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FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: No

RH/CL

Title 52.
Subtitle 5.
Chapter 35B.(New)
Design-Build Contracts
§§1-9, 42 - C.52:35B-1 to 52:35B-10
§§10-17 - C.18A:64-76.5 to 18A:64-76.12
§§18-25 – C.18A:64A-25.24a to
18A:64A-25.24h
Title 40A.
Chapter 11.
Part T.(New)
Design-Build Contracts
§§26-33 - C.40A:11-53 to 40A:11-60
Title 18A.
Article 17.(New)
Design-Build Contracts
§§34-41 -
C.18A:18A-61 to 18A:18A-68

P.L. 2021, CHAPTER 71, *approved April 30, 2021*
Assembly, No. 1285 (*Fourth Reprint*)

1 AN ACT establishing procedures for awarding design-build
2 contracts and supplementing ³**[Title]**³ ¹**[40A** of the New
3 Jersey]¹ ³**[52 of the Revised Statutes]** various parts of the
4 statutory law³.

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

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

11
12 2. As used in ³**[this act]** sections 2 through 9 of P.L. _____,
13 c. () (pending before the Legislature as this bill)³:

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

20 ¹“Contracting unit” means ³**[a local contracting unit or a State**
21 contracting unit] a government entity that enters into contracts
22 pursuant to P.L.2007, c.137 (C.52:18A-235 et seq.); or chapters 32,
23 33, or 34 of Title 52 of the Revised Statutes³ .¹

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

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATR committee amendments adopted August 24, 2020.

²Assembly floor amendments adopted October 29, 2020.

³Assembly AAP committee amendments adopted November 12, 2020.

⁴Assembly floor amendments adopted January 11, 2021.

1 “Delivery system” means the procedure used to develop and
2 construct a project.

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

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

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

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

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

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

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

45 ³**[**“State contracting unit” means a government entity that enters
46 into contracts pursuant to the “State College Contracts Law,”
47 P.L.1986, c.43 (C.18A:64-52 et seq.); P.L.2007, c.137 (C.52:18A-

1 235 et seq.); and chapters 32, 33, and 34 of Title 52 of the Revised
 2 Statutes.¹】³

3 ”Stipend” means the fee paid to a design-builder by the
 4 contracting unit to encourage competition.²

5
 6 3. a. If a contracting unit ⁴**【can demonstrate why】** determines
 7 in its discretion that⁴ the design-build approach meets their needs
 8 better than the traditional design-bid-build approach established
 9 under New Jersey public procurement statutes for the project or
 10 projects under consideration, it shall be the public policy of this
 11 State to permit that contracting unit to enter into design-build
 12 contracts as defined in ³section 2 of³ P.L. , c. (C.) (pending
 13 before the Legislature as this bill), provided the following
 14 conditions are met:

15 (1) The contracting unit shall, prior to issuing solicitations,
 16 publish procedures consistent with regulations promulgated by the
 17 ⁴**【Division of Property Management and Construction in the**
 18 **Department of the Treasury or the Department of Transportation】**
 19 contracting unit⁴, where applicable for the solicitation and award of
 20 design-build contracts, and shall adhere to ³sections 2 through 9 of³
 21 P.L. , c. (C.) (pending before the Legislature as this bill)
 22 and those procedures; and

23 (2) The contracting unit shall, for each public project or projects
 24 under ³**【this act】** sections 2 through 9 of P.L. , c. (C.)
 25 (pending before the Legislature as this bill)³ , make a determination
 26 based on the timeliness of the project or projects that it is in the best
 27 interest of the public to enter into a design-build contract to
 28 complete the public project or projects.

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

33 c. ⁴**【All】** Except where the contracting unit is the Department
 34 of Transportation, all⁴ design-build construction projects shall be
 35 encouraged to adhere to the Leadership in Energy and
 36 Environmental Design Green Building Rating System as adopted by
 37 the United States Green Building Council, the Green Globes
 38 Program adopted by the Green Building Initiative, or a comparable
 39 nationally recognized, accepted, and appropriate sustainable
 40 development system.

41 ⁴d. Notwithstanding the provisions of sections 2 through 9 of
 42 P.L. , c. (C.) (pending before the Legislature as this bill) to
 43 the contrary, an independent State transportation authority which
 44 already has an established prequalification, project rating, or
 45 proposal process for design-build contracts as of the effective date
 46 of P.L. , c. (C.) (pending before the Legislature as this bill)

1 may continue to award design-build contracts pursuant to that
2 process.⁴

3

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

6 (1) The contracting unit shall ³either³ appoint a ⁴[registered]
7 licensed and prequalified⁴ design professional ³, or designate an
8 employee of the contracting unit licensed to provide architectural,
9 engineering, or surveying services.³ to provide technical advice,
10 construction review services, and professional expertise on behalf
11 of the contracting unit;

12 (2) The contracting unit shall develop, with the assistance of the
13 design professional ³or designated employee³, 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 ³of qualification³ from design-builders. The
30 contracting unit shall solicit proposals ³of qualification³ 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, ⁴and⁴ the contracting
36 unit's authorized design professional ⁴[, and the] . The⁴
37 contracting unit's attorney ⁴may advise the technical review
38 committee⁴. The technical review committee shall have the
39 responsibility to evaluate bids based on rating and scoring
40 proposals, and shall evaluate design-builders based on their
41 qualifications. ⁴A member of the technical review committee shall
42 not have a personal or financial interest in any of the design-
43 builders submitting proposals.⁴

44 b. The factors used to evaluate proposals ³of qualification³
45 shall be stated in the solicitation and shall include, but not be
46 limited to: specialized experience and technical competence,

1 training certification of professional and field workforce, principal
 2 location of the company, capability to perform, safety modification
 3 rating, past performance of the individual members of the design-
 4 builder's team in their respective capacities, including the architect-
 5 engineer and construction members of the team, and other
 6 appropriate technical and qualification factors as determined by the
 7 ⁴~~Division of Property Management and Construction in the~~
 8 ~~Department of the Treasury or the Department of Transportation]~~
 9 contracting unit⁴, where applicable ³~~[,]~~ ³ Each solicitation for
 10 proposals ³~~must~~ of qualification shall³ establish the relative
 11 importance assigned to the evaluation factors and sub-factors to be
 12 considered.

