

SENATE SUBSTITUTE FOR
SENATE, No. 2874

STATE OF NEW JERSEY
219th LEGISLATURE

ADOPTED JANUARY 11, 2021

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)

Co-Sponsored by:

Senator Pou

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

Substitute as adopted by the Senate.



1 AN ACT establishing procedures for awarding design-build
2 contracts and supplementing various parts of the statutory law.

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 sections 2 through 9 of P.L. , c. ()
11 (pending before the Legislature as this bill):

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

18 “Contracting unit” means a government entity that enters into
19 contracts pursuant to P.L.2007, c.137 (C.52:18A-235 et seq.); or
20 chapters 32, 33, or 34 of Title 52 of the Revised Statutes.

21 “Delivery system” means the procedure used to develop and
22 construct a project.

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

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

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

44 “Design professional” means the entity, whether natural person,
45 partnership, joint stock company, corporation, trust, professional
46 corporation, business association, or other legal business entity or
47 successor that provides licensed and prequalified architectural,

1 engineering, or surveying services in accordance with R.S.45:3-
2 1 et seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be
3 responsible for planning, designing and observing the construction
4 of the 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 "Proposal" means an offer to enter into a design-build contract.

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

15

16 3. a. If a contracting unit determines in its discretion that the
17 design-build approach meets their needs better than the traditional
18 design-bid-build approach established under New Jersey public
19 procurement statutes for the project or projects under consideration,
20 it shall be the public policy of this State to permit that contracting
21 unit to enter into design-build contracts as defined in section 2 of
22 P.L. , c. (C.) (pending before the Legislature as this bill),
23 provided the following conditions are met:

24 (1) The contracting unit shall, prior to issuing solicitations,
25 publish procedures consistent with regulations promulgated by the
26 contracting unit, where applicable for the solicitation and award of
27 design-build contracts, and shall adhere to sections 2 through 9 of
28 P.L. , c. (C.) (pending before the Legislature as this bill)
29 and those procedures; and

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

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

40 c. Except where the contracting unit is the Department of
41 Transportation, all design-build construction projects shall be
42 encouraged to adhere to the Leadership in Energy and
43 Environmental Design Green Building Rating System as adopted by
44 the United States Green Building Council, the Green Globes
45 Program adopted by the Green Building Initiative, or a comparable
46 nationally recognized, accepted, and appropriate sustainable
47 development system.

1 d. Notwithstanding the provisions of sections 2 through 9 of
2 P.L. , c. (C.) (pending before the Legislature as this bill) to
3 the contrary, an independent State transportation authority which
4 already has an established prequalification, project rating, or
5 proposal process for design-build contracts as of the effective date
6 of P.L. , c. (C.) (pending before the Legislature as this bill)
7 may continue to award design-build contracts pursuant to that
8 process.

9
10 4. a. The contracting unit shall adopt the following procedures
11 for awarding design-build contracts:

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

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

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

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

1 review committee shall not have a personal or financial interest in
2 any of the design-builders submitting proposals.

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

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

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

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

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

37 g. The contracting unit shall separately evaluate the
38 submissions described above, and award the contract in accordance
39 with section 8 of P.L. , c. (C.) (pending before the
40 Legislature as this bill).

41
42 5. a. Each request for proposals shall contain evaluation
43 factors prepared by a design professional or designated employee as
44 defined in section 2 of P.L. , c. (C.) (pending before the
45 Legislature as this bill). The design professional or designated
46 employee that develops the evaluation factors shall be disqualified
47 from submitting a proposal to enter into the design-build contract,

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

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

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

17

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

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

22 (2) The procedures to be followed for submitting proposals, the
23 criteria for evaluation of proposals and their relative weight, and the
24 procedures for making awards, including a reference to the
25 requirements of sections 2 through 9 of P.L. , c. (C.)
26 (pending before the Legislature as this bill) and the regulations of
27 the contracting unit;

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

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

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

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

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

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

42 (9) Requirements for contractors and the design professional to
43 have performance bonds, payment bonds, and insurance, and to
44 meet all the qualifications of the Division of Property Management

1 and Construction in the Department of the Treasury or the
2 Department of Transportation where applicable; and

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

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

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

16

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

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

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

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

34 e. All proposals shall be received and opened at a previously
35 announced time, where a synopsis of each shall be publicly read and
36 recorded consistent with the provisions of subsection f. of this
37 section.

