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SENATE, No. 2874

STATE OF NEW JERSEY
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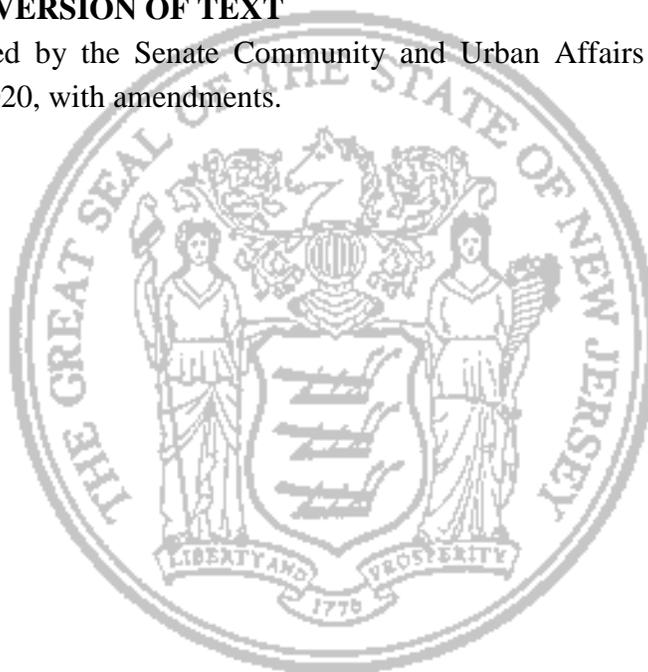
Senator Pou

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

As reported by the Senate Community and Urban Affairs Committee on October 8, 2020, with amendments.



(Sponsorship Updated As Of: 11/16/2020)

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
13 subdivisions, any authority created by the Legislature of the State of
14 New Jersey and any instrumentality or agency of the State of New
15 Jersey or of any of its political subdivisions, authorizing the
16 execution of a design-build 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
23 project design in its entirety; the contracting unit then solicits bids
24 and awards the contract to the lowest responsible bidder that
25 demonstrates the ability to complete the project specified in the
26 design.

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

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

42 “Design professional” means the entity, whether natural person,
43 partnership, joint stock company, corporation, trust, professional
44 corporation, business association, or other legal business entity or
45 successor that provides registered architectural, engineering, or

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCU committee amendments adopted October 8, 2020.

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

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

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

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

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

23 “Stipend” means the fee paid to a design-builder by the
24 contracting unit to encourage competition.¹

25

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

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

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

46 b. All workers employed in a design-build construction project
47 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.

9

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

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

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

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

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

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

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

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

12 d. ¹The contracting unit shall offer a stipend, based upon the
13 project size and type, which shall not exceed three percent of the
14 project's estimated cost, to any design-builder providing design,
15 construction information, or materials presented in response to a
16 request for second proposals. This stipend is intended to encourage
17 the submission of proposals and to increase competition.

18 e.¹ On the basis of the proposal, the technical review committee
19 shall select the most highly qualified number of design-builders
20 specified in the solicitation and request the selected design-builders
21 to submit a second proposal and sealed bid. Each solicitation for
22 second proposals must establish the relative importance assigned to
23 the evaluation factors to be considered.

24 ¹[e.] f.¹ The technical review committee shall evaluate each
25 second 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 ¹[f.] g.¹ The contracting unit shall separately evaluate the
31 submissions described above, and award the contract in accordance
32 with section 8 of P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34
35 5. a. Each request for proposals shall contain evaluation
36 factors prepared by a design professional as defined in section 2 of
37 P.L. , c. (C.) (pending before the Legislature as this bill).
38 The design professional that develops the evaluation factors shall be
39 disqualified from submitting a proposal to enter into the design-
40 build contract, and the design-builder shall not be permitted to
41 delegate services under the design-build contract to the design
42 professional that developed the evaluation factors.

43 b. The design professional that develops the evaluation factors
44 shall be either an employee of the contracting unit or shall be
45 engaged in compliance with applicable New Jersey public
46 procurement laws, and to the extent allowed by law may delegate
47 the development of specific aspects of the design criteria to other
48 consultants.

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

7
8 6. a. Solicitations for each design-build contract shall include,
9 but not be limited to, the following:

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

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

16 (3) The proposed terms and conditions for the design-build
17 contract;

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

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

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

25 (7) Affirmative action, disadvantaged business or set-aside goals
26 or requirements for the design-build contract, ¹**["as determined"]** in
27 accordance with the requirements of all rules, regulations,
28 standards, or policies adopted¹ by the contracting unit;

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

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

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

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

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

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

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

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

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

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

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

31

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

39 b. ¹[A contracting unit must accept the proposal which it
40 considers most advantageous to the contracting unit after a thorough
41 review and scoring of both parts of a design-bid proposal] The
42 technical review committee shall score the technical proposals
43 using the criteria and methodology set forth in the request for
44 proposals in accordance with paragraph (2) of subsection a. of
45 section 6 of P.L. , c. (C.) (pending before the legislature as
46 this bill)]¹.

47 c. ¹The contracting unit shall make public the sealed price bid
48 for each proposal submitted to the contracting unit by a design-

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

10 ¹[d.] e.¹ The contracting unit shall have the right to reject any
11 and all proposals, except for the purpose of evading the provisions
12 and policies of this chapter. The contracting unit shall solicit new
13 proposals using the same evaluation factors, budget constraints, or
14 qualifications.

15 ¹[e.] f.¹ Proposals may be withdrawn for any reason at any
16 time prior to acceptance.

17 ¹[f.] g.¹ When a design-builder receives notification from a
18 public body that the proposal, which it has submitted, has not been
19 accepted, the design-builder may, within 30 days, request from the
20 public body a written explanation of the selection process. The
21 design-builder shall submit this request in writing.

22

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

27

28 10. The Division of Property Management and Construction in
29 the Department of the Treasury or the Department of
30 Transportation, where applicable, shall adopt regulations pursuant
31 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
32 1 et seq.), to effectuate the provisions of this act.

33

34 11. This act shall take effect immediately.