13 c. A solicitation for proposals ³of qualification³ shall state the
 14 maximum number of design-builders that are to be selected to
 15 submit ³second³ proposals. The maximum number specified in the
 16 solicitation shall be at least two and shall not exceed ⁴~~five~~ six⁴.

17 d. ²The contracting unit ⁴~~shall~~ may⁴ offer a stipend, based
 18 upon the project size and type, which shall not exceed three percent
 19 of the project's estimated cost, to any design-builder providing
 20 design, construction information, or materials presented in response
 21 to a request for second proposals. This stipend is intended to
 22 encourage the submission of proposals and to increase competition.

23 e.² On the basis of the proposal ³of qualification³, 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 ³~~must~~ shall³ establish the
 28 relative importance assigned to the evaluation factors to be
 29 considered.

30 ²~~e.] f.~~² The technical review committee shall evaluate each
 31 second 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 ²~~f.] g.~~² The contracting unit shall separately evaluate the
 37 submissions described above, and award the contract in accordance
 38 with section 8 of P.L. , c. (C.) (pending before the
 39 Legislature as this bill).

40
 41 5. a. Each request for proposals shall contain evaluation
 42 factors prepared by a design professional ³or designated employee³
 43 as defined in section 2 of P.L. , c. (C.) (pending before the
 44 Legislature as this bill). The design professional ³or designated
 45 employee³ that develops the evaluation factors shall be disqualified
 46 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 ³or
3 designated employee³ that developed the evaluation factors.
- 4 b. The design professional ³or designated employee³ 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 ³or designated employee³, shall determine the scope
12 and level of detail required for the evaluation factors. The
13 evaluation factors should be detailed enough to permit qualified
14 persons to submit proposals in accordance with the solicitation,
15 given the nature of the public project and the level of design to be
16 provided in 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 ³**[admitting]** submitting³
23 proposals, the criteria for evaluation of proposals and their relative
24 weight, and the procedures for making awards, including a
25 reference to the requirements of ³**[this act]** sections 2 through 9 of
26 P.L. ., c. (C.) (pending before the Legislature as this bill)³
27 and the regulations of 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
38 goals or requirements for the design-build contract, ²**[as**
39 determined] in accordance with the requirements of all rules,
40 regulations, standards, or policies adopted² by the contracting unit;
- 41 (8) The required qualifications of the design-builder;
- 42 (9) Requirements for contractors ⁴and the design professional⁴
43 to have performance bonds, payment bonds, and insurance, and to
44 meet all the qualifications of the Division of Property Management
45 and Construction in the Department of the Treasury or the
46 Department of Transportation where applicable; and

1 (10) A statement that ¹【all employees have graduated from a
2 registered apprenticeship program, which is registered with, and
3 approved by, the United States Department of Labor, and
4 which provides each trainee with combined classroom and on-the-
5 job training under the direct and close supervision of a highly
6 skilled worker in an occupation recognized as an apprenticeable
7 trade, and meets the program performance standards of enrollment
8 and graduation under 29 C.F.R. 29.6 (2011). Every contract subject
9 to the provisions of this section shall provide that every worker
10 employed in the performance of that contract is an apprentice
11 participating in a registered apprenticeship program or has
12 completed a registered apprenticeship, unless the contractor or
13 subcontractor certifies that every worker shall be paid not less than
14 the journeyworker's rate established for the apprenticeable trade
15 performed pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.)】 the
16 prospective design-builder is in compliance with all applicable
17 laws, including the "New Jersey Prevailing Wage Act," P.L.1963,
18 c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor
19 Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the
20 "Construction Industry Independent Contractor Act," P.L.2007,
21 c.114 (C.34:20-1 et seq.).¹

22 b. The solicitation may include any other information which the
23 contracting unit in its discretion chooses to supply, including
24 without limitation, surveys, soils reports, drawings or models of
25 existing structures, environmental studies, photographs or
26 references to public records.

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

29
30 7. a. Each design-build team shall include a licensed ³or
31 prequalified³ design professional independent from the contracting
32 unit's licensed architect or engineer. The licensed ³or prequalified³
33 design professional ³【must】 shall³ be named in any proposal
34 submitted to the contracting unit.

35 b. Proposals shall be sealed and shall not be opened until
36 expiration of the time established for making proposals as set forth
37 in the solicitation.

38 c. Proposals shall identify each person to whom the design-
39 builder proposes to delegate obligations under the design-build
40 contract. Persons so identified ³【will】 shall³ not be replaced
41 without the approval of the contracting unit.

42 d. Proposals shall establish the cost of the design-build contract
43 which ³【will】 shall³ not be exceeded if the proposal is accepted
44 without change. Afterward, the maximum cost in the proposal may
45 be converted to fixed prices by negotiated agreement between the
46 contracting unit and the design-builder.

1 e. All proposals shall be received and opened at a previously
2 announced time, where ⁴~~they~~ a synopsis of each⁴ shall be
3 publicly read and recorded ⁴consistent with the provisions of
4 subsection f. of this section⁴.