38 f. Unless and until a proposal is accepted, the drawings,
39 specifications and other information in the proposal shall remain the
40 property of the person making the proposal. The contracting unit
41 shall make reasonable efforts to maintain the secrecy and
42 confidentiality of all proposals, and all information contained in the
43 proposals, and shall not disclose the proposals or the information
44 contained therein to the design-builders' competitors or the public.
45 Once a proposal is accepted, the disclosure of the proposal and the

1 information in the proposal, and the ownership of the drawings,
2 specifications, and information therein, shall be determined in
3 accordance with existing law and the terms of the design-build
4 contract.

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

14 b. The technical review committee shall score the technical
15 proposals using the criteria and methodology set forth in the request
16 for proposals in accordance with paragraph (2) of subsection a. of
17 section 6 of P.L. , c. (C.) (pending before the legislature as
18 this bill) and make an award recommendation to the head of the
19 contracting unit. The head of the contracting unit shall make the
20 design-build contract award decision, consistent with the award
21 recommendation.

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

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

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

43 f. Proposals may be withdrawn for any reason at any time prior
44 to acceptance.

45 g. When a design-builder receives notification from a public
46 body that the proposal, which it has submitted, has not been
47 accepted, the design-builder may, within 30 days, request to review

1 the design-build proposals submitted, the technical review
2 committee evaluation scores from the selection process, and the
3 final recommendation of award document. The design-builder shall
4 submit this request in writing.

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

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

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

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

29 "Delivery system" means the procedure used to develop and
30 construct a project.

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

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

43 "Design-builder" means the entity, whether natural person,
44 partnership, joint stock company, corporation, trust, professional
45 corporation, business association, or other legal business entity or
46 successor, that proposes to design and construct any public project,
47 who is registered pursuant to the provisions of P.L.1999, c.238

1 (C.34:11-56.48 et seq.), and classified by the New Jersey Division
2 of Property Management and Construction or the New Jersey
3 Department of Transportation, where applicable, to perform work
4 on a design-build project.

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

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

20 "Proposal" means an offer to enter into a design-build contract.

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

23

24 11. a. If a contracting unit determines in its discretion that the
25 design-build approach meets their needs better than the traditional
26 design-bid-build approach established under New Jersey public
27 procurement statutes for the project or projects under consideration,
28 it shall be the public policy of this State to permit that contracting
29 unit to enter into design-build contracts as defined in section 10 of
30 P.L. , c. (C.) (pending before the Legislature as this bill),
31 provided the following conditions are met:

32 (1) The contracting unit shall, prior to issuing solicitations,
33 publish procedures consistent with regulations promulgated by the
34 Secretary of Higher Education, where applicable for the solicitation
35 and award of design-build contracts, and shall adhere to sections 10
36 through 17 of P.L. , c. (C.) (pending before the Legislature
37 as this bill) and those procedures; and

38 (2) The contracting unit shall, for each public project or projects
39 under sections 10 through 17 of P.L. , c. (C.) (pending
40 before the Legislature as this bill), make a determination based on
41 the timeliness of the project or projects that it is in the best interest
42 of the public to enter into a design-build contract to complete the
43 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
46 of Labor pursuant to the provisions of the "New Jersey Prevailing
47 Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.).

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

7
8 12. a. The contracting unit shall adopt the following procedures
9 for awarding design-build contracts:

10 (1) The contracting unit shall either appoint a licensed and
11 prequalified design professional, or designate an employee of the
12 contracting unit licensed to provide architectural, engineering, or
13 surveying services, 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 or designated employee, performance criteria
18 and a scope of work statement that defines the project and provides
19 prospective design-builders with sufficient information regarding
20 the contracting unit's requirements. The statement shall include:
21 evaluation factor criteria and preliminary design documents, general
22 budget parameters, and general schedule or delivery requirements to
23 enable the design-builders to submit proposals which meet the
24 contracting unit's needs. When the design-build selection procedure
25 is used and the contracting unit contracts for development of the
26 scope of work statement, the design-builder shall contract for
27 architectural or engineering services as defined by and in
28 accordance with R.S.45:3-1 et seq., P.L.1938, c.342 (C.45:8-27 et
29 seq.), and all other applicable 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 of qualification from design-builders. The
34 contracting unit shall solicit proposals of qualification in
35 accordance with the requirements of the applicable public
36 procurement laws of the State of New Jersey.

