 considers most advantageous to the contracting unit after a thorough
25 review and scoring of both parts of a design-bid proposal.
- 26 c. Acceptance of a proposal shall be made by written notice to
27 the design-builder which submitted the accepted proposal. At the
28 same time notice of acceptance is delivered, the contracting unit
29 shall also inform, in writing, the other design-builders that their
30 proposals were not accepted.
- 31 d. The contracting unit shall have the right to reject any and all
32 proposals, except for the purpose of evading the provisions and
33 policies of this chapter. The contracting unit shall solicit new
34 proposals using the same evaluation factors, budget constraints, or
35 qualifications.
- 36 e. Proposals may be withdrawn for any reason at any time prior
37 to acceptance.
- 38 f. When a design-builder receives notification from a public
39 body that the proposal, which it has submitted, has not been
40 accepted, the design-builder may, within 30 days, request from the
41 public body a written explanation of the selection process. The
42 design-builder shall submit this request in writing.
43
- 44 9. The State of New Jersey shall, on an annual basis, compile
45 and make public all proceedings, records, contracts and other public
46 records relating to procurement transactions authorized under
47 P.L. , c. (C.) (pending before the Legislature as this bill).

1 10. The Division of Property Management and Construction in
2 the Department of the Treasury or the Department of
3 Transportation, where applicable, shall adopt regulations pursuant
4 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
5 1 et seq.), to effectuate the provisions of this act.
6

7 11. This act shall take effect immediately.
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9

10 STATEMENT 11

12 This bill, known as the "Design-Build Construction Services
13 Procurement Act," sets forth the procedures for the awarding of
14 design-build contracts for State and local contracting units.

15 In order to enter into a design-build contract, a contracting unit is
16 required to demonstrate why the design-build approach better meets
17 the contracting unit's needs than the traditional public procurement
18 method. When proceeding with a design-build contract, the
19 contracting unit is required to get guidance from a registered design
20 professional, develop performance criteria and a scope of work
21 statement, establish evaluation factors for proposals, solicit proposals
22 from design-builders, and utilize a technical review committee. On the
23 basis of the proposal, the technical review committee is to select the
24 most highly qualified design-builders and request those design-
25 builders to submit a second proposal and sealed bid, which is then
26 evaluated by the technical review committee. The contracting unit
27 separately evaluates the submissions and awards the contract in
28 accordance with the bill.

29 The bill outlines all requirements for solicitations for design-build
30 contracts, the requirements for design-build teams and the submission
31 of proposals, and the procedures for awarding of a contract.

32 All design-build construction projects entered into under the bill
33 are required to comply with the "New Jersey Prevailing Wage Act"
34 and are encouraged to adhere to the Leadership in Energy and
35 Environmental Design Green Building Rating System.

36 The bill requires the State to compile and make public all
37 proceedings, records, contracts, and other public records relating to
38 procurement transactions authorized under the bill.