5 f. Unless and until a proposal is accepted, the drawings,
6 specifications and other information in the proposal shall remain the
7 property of the person making the proposal. The contracting unit
8 shall make reasonable efforts to maintain the secrecy and
9 confidentiality of all proposals, and all information contained in the
10 proposals, and shall not disclose the proposals or the information
11 contained therein to the design-builders' competitors or the public.
12 Once a proposal is accepted, the disclosure of the proposal and the
13 information in the proposal, and the ownership of the drawings,
14 specifications, and information therein, shall be determined in
15 accordance with existing law and the terms of the design-build
16 contract.

17

18 8. a. Once received, proposals shall be submitted to the design
19 professional ³or designated employee³ retained by the contracting
20 unit. No proposal shall be considered until certification is issued by
21 the design professional ³or designated employee³ retained by the
22 contracting unit that the proposal is consistent with the evaluation
23 factors. No proposal for a design-build contract may be accepted
24 unless the contracting unit determines that there was adequate
25 competition for such contract.

26 b. ²~~A contracting unit must accept the proposal which it~~
27 ~~considers most advantageous to the contracting unit after a thorough~~
28 ~~review and scoring of both parts of a design-bid proposal~~ The
29 technical review committee shall score the technical proposals
30 using the criteria and methodology set forth in the request for
31 proposals in accordance with paragraph (2) of subsection a. of
32 section 6 of P.L. , c. (C.) (pending before the legislature as
33 this bill)² ³and make an award recommendation to the head of the
34 contracting unit. The head of the contracting unit shall make the
35 design-build contract award decision, consistent with the award
36 recommendation³.

37 c. ⁴²~~The contracting unit shall make public the sealed price~~
38 ~~bid for each proposal submitted to the contracting unit by a design-~~
39 ~~builder.~~ ⁴ The contracting unit shall evaluate the received technical
40 proposals and price bid against the published factors and weighting
41 to arrive at a composite score. The contracting unit shall make
42 public the design-builder to be awarded the contract for the project.
43 ⁴After the award decision is made, the contracting unit shall make
44 public the sealed price bid for each proposal submitted to the
45 contracting unit by a design-builder.⁴

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

6 ²[d.] e.² The contracting unit shall have the right to reject any
7 and all proposals, except for the purpose of evading the provisions
8 and policies of ³[this chapter] sections 2 through 9 of P.L. _____,
9 c. (_____) (pending before the Legislature as this bill)³. The
10 contracting unit shall solicit new proposals using the same
11 evaluation factors, budget constraints, or qualifications ⁴, unless
12 there has been a material change in circumstances affecting the
13 needs of the contracting unit, including but not limited to an
14 environmental issue, natural disaster, state of emergency, or
15 unforeseen fiscal constraint⁴.

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

18 ²[f.] g.² When a design-builder receives notification from a
19 public body that the proposal, which it has submitted, has not been
20 accepted, the design-builder may, within 30 days, request ⁴[from
21 the public body a written explanation of] to review the design-build
22 proposals submitted, the technical review committee evaluation
23 scores from⁴ the selection process ⁴, and the final recommendation
24 of award document⁴. The design-builder shall submit this request
25 in writing.

26
27 ³[9. The State of New Jersey shall, on an annual basis, compile
28 and make public all proceedings, records, contracts and other public
29 records relating to procurement transactions authorized under
30 P.L. _____, c. (C. _____) (pending before the Legislature as this
31 bill).]³

32
33 ³9. Notwithstanding the provisions of the "Administrative
34 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
35 contrary, a contracting unit shall adopt, immediately upon filing
36 with the Office of Administrative Law, regulations that the
37 contracting unit deems necessary to implement the provisions of
38 sections 2 through 9 of P.L. _____, c. (C. _____) (pending before the
39 Legislature as this bill), which regulations shall be effective for a
40 period not to exceed 180 days from the date of the filing. The
41 contracting unit shall thereafter amend, adopt, or readopt the
42 regulations pursuant to the "Administrative Procedures Act,"
43 P.L.1968, c.410 (C.52:14B-1 et seq.).³

44
45 ³[10. The Division of Property Management and Construction
46 in the Department of the Treasury or the Department of

1 Transportation, where applicable, shall adopt regulations pursuant
2 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
3 1 et seq.), to effectuate the provisions of this act. **】³**

4

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

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

13 “Contracting unit” means a government entity that enters into
14 contracts pursuant to the “State College Contracts Law,” P.L.1986,
15 c.43 (C.18A:64-52 et seq.).

16 “Delivery system” means the procedure used to develop and
17 construct a project.

18 “Design-bid-build” means the delivery system used in public
19 projects in which a ⁴**【registered】** licensed and prequalified⁴ design
20 professional or designated employee develops the project design in
21 its entirety; the contracting unit then solicits bids and awards the
22 contract to the lowest responsible bidder that demonstrates the
23 ability to complete the project specified in the design.

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

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

39 “Design professional” 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 provides licensed and prequalified architectural,
43 engineering, or surveying services in accordance with R.S.45:3-1 et
44 seq., and P.L.1938, c.342 (C.45:8-27 et seq.), and that shall be
45 responsible for planning, designing and observing the construction
46 of the project or projects.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 team in their respective capacities, including the architect-engineer
2 and construction members of the team, and other appropriate
3 technical and qualification factors as determined by the ⁴~~Division~~
4 of Property Management and Construction in the Department of the
5 Treasury or the Department of Transportation] Secretary of Higher
6 Education⁴ , where applicable ⁴~~[.]~~ .⁴ 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 ⁴~~five~~ six⁴.

13 d. The contracting unit ⁴~~shall~~ may⁴ offer a stipend, based
14 upon the project size and type, which shall not exceed three percent
15 of the project's estimated cost, to any design-builder providing
16 design, construction information, or materials presented in response
17 to a request for second proposals. This stipend is intended to
18 encourage 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 16 of P.L. , c. (C.) (pending before the
34 Legislature as this bill).³

36 ³13. a. Each request for proposals shall contain evaluation
37 factors prepared by a design professional or designated employee as
38 defined in section 10 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

1 contracting unit or shall be engaged in compliance with applicable
2 New Jersey public procurement laws, and to the extent allowed by
3 law may delegate the development of specific aspects of the design
4 criteria to other consultants.