37 (4) The contracting unit shall establish a technical review
38 committee, which shall consist of a representative of the contracting
39 unit, the contracting unit's project manager, and the contracting
40 unit's authorized design professional. The contracting unit's
41 attorney may advise the technical review committee. The technical
42 review committee shall have the responsibility to evaluate bids
43 based on rating and scoring proposals, and shall evaluate design-
44 builders based on their qualifications. A member of the technical
45 review committee shall not have a personal or financial interest in
46 any of the design-builders submitting proposals.

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

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

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

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

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

35 g. The contracting unit shall separately evaluate the
36 submissions described above, and award the contract in accordance
37 with section 16 of P.L. , c. (C.) (pending before the
38 Legislature as this bill).

39

40 13. a. Each request for proposals shall contain evaluation
41 factors prepared by a design professional or designated employee as
42 defined in section 10 of P.L. , c. (C.) (pending before the
43 Legislature as this bill). The design professional or designated
44 employee that develops the evaluation factors shall be disqualified
45 from submitting a proposal to enter into the design-build contract,
46 and the design-builder shall not be permitted to delegate services

1 under the design-build contract to the design professional or
2 designated employee that developed the evaluation factors.

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

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

16

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

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

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

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

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

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

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

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

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

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

46 (10) A statement that the prospective design-builder is in
47 compliance with all applicable laws, including the "New Jersey

1 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
2 "The Public Works Contractor Registration Act," P.L.1999, c.238
3 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
4 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).

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

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

13

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

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

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

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

31 e. All proposals shall be received and opened at a previously
32 announced time, where a synopsis of each shall be publicly read and
33 recorded consistent with the provisions of subsection f. of this
34 section.

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

- 1 16. a. Once received, proposals shall be submitted to the design
2 professional or designated employee retained by the contracting
3 unit. No proposal shall be considered until certification is issued by
4 the design professional or designated employee retained by the
5 contracting unit that the proposal is consistent with the evaluation
6 factors. No proposal for a design-build contract may be accepted
7 unless the contracting unit determines that there was adequate
8 competition for such contract.
- 9 b. The technical review committee shall score the technical
10 proposals using the criteria and methodology set forth in the request
11 for proposals in accordance with paragraph (2) of subsection a. of
12 section 14 of P.L. , c. (C.) (pending before the legislature
13 as this bill) and make an award recommendation to the head of the
14 contracting unit. The head of the contracting unit shall make the
15 design-build contract award decision, consistent with the award
16 recommendation.
- 17 c. The contracting unit shall evaluate the received technical
18 proposals and price bid against the published factors and weighting
19 to arrive at a composite score. The contracting unit shall make
20 public the design-builder to be awarded the contract for the project.
21 After the award decision is made, the contracting unit shall make
22 public the sealed price bid for each proposal submitted to the
23 contracting unit by a design-builder.
- 24 d. Acceptance of a proposal shall be made by written notice to
25 the design-builder which submitted the accepted proposal. At the
26 same time notice of acceptance is delivered, the contracting unit
27 shall also inform, in writing, the other design-builders that their
28 proposals were not accepted.
- 29 e. The contracting unit shall have the right to reject any and all
30 proposals, except for the purpose of evading the provisions and
31 policies of sections 10 through 17 of P.L. , c. () (pending
32 before the Legislature as this bill). The contracting unit shall solicit
33 new proposals using the same evaluation factors, budget
34 constraints, or qualifications, unless there has been a material
35 change in circumstances affecting the needs of the contracting unit,
36 including but not limited to an environmental issue, natural disaster,
37 state of emergency, or unforeseen fiscal constraint.
- 38 f. Proposals may be withdrawn for any reason at any time prior
39 to acceptance.
- 40 g. When a design-builder receives notification from a public
41 body that the proposal, which it has submitted, has not been
42 accepted, the design-builder may, within 30 days, request to review
43 the design-build proposals submitted, the technical review
44 committee evaluation scores from the selection process, and the
45 final recommendation of award document. The design-builder shall
46 submit this request in writing.