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

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

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

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

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

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

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

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

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

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

37 (9) Requirements for contractors⁴ and the design professional⁴
38 to have performance bonds, payment bonds, and insurance, and to
39 meet all the qualifications of the Division of Property Management
40 and Construction in the Department of the Treasury or the
41 Department of Transportation where applicable; and

42 (10) A statement that the prospective design-builder is in
43 compliance with all applicable laws, including the "New Jersey
44 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
45 "The Public Works Contractor Registration Act," P.L.1999, c.238
46 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
47 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.³

9
10 ³15. 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 ⁴[they] a synopsis of each⁴ shall be
29 publicly read and recorded ⁴consistent with the provisions of
30 subsection f. of this section⁴.

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.³

43
44 ³16. 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
47 the design professional or designated employee retained by the

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

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

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

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

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

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

38 g. When a design-builder receives notification from a public
39 body that the proposal, which it has submitted, has not been
40 accepted, the design-builder may, within 30 days, request ⁴[from
41 the public body a written explanation of] to review the design-build
42 proposals submitted, the technical review committee evaluation
43 scores from⁴ the selection process ⁴, and the final recommendation
44 of award document⁴. The design-builder shall submit this request
45 in writing.³

1 ³17. 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-1 et
12 seq.).³

13
14 ³18. 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 ⁴**[registered]** licensed and prequalified⁴ design
29 professional or designated employee develops the project design in
30 its entirety; the contracting unit then solicits bids and awards the
31 contract to the lowest responsible bidder that demonstrates the
32 ability to complete 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.³

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

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

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

43 b. All workers employed in a design-build construction project
44 shall be paid the prevailing wage determined by the Commissioner
45 of Labor pursuant to the provisions of the "New Jersey Prevailing
46 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.³

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

10 (1) The contracting unit shall either appoint a ⁴[registered]
11 licensed and prequalified⁴ design professional, or designate an
12 employee of the contracting unit licensed to provide architectural,
13 engineering, or surveying services, to provide technical advice,
14 construction review services, and professional expertise on behalf
15 of the contracting 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, ⁴and⁴ the contracting
40 unit's authorized design professional ⁴[, and the] . The⁴
41 contracting unit's attorney ⁴may advise the technical review
42 committee⁴. The technical review committee shall have the
43 responsibility to evaluate bids based on rating and scoring
44 proposals, and shall evaluate design-builders based on their
45 qualifications. ⁴A member of the technical review committee shall

- 1 not have a personal or financial interest in any of the design-
2 builders submitting proposals.⁴
- 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 ⁴【Division
12 of Property Management and Construction in the Department of the
13 Treasury or the Department of Transportation】 Secretary of Higher
14 Education⁴ , where applicable ⁴【.】 .⁴ Each solicitation for
15 proposals of qualification shall establish the relative importance
16 assigned to the evaluation factors and sub-factors to be considered.
- 17 c. A solicitation for proposals of qualification shall state the
18 maximum number of design-builders that are to be selected to
19 submit second proposals. The maximum number specified in the
20 solicitation shall be at least two and shall not exceed ⁴【five】 six⁴.
- 21 d. The contracting unit ⁴【shall】 may⁴ offer a stipend, based
22 upon the project size and type, which shall not exceed three percent
23 of the project's estimated cost, to any design-builder providing
24 design, construction information, or materials presented in response
25 to a request for second proposals. This stipend is intended to
26 encourage the submission of proposals and to increase competition.
- 27 e. On the basis of the proposal of qualification, the technical
28 review committee shall select the most highly qualified number of
29 design-builders specified in the solicitation and request the selected
30 design-builders to submit a second proposal and sealed bid. Each
31 solicitation for second proposals shall establish the relative
32 importance assigned to the evaluation factors to be considered.
- 33 f. The technical review committee shall evaluate each second
34 proposal based on the technical submission for the proposal,
35 including design concepts or proposed solutions to requirements
36 addressed within the scope of work, and the evaluation factors,
37 including a minimum of 50 percent consideration based on the cost
38 of the bid.
- 39 g. The contracting unit shall separately evaluate the
40 submissions described above, and award the contract in accordance
41 with section 24 of P.L. , c. (C.) (pending before the
42 Legislature as this bill).³
- 43
- 44 ³21. a. Each request for proposals shall contain evaluation
45 factors prepared by a design professional or designated employee as
46 defined in section 18 of P.L. , c. (C.) (pending before the
47 Legislature as this bill). The design professional or designated

1 employee that develops the evaluation factors shall be disqualified
2 from submitting a proposal to enter into the design-build contract,
3 and the design-builder shall not be permitted to delegate services
4 under the design-build contract to the design professional or
5 designated employee that developed the evaluation factors.

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

12 c. The contracting unit, in consultation with the design
13 professional or designated employee, shall determine the scope and
14 level of detail required for the evaluation factors. The evaluation
15 factors should be detailed enough to permit qualified persons to
16 submit proposals in accordance with the solicitation, given the
17 nature of the public project and the level of design to be provided in
18 the proposal.³

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

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

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

30 (3) The proposed terms and conditions for the design-build
31 contract;

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

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

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

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

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

44 (9) Requirements for contractors ⁴and the design professional⁴
45 to have performance bonds, payment bonds, and insurance, and to
46 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
10 the 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
15 manner in which proposals generally are solicited for public
16 projects.³

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

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

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

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

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

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

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

4
5 ³24. a. Once received, proposals shall be submitted to the design
6 professional or designated employee retained by the contracting
7 unit. No proposal shall be considered until certification is issued by
8 the design professional or designated employee retained by the
9 contracting unit that the proposal is consistent with the evaluation
10 factors. No proposal for a design-build contract may be accepted
11 unless the contracting unit determines that there was adequate
12 competition for such contract.

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

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

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

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

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

46 g. When a design-builder receives notification from a public
47 body that the proposal, which it has submitted, has not been

1 accepted, the design-builder may, within 30 days, request ⁴[from
2 the public body a written explanation of] to review the design-build
3 proposals submitted, the technical review committee evaluation
4 scores from⁴ the selection process ⁴, and the final recommendation
5 of award document⁴. The design-builder shall submit this request
6 in writing.³
7

8 ³25. Notwithstanding the provisions of the "Administrative
9 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
10 contrary, the Secretary of Higher Education shall adopt,
11 immediately upon filing with the Office of Administrative Law,
12 regulations that the Secretary of Higher Education deems necessary
13 to implement the provisions of sections 18 through 25 of P.L. _____,
14 c. (C. _____) (pending before the Legislature as this bill), which
15 regulations shall be effective for a period not to exceed 180 days
16 from the date of the filing. The Secretary of Higher Education shall
17 thereafter amend, adopt, or readopt the regulations pursuant to the
18 "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-1 et
19 seq.).³
20

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

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

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

32 "Delivery system" means the procedure used to develop and
33 construct a project.

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

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

46 "Design-builder" 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 proposes to design and construct any public project,
 3 who is registered pursuant to the provisions of P.L.1999, c.238
 4 (C.34:11-56.48 et seq.), and classified by the New Jersey Division
 5 of Property Management and Construction or the New Jersey
 6 Department of Transportation, where applicable, to perform work
 7 on a design-build project.

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

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

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

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

26
 27 ³27. a. If a contracting unit ⁴**[can demonstrate why]** determines
 28 in its discretion that ⁴ the design-build approach meets their needs
 29 better than the traditional design-bid-build approach established
 30 under New Jersey public procurement statutes for the project or
 31 projects under consideration, it shall be the public policy of this
 32 State to permit that contracting unit to enter into design-build
 33 contracts as defined in section 26 of P.L. , c. (C.) (pending
 34 before the Legislature as this bill), provided the following
 35 conditions are met:

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

38 (2) ⁴The contracting unit shall, prior to issuing solicitations,
 39 publish procedures consistent with regulations promulgated by the
 40 ⁴**[Division of Property Management and Construction in the**
 41 Department of the Treasury or the]⁴ Department of
 42 ⁴**[Transportation] Community Affairs**⁴, where applicable for the
 43 solicitation and award of design-build contracts, and shall adhere to
 44 sections 26 through 33 of P.L. , c. (C.) (pending before the
 45 Legislature as this bill) and those procedures; and

46 ⁴**[(2)] (3)**⁴The contracting unit shall, for each public project or
 47 projects under sections 26 through 33 of P.L. , c. (C.)

1 (pending before the Legislature as this bill), make a determination
2 based on the timeliness of the project or projects that it is in the best
3 interest of the public to enter into a design-build contract to
4 complete the public project or projects.

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

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

15 ⁴d. Any design-build contract awarded pursuant to sections 26
16 through 33 of P.L. , c. () (pending before the Legislature as
17 this bill) may be reviewed by the Office of the State Comptroller.⁴
18

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

21 (1) The contracting unit shall either appoint a ⁴[registered]
22 licensed and prequalified⁴ design professional, or designate an
23 employee of the contracting unit licensed to provide architectural,
24 engineering, or surveying services, to provide technical advice,
25 construction review services, and professional expertise on behalf
26 of the contracting unit;

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

41 (3) Once the contracting unit has developed a scope of work
42 statement which adequately defines the contracting unit's
43 requirements for the project or projects, the contracting unit shall
44 solicit proposals of qualification from design-builders. The
45 contracting unit shall solicit proposals of qualification in
46 accordance with the requirements of the applicable public
47 procurement laws of the State of New Jersey.

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

12 b. The factors used to evaluate proposals of qualification shall
13 be stated in the solicitation and shall include, but not be limited to:
14 specialized experience and technical competence, training
15 certification of professional and field workforce, principal location
16 of the company, capability to perform, safety modification rating,
17 past performance of the individual members of the design-builder's
18 team in their respective capacities, including the architect-engineer
19 and construction members of the team, and other appropriate
20 technical and qualification factors as determined by the ⁴[Division
21 of Property Management and Construction in the Department of the
22 Treasury or the]⁴ Department of ⁴[Transportation] Community
23 Affairs⁴, where applicable ⁴[.] ⁴ Each solicitation for proposals
24 of qualification shall establish the relative importance assigned to
25 the evaluation factors and sub-factors to be considered.

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

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

36 e. On the basis of the proposal of qualification, the technical
37 review committee shall select the most highly qualified number of
38 design-builders specified in the solicitation and request the selected
39 design-builders to submit a second proposal and sealed bid. Each
40 solicitation for second proposals shall establish the relative
41 importance assigned to the evaluation factors to be considered.

42 f. The technical review committee shall evaluate each second
43 proposal based on the technical submission for the proposal,
44 including design concepts or proposed solutions to requirements
45 addressed within the scope of work, and the evaluation factors,

1 including a minimum of 50 percent consideration based on the cost
2 of the bid.

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

7
8 ³29. a. Each request for proposals shall contain evaluation
9 factors prepared by a design professional or designated employee as
10 defined in section 26 of P.L. , c. (C.) (pending before the
11 Legislature as this bill). The design professional or designated
12 employee that develops the evaluation factors shall be disqualified
13 from submitting a proposal to enter into the design-build contract,
14 and the design-builder shall not be permitted to delegate services
15 under the design-build contract to the design professional or
16 designated employee that developed the evaluation factors.