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

13
14 18. As used in sections 18 through 25 of P.L. , c. ()
15 (pending before the Legislature as this bill):

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

22 "Contracting unit" means a government entity that enters into
23 contracts pursuant to the "County College Contracts Law,"
24 P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

25 "Delivery system" means the procedure used to develop and
26 construct a project.

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

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

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

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

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

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

17 “Stipend” means the fee paid to a design-builder by the
18 contracting unit to encourage competition.

19

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

28 (1) The contracting unit shall, prior to issuing solicitations,
29 publish procedures consistent with regulations promulgated by the
30 Secretary of Higher Education, where applicable for the solicitation
31 and award of design-build contracts, and shall adhere to sections 18
32 through 25 of P.L. , c. (C.) (pending before the Legislature
33 as this bill) and those procedures; and

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

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

44 c. All design-build construction projects shall be encouraged to
45 adhere to the Leadership in Energy and Environmental Design
46 Green Building Rating System as adopted by the United States
47 Green Building Council, the Green Globes Program adopted by the

1 Green Building Initiative, or a comparable nationally recognized,
2 accepted, and appropriate sustainable development system.

3

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

6 (1) The contracting unit shall either appoint a licensed and
7 prequalified design professional, or designate an employee of the
8 contracting unit licensed to provide architectural, engineering, or
9 surveying services, to provide technical advice, construction review
10 services, and professional expertise on behalf of the contracting
11 unit;

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

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

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

43 b. The factors used to evaluate proposals of qualification shall
44 be stated in the solicitation and shall include, but not be limited to:
45 specialized experience and technical competence, training
46 certification of professional and field workforce, principal location
47 of the company, capability to perform, safety modification rating,

1 past performance of the individual members of the design-builder's
2 team in their respective capacities, including the architect-engineer
3 and construction members of the team, and other appropriate
4 technical and qualification factors as determined by the Secretary of
5 Higher Education, where applicable. 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 six.

12 d. The contracting unit may 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. 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 24 of P.L. , c. (C.) (pending before the
33 Legislature as this bill).

34
35 21. a. Each request for proposals shall contain evaluation factors
36 prepared by a design professional or designated employee as
37 defined in section 18 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.

10

11 22. 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 18 through 25 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 and the design professional to
36 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.

7
8 23. 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 a synopsis of each shall be publicly read and
27 recorded consistent with the provisions of subsection f. of this
28 section.

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.

41
42 24. 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 22 of P.L. , c. (C.) (pending before the legislature
7 as this bill) and make an award recommendation to the head of the
8 contracting unit. The head of the contracting unit shall make the
9 design-build contract award decision, consistent with the award
10 recommendation.

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

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

23 e. The contracting unit shall have the right to reject any and all
24 proposals, except for the purpose of evading the provisions and
25 policies of sections 18 through 25 of P.L. , c. () (pending
26 before the Legislature as this bill). The contracting unit shall solicit
27 new proposals using the same evaluation factors, budget
28 constraints, or qualifications, unless there has been a material
29 change in circumstances affecting the needs of the contracting unit,
30 including but not limited to an environmental issue, natural disaster,
31 state of emergency, or unforeseen fiscal constraint.

32 f. Proposals may be withdrawn for any reason at any time prior
33 to acceptance.

34 g. When a design-builder receives notification from a public
35 body that the proposal, which it has submitted, has not been
36 accepted, the design-builder may, within 30 days, request to review
37 the design-build proposals submitted, the technical review
38 committee evaluation scores from the selection process, and the
39 final recommendation of award document. The design-builder shall
40 submit this request in writing.