17 b. The design professional or designated employee that
18 develops the evaluation factors shall be either an employee of the
19 contracting unit or shall be engaged in compliance with applicable
20 New Jersey public procurement laws, and to the extent allowed by
21 law may delegate the development of specific aspects of the design
22 criteria to other consultants.

23 c. The contracting unit, in consultation with the design
24 professional or designated employee, shall determine the scope and
25 level of detail required for the evaluation factors. The evaluation
26 factors should be detailed enough to permit qualified persons to
27 submit proposals in accordance with the solicitation, given the
28 nature of the public project and the level of design to be provided in
29 the proposal.³

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

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

35 (2) The procedures to be followed for submitting proposals, the
36 criteria for evaluation of proposals and their relative weight, and the
37 procedures for making awards, including a reference to the
38 requirements of sections 26 through 33 of P.L. , c. (C.)
39 (pending before the Legislature as this bill) and the regulations of
40 the contracting unit;

41 (3) The proposed terms and conditions for the design-build
42 contract;

43 (4) A description of the drawings, specifications, or other
44 submittals to be submitted with the proposal, with guidance as to
45 the form and level of completeness of the drawings, specifications,
46 or submittals that shall be acceptable;

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

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

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

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

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

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

20 b. The solicitation may include any other information which
21 the contracting unit in its discretion chooses to supply, including
22 without limitation, surveys, soils reports, drawings or models of
23 existing structures, environmental studies, photographs or
24 references to public records.

25 c. Notice of solicitations shall be advertised in the same
26 manner in which proposals generally are solicited for public
27 projects.³

28
29 ³31. a. Each design-build team shall include a licensed or
30 prequalified design professional independent from the contracting
31 unit's licensed architect or engineer. The licensed or prequalified
32 design professional shall be named in any proposal submitted to the
33 contracting unit.

34 b. Proposals shall be sealed and shall not be opened until
35 expiration of the time established for making proposals as set forth
36 in the solicitation.

37 c. Proposals shall identify each person to whom the design-
38 builder proposes to delegate obligations under the design-build
39 contract. Persons so identified shall not be replaced without the
40 approval of the contracting unit.

41 d. Proposals shall establish the cost of the design-build contract
42 which shall not be exceeded if the proposal is accepted without
43 change. Afterward, the maximum cost in the proposal may be
44 converted to fixed prices by negotiated agreement between the
45 contracting unit and the design-builder.

46 e. All proposals shall be received and opened at a previously
47 announced time, where ⁴[they] a synopsis of each⁴ shall be

1 publicly read and recorded ⁴consistent with the provisions of
2 subsection f. of this section⁴.

3 f. Unless and until a proposal is accepted, the drawings,
4 specifications and other information in the proposal shall remain the
5 property of the person making the proposal. The contracting unit
6 shall make reasonable efforts to maintain the secrecy and
7 confidentiality of all proposals, and all information contained in the
8 proposals, and shall not disclose the proposals or the information
9 contained therein to the design-builders' competitors or the public.
10 Once a proposal is accepted, the disclosure of the proposal and the
11 information in the proposal, and the ownership of the drawings,
12 specifications, and information therein, shall be determined in
13 accordance with existing law and the terms of the design-build
14 contract.³

15

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

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

32 c. ⁴**[The contracting unit shall make public the sealed price bid**
33 for each proposal submitted to the contracting unit by a design-
34 builder.]⁴ The contracting unit shall evaluate the received technical
35 proposals and price bid against the published factors and weighting
36 to arrive at a composite score. The contracting unit shall make
37 public the design-builder to be awarded the contract for the project.
38 ⁴After the award decision is made, the contracting unit shall make
39 public the sealed price bid for each proposal submitted to the
40 contracting unit by a design-builder.⁴

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

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

10 f. Proposals may be withdrawn for any reason at any time prior
11 to acceptance.

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

20
21 ³33. Notwithstanding the provisions of the "Administrative
22 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
23 contrary, the Department of Community Affairs shall adopt,
24 immediately upon filing with the Office of Administrative Law,
25 regulations that the Department of Community Affairs deems
26 necessary to implement the provisions of sections 26 through 30 of
27 P.L. , c. (C.) (pending before the Legislature as this bill),
28 which regulations shall be effective for a period not to exceed 180
29 days from the date of the filing. The Department of Community
30 Affairs shall thereafter amend, adopt, or readopt the regulations
31 pursuant to the "Administrative Procedures Act," P.L.1968, c.410
32 (C.52:14B-1 et seq.).³

33
34 ³34. As used in sections 34 through 41 of P.L. , c. ()
35 (pending before the Legislature as this bill):

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

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

45 "Delivery system" means the procedure used to develop and
46 construct a project.

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

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

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

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

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

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

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

40
41 ³35. a. If a contracting unit ⁴[can demonstrate why] determines
42 in its discretion that⁴ the design-build approach meets their needs
43 better than the traditional design-bid-build approach established
44 under New Jersey public procurement statutes for the project or
45 projects under consideration, it shall be the public policy of this
46 State to permit that contracting unit to enter into design-build
47 contracts as defined in section 34 of P.L. , c. (C.) (pending

1 before the Legislature as this bill), provided the following
 2 conditions are met:

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

5 (2)⁴ The contracting unit shall, prior to issuing solicitations,
 6 publish procedures consistent with regulations promulgated by the
 7 ⁴[Division of Property Management and Construction in the
 8 Department of the Treasury or the]⁴ Department of
 9 ⁴[Transportation] Community Affairs, in consultation with the
 10 Department of Education⁴, where applicable for the solicitation and
 11 award of design-build contracts, and shall adhere to sections 34
 12 through 41 of P.L. , c. (C.) (pending before the Legislature
 13 as this bill) and those procedures; and

14 ⁴[(2)] (3)⁴ The contracting unit shall, for each public project or
 15 projects under sections 34 through 41 of P.L. , c. (C.)
 16 (pending before the Legislature as this bill), make a determination
 17 based on the timeliness of the project or projects that it is in the best
 18 interest of the public to enter into a design-build contract to
 19 complete the public project or projects.

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

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

30 ⁴d. Any design-build contract awarded pursuant to sections 34
 31 through 41 of P.L. , c. () (pending before the Legislature as
 32 this bill) may be reviewed by the Office of the State Comptroller.⁴
 33

34 ³36. a. The contracting unit shall adopt the following procedures
 35 for awarding design-build contracts:

36 (1) The contracting unit shall either appoint a ⁴[registered]
 37 licensed and prequalified⁴ design professional, or designate an
 38 employee of the contracting unit licensed to provide architectural,
 39 engineering, or surveying services, to provide technical advice,
 40 construction review services, and professional expertise on behalf
 41 of the contracting unit;

42 (2) The contracting unit shall develop, with the assistance of the
 43 design professional or designated employee, performance criteria
 44 and a scope of work statement that defines the project and provides
 45 prospective design-builders with sufficient information regarding
 46 the contracting unit's requirements. The statement shall include:

1 evaluation factor criteria and preliminary design documents, general
2 budget parameters, and general schedule or delivery requirements to
3 enable the design-builders to submit proposals which meet the
4 contracting unit's needs. When the design-build selection procedure
5 is used and the contracting unit contracts for development of the
6 scope of work statement, the design-builder shall contract for
7 architectural or engineering services as defined by and in
8 accordance with R.S.45:3-1 et seq., P.L.1938, c.342 (C.45:8-27 et
9 seq.), and all other applicable licensing statutes;

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

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

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

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

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

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

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

19 g. The contracting unit shall separately evaluate the
20 submissions described above, and award the contract in accordance
21 with section 40 of P.L. , c. (C.) (pending before the
22 Legislature as this bill).³

23
24 ³37. a. Each request for proposals shall contain evaluation
25 factors prepared by a design professional or designated employee as
26 defined in section 34 of P.L. , c. (C.) (pending before the
27 Legislature as this bill). The design professional or designated
28 employee that develops the evaluation factors shall be disqualified
29 from submitting a proposal to enter into the design-build contract,
30 and the design-builder shall not be permitted to delegate services
31 under the design-build contract to the design professional or
32 designated employee that developed the evaluation factors.

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

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

- 1 ³38. a. Solicitations for each design-build contract shall include,
2 but not be limited to, the following:
- 3 (1) The identity of the contracting unit which shall award the
4 design-build contract;
- 5 (2) The procedures to be followed for submitting proposals, the
6 criteria for evaluation of proposals and their relative weight, and the
7 procedures for making awards, including a reference to the
8 requirements of sections 34 through 41 of P.L. , c. (C.)
9 (pending before the Legislature as this bill) and the regulations of
10 the contracting unit;
- 11 (3) The proposed terms and conditions for the design-build
12 contract;
- 13 (4) A description of the drawings, specifications, or other
14 submittals to be submitted with the proposal, with guidance as to
15 the form and level of completeness of the drawings, specifications,
16 or submittals that shall be acceptable;
- 17 (5) A schedule for planned commencement and completion of
18 the design-build contract;
- 19 (6) Budget limits for the design-build contract, if any;
- 20 (7) Affirmative action, disadvantaged business or set-aside goals
21 or requirements for the design-build contract, in accordance with
22 the requirements of all rules, regulations, standards, or policies
23 adopted by the contracting unit;
- 24 (8) The required qualifications of the design-builder;
- 25 (9) Requirements for contractors⁴ and the design professional⁴
26 to have performance bonds, payment bonds, and insurance, and to
27 meet all the qualifications of the Division of Property Management
28 and Construction in the Department of the Treasury or the
29 Department of Transportation where applicable; and
- 30 (10) A statement that the prospective design-builder is in
31 compliance with all applicable laws, including the "New Jersey
32 Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.),
33 "The Public Works Contractor Registration Act," P.L.1999, c.238
34 (C.34:11-56.48 et seq.), and the "Construction Industry Independent
35 Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).
- 36 b. The solicitation may include any other information which
37 the contracting unit in its discretion chooses to supply, including
38 without limitation, surveys, soils reports, drawings or models of
39 existing structures, environmental studies, photographs or
40 references to public records.
- 41 c. Notice of solicitations shall be advertised in the same
42 manner in which proposals generally are solicited for public
43 projects.³
- 44
- 45 ³39. a. Each design-build team shall include a licensed or
46 prequalified design professional or independent from the
47 contracting unit's licensed architect or engineer. The licensed or

1 prequalified design professional or designated employee shall be
2 named in any proposal submitted to the contracting unit.

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

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

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

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

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

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

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

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

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

15 e. The contracting unit shall have the right to reject any and all
16 proposals, except for the purpose of evading the provisions and
17 policies of sections 34 through 41 of P.L. , c. () (pending
18 before the Legislature as this bill). The contracting unit shall solicit
19 new proposals using the same evaluation factors, budget
20 constraints, or qualifications⁴, unless there has been a material
21 change in circumstances affecting the needs of the contracting unit,
22 including but not limited to an environmental issue, natural disaster,
23 state of emergency, or unforeseen fiscal constraint⁴.

24 f. Proposals may be withdrawn for any reason at any time
25 prior to acceptance.