41
42 25. Notwithstanding the provisions of the "Administrative
43 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
44 contrary, the Secretary of Higher Education shall adopt,
45 immediately upon filing with the Office of Administrative Law,
46 regulations that the Secretary of Higher Education deems necessary
47 to implement the provisions of sections 18 through 25 of P.L. ,

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

7
8 26. As used in sections 26 through 33 of P.L. , c. ()
9 (pending before the Legislature as this bill):

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

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

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 licensed and prequalified design professional or
23 designated employee develops the project design in its entirety; the
24 contracting unit then solicits bids and awards the contract to the
25 lowest responsible bidder that demonstrates the ability to complete
26 the project specified in the 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 licensed and prequalified architectural,
46 engineering, or surveying services in accordance with R.S.45:3-
47 1 et seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be

1 responsible for planning, designing and observing the construction
2 of the project or projects.

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

10 "Proposal" means an offer to enter into a design-build contract.

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

13

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

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

24 (2) The contracting unit shall, prior to issuing solicitations,
25 publish procedures consistent with regulations promulgated by the
26 Department of Community Affairs, where applicable for the
27 solicitation and award of design-build contracts, and shall adhere to
28 sections 26 through 33 of P.L. , c. (C.) (pending before the
29 Legislature as this bill) and those procedures; and

30 (3) The contracting unit shall, for each public project or projects
31 under sections 26 through 33 of P.L. , c. (C.) (pending
32 before the Legislature as this bill), make a determination based on
33 the timeliness of the project or projects that it is in the best interest
34 of the public to enter into a design-build contract to complete the
35 public project or projects.

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

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

1 d. Any design-build contract awarded pursuant to sections 26
2 through 33 of P.L. , c. () (pending before the Legislature as
3 this bill) may be reviewed by the Office of the State Comptroller.
4

5 28. a. The contracting unit shall adopt the following procedures
6 for awarding design-build contracts:

7 (1) The contracting unit shall either appoint a licensed and
8 prequalified design professional, or designate an employee of the
9 contracting unit licensed to provide architectural, engineering, or
10 surveying services, to provide technical advice, construction review
11 services, and professional expertise on behalf of the contracting
12 unit;

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

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

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

44 b. The factors used to evaluate proposals of qualification shall
45 be stated in the solicitation and shall include, but not be limited to:
46 specialized experience and technical competence, training
47 certification of professional and field workforce, principal location

1 of the company, capability to perform, safety modification rating,
2 past performance of the individual members of the design-builder's
3 team in their respective capacities, including the architect-engineer
4 and construction members of the team, and other appropriate
5 technical and qualification factors as determined by the Department
6 of Community Affairs, where applicable. Each solicitation for
7 proposals of qualification shall establish the relative importance
8 assigned to the evaluation factors and sub-factors to be considered.

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

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

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

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

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

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

45 b. The design professional or designated employee that
46 develops the evaluation factors shall be either an employee of the
47 contracting unit or shall be engaged in compliance with applicable

1 New Jersey public procurement laws, and to the extent allowed by
2 law may delegate the development of specific aspects of the design
3 criteria to other consultants.

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

11

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 e. All proposals shall be received and opened at a previously
28 announced time, where a synopsis of each shall be publicly read and
29 recorded consistent with the provisions of subsection f. of this
30 section.

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

43
44 32. a. Once received, proposals shall be submitted to the design
45 professional or designated employee retained by the contracting
46 unit. No proposal shall be considered until certification is issued by

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

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

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

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

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

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

37 g. When a design-builder receives notification from a public
38 body that the proposal, which it has submitted, has not been
39 accepted, the design-builder may, within 30 days, request to review
40 the design-build proposals submitted, the technical review
41 committee evaluation scores from the selection process, and the
42 final recommendation of award document. The design-builder shall
43 submit this request in writing.

44

45 33. 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.).

11

12 34. 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 licensed and prequalified design professional or
27 designated employee develops the project design in its entirety; the
28 contracting unit then solicits bids and awards the contract to the
29 lowest responsible bidder that demonstrates the ability to complete
30 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.

17

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

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

28 (2) The contracting unit shall, prior to issuing solicitations,
29 publish procedures consistent with regulations promulgated by the
30 Department of Community Affairs, in consultation with the
31 Department of Education, where applicable for the solicitation and
32 award of design-build contracts, and shall adhere to sections 34
33 through 41 of P.L. , c. (C.) (pending before the Legislature
34 as this bill) and those procedures; and

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

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

45 c. All design-build construction projects shall be encouraged to
46 adhere to the Leadership in Energy and Environmental Design
47 Green Building Rating System as adopted by the United States

1 Green Building Council, the Green Globes Program adopted by the
2 Green Building Initiative, or a comparable nationally recognized,
3 accepted, and appropriate sustainable development system.

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

7
8 36. a. The contracting unit shall adopt the following procedures
9 for awarding design-build contracts:

10 (1) The contracting unit shall either appoint a licensed and
11 prequalified design professional, or designate an employee of the
12 contracting unit licensed to provide architectural, engineering, or
13 surveying services, 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 or designated employee, performance criteria
18 and a scope of work statement that defines the project and provides
19 prospective design-builders with sufficient information regarding
20 the contracting unit's requirements. The statement shall include:
21 evaluation factor criteria and preliminary design documents, general
22 budget parameters, and general schedule or delivery requirements to
23 enable the design-builders to submit proposals which meet the
24 contracting unit's needs. When the design-build selection procedure
25 is used and the contracting unit contracts for development of the
26 scope of work statement, the design-builder shall contract for
27 architectural or engineering services as defined by and in
28 accordance with R.S.45:3-1 et seq., P.L.1938, c.342 (C.45:8-
29 27 et seq.), and all other applicable 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 of qualification from design-builders. The
34 contracting unit shall solicit proposals of qualification in
35 accordance with the requirements of the applicable public
36 procurement laws of the State of New Jersey.

37 (4) The contracting unit shall establish a technical review
38 committee, which shall consist of a representative of the contracting
39 unit, the contracting unit's project manager, and the contracting
40 unit's authorized design professional. The contracting unit's
41 attorney may advise the technical review committee. The technical
42 review committee shall have the responsibility to evaluate bids
43 based on rating and scoring proposals, and shall evaluate design-
44 builders based on their qualifications. A member of the technical
45 review committee shall not have a personal or financial interest in
46 any of the design-builders submitting proposals.

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

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

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

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

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

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

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

1 under the design-build contract to the design professional or
2 designated employee that developed the evaluation factors.

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

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

16

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

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

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

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

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

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

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

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

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

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

46 (10) A statement that the prospective design-builder is in
47 compliance with all applicable laws, including the "New Jersey

1 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
2 "The Public Works Contractor Registration Act," P.L.1999, c.238
3 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
4 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).

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

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

13

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

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

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

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

31 e. All proposals shall be received and opened at a previously
32 announced time, where a synopsis of each shall be publicly read and
33 recorded consistent with the provisions of subsection f. of this
34 section.

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

- 1 40. a. Once received, proposals shall be submitted to the design
2 professional or designated employee retained by the contracting
3 unit. No proposal shall be considered until certification is issued by
4 the design professional or designated employee retained by the
5 contracting unit that the proposal is consistent with the evaluation
6 factors. No proposal for a design-build contract may be accepted
7 unless the contracting unit determines that there was adequate
8 competition for such contract.
- 9 b. The technical review committee shall score the technical
10 proposals using the criteria and methodology set forth in the request
11 for proposals in accordance with paragraph (2) of subsection a. of
12 section 38 of P.L. , c. (C.) (pending before the legislature
13 as this bill) and make an award recommendation to the head of the
14 contracting unit. The head of the contracting unit shall make the
15 design-build contract award decision, consistent with the award
16 recommendation.
- 17 c. The contracting unit shall evaluate the received technical
18 proposals and price bid against the published factors and weighting
19 to arrive at a composite score. The contracting unit shall make
20 public the design-builder to be awarded the contract for the project.
21 After the award decision is made, the contracting unit shall make
22 public the sealed price bid for each proposal submitted to the
23 contracting unit by a design-builder.
- 24 d. Acceptance of a proposal shall be made by written notice to
25 the design-builder which submitted the accepted proposal. At the
26 same time notice of acceptance is delivered, the contracting unit
27 shall also inform, in writing, the other design-builders that their
28 proposals were not accepted.
- 29 e. The contracting unit shall have the right to reject any and all
30 proposals, except for the purpose of evading the provisions and
31 policies of sections 34 through 41 of P.L. , c. () (pending
32 before the Legislature as this bill). The contracting unit shall solicit
33 new proposals using the same evaluation factors, budget
34 constraints, or qualifications, unless there has been a material
35 change in circumstances affecting the needs of the contracting unit,
36 including but not limited to an environmental issue, natural disaster,
37 state of emergency, or unforeseen fiscal constraint.
- 38 f. Proposals may be withdrawn for any reason at any time
39 prior to acceptance.
- 40 g. When a design-builder receives notification from a public
41 body that the proposal, which it has submitted, has not been
42 accepted, the design-builder may, within 30 days, request to review
43 the design-build proposals submitted, the technical review
44 committee evaluation scores from the selection process, and the
45 final recommendation of award document. The design-builder shall
46 submit this request in writing.

1 41. Notwithstanding the provisions of the "Administrative
2 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
3 contrary, the Department of Community Affairs, in consultation
4 with the Department of Education, shall adopt, immediately upon
5 filing with the Office of Administrative Law, regulations that the
6 Department of Community Affairs, in consultation with the
7 Department of Education, deems necessary to implement the
8 provisions of sections 34 through 41 of P.L. , c. (C.)
9 (pending before the Legislature as this bill), which regulations shall
10 be effective for a period not to exceed 180 days from the date of the
11 filing. The Department of Community Affairs, in consultation with
12 the Department of Education, shall thereafter amend, adopt, or
13 readopt the regulations pursuant to the "Administrative Procedures
14 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).
15

16 42. All proceedings, records, contracts, and other public records
17 relating to procurement transactions authorized under
18 P.L. , c. (C.) (pending before the Legislature as this bill)
19 shall be accessible to the public pursuant to P.L.1963, c.73
20 (C.47:1A-1 et seq.), except as otherwise may be provided under
21 P.L. , c. (C.) (pending before the Legislature as this bill).
22

23 43. This act shall take effect immediately.
24
25

26 STATEMENT 27

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

31 In order to enter into a design-build contract, a contracting unit
32 first has to determine in its discretion that the design-build approach
33 meets their needs better than the traditional design-bid-build
34 approach. When proceeding with a design-build contract, the
35 contracting unit is required to get guidance from a registered design
36 professional, develop performance criteria and a scope of work
37 statement, establish evaluation factors for proposals, solicit
38 proposals from design-builders, and utilize a technical review
39 committee. On the basis of the proposal, the technical review
40 committee is to select the most highly qualified design-builders and
41 request those design-builders to submit a second proposal and
42 sealed bid, which is then evaluated by the technical review
43 committee. The contracting unit separately evaluates the
44 submissions and awards the contract in accordance with the bill.

45 The bill outlines all requirements for solicitations for design-
46 build contracts, the requirements for design-build teams and the

1 submission of proposals, and the procedures for awarding of a
2 contract.

3 All design-build construction projects entered into under the bill
4 are required to comply with the “New Jersey Prevailing Wage Act”
5 and, except with respect to the Department of Transportation, are
6 encouraged to adhere to the Leadership in Energy and
7 Environmental Design Green Building Rating System.

8 The bill requires that certain State contracting units adopt rules
9 and regulations to govern the award of design-build contracts by
10 those contracting units. The bill requires the Office of the Secretary
11 of Higher Education to adopt rules and regulations to govern the
12 award of design-build contracts by State colleges and county
13 colleges. The bill requires the Department of Community Affairs to
14 adopt rules and regulations to govern the award of design-build
15 contracts by certain local contracting units. The bill further requires
16 the Department of Community Affairs, in consultation with
17 Department of Education, to adopt rules and regulations to govern
18 the award of design-build contracts by school districts.

19 The bill provides that all proceedings, records, contracts, and
20 other public records relating to procurement transactions authorized
21 under the bill be accessible to the public pursuant to P.L.1963, c.73
22 (C.47:1A-1 et seq.), except as otherwise may be provided under
23 the bill.