26 g. When a design-builder receives notification from a public
27 body that the proposal, which it has submitted, has not been
28 accepted, the design-builder may, within 30 days, request⁴["from
29 the public body a written explanation of]" to review the design-build
30 proposals submitted, the technical review committee evaluation
31 scores from⁴ the selection process⁴, and the final recommendation
32 of award document⁴. The design-builder shall submit this request
33 in writing.³

34
35 ³41. Notwithstanding the provisions of the "Administrative
36 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the
37 contrary, the⁴Department of Community Affairs, in consultation
38 with the⁴ Department of Education^{4,4} shall adopt, immediately
39 upon filing with the Office of Administrative Law, regulations that
40 the⁴Department of Community Affairs, in consultation with the⁴
41 Department of Education^{4,4} deems necessary to implement the
42 provisions of sections 34 through 41 of P.L. , c. (C.)
43 (pending before the Legislature as this bill), which regulations shall
44 be effective for a period not to exceed 180 days from the date of the
45 filing. The⁴Department of Community Affairs, in consultation
46 with the⁴ Department of Education^{4,4} shall thereafter amend,

1 adopt, or readopt the regulations pursuant to the "Administrative
2 Procedures Act," P.L.1968, c.410 (C.52:14B-1 et seq.).³

3
4 ³42. ⁴["The State of New Jersey shall, on an annual basis,
5 compile and make public all] All⁴ proceedings, records, contracts
6 ⁴₂ and other public records relating to procurement transactions
7 authorized under P.L. , c. (C.) (pending before the
8 Legislature as this bill) ⁴shall be accessible to the public pursuant to
9 P.L.1963, c.73 (C.47:1A-1 et seq.), except as otherwise may be
10 provided under P.L. , c. (C.) (pending before the
11 Legislature as this bill)⁴ ³

12
13 ³[11.] ⁴3. ³ This act shall take effect immediately.

14
15
16
17
18

Establishes procedures for awarding of design-build contracts.

ASSEMBLY, No. 1285

STATE OF NEW JERSEY 219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblyman LOUIS D. GREENWALD

District 6 (Burlington and Camden)

Assemblyman NICHOLAS CHIARAVALLOTTI

District 31 (Hudson)

Assemblyman WILLIAM F. MOEN, JR.

District 5 (Camden and Gloucester)

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



(Sponsorship Updated As Of: 7/23/2020)

1 AN ACT establishing procedures for awarding design-build
2 contracts and supplementing Title 40A of the New Jersey
3 Statutes.

4

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

7

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

10

11 2. As used in this act:

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

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

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

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

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

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

8 “Proposal” means an offer to enter into a design-build contract.
9

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

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

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

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

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

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

43 (1) The contracting unit shall appoint a registered design
44 professional to provide technical advice, construction review
45 services, and professional expertise on behalf of the contracting
46 unit;

47 (2) The contracting unit shall develop, with the assistance of the
48 design professional, performance criteria and a scope of work

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

13 (3) Once the contracting unit has developed a scope of work
14 statement which adequately defines the contracting unit's
15 requirements for the project or projects, the contracting unit shall
16 solicit proposals from design-builders. The contracting unit shall
17 solicit proposals in accordance with the requirements of the
18 applicable public procurement laws of the State of New Jersey.

19 (4) The contracting unit shall establish a technical review
20 committee, which shall consist of a representative of the contracting
21 unit, the contracting unit's project manager, the contracting unit's
22 authorized design professional, and the contracting unit's attorney.
23 The technical review committee shall have the responsibility to
24 evaluate bids based on rating and scoring proposals, and shall
25 evaluate design-builders based on their qualifications.

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

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

43 d. On the basis of the proposal, the technical review committee
44 shall select the most highly qualified number of design-builders
45 specified in the solicitation and request the selected design-builders
46 to submit a second proposal and sealed bid. Each solicitation for
47 second proposals must establish the relative importance assigned to
48 the evaluation factors to be considered.

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

7 f. The contracting unit shall separately evaluate the submissions
8 described above, and award the contract in accordance with section
9 8 of P.L. , c. (C.) (pending before the Legislature as this
10 bill).

11

12 5. a. Each request for proposals shall contain evaluation factors
13 prepared by a design professional as defined in section 2 of P.L. ,
14 c. (C.) (pending before the Legislature as this bill). The
15 design professional that develops the evaluation factors shall be
16 disqualified from submitting a proposal to enter into the design-
17 build contract, and the design-builder shall not be permitted to
18 delegate services under the design-build contract to the design
19 professional that developed the evaluation factors.

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

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

32

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

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

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

41 (3) The proposed terms and conditions for the design-build
42 contract;

43 (4) A description of the drawings, specifications, or other
44 submittals to be submitted with the proposal, with guidance as to
45 the form and level of completeness of the drawings, specifications,
46 or submittals that will be acceptable;

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

- 1 (6) Budget limits for the design-build contract, if any;
- 2 (7) Affirmative action, disadvantaged business or set-aside goals
3 or requirements for the design-build contract, as determined by the
4 contracting unit;
- 5 (8) The required qualifications of the design-builder;
- 6 (9) Requirements for contractors to have performance bonds,
7 payment bonds, and insurance, and to meet all the qualifications of
8 the Division of Property Management and Construction in the
9 Department of the Treasury or the Department of Transportation
10 where applicable; and
- 11 (10) A statement that all employees have graduated from a
12 registered apprenticeship program, which is registered with, and
13 approved by, the United States Department of Labor, and which
14 provides each trainee with combined classroom and on-the-job
15 training under the direct and close supervision of a highly skilled
16 worker in an occupation recognized as an apprenticeable trade, and
17 meets the program performance standards of enrollment and
18 graduation under 29 C.F.R. 29.6 (2011). Every contract subject to
19 the provisions of this section shall provide that every worker
20 employed in the performance of that contract is an apprentice
21 participating in a registered apprenticeship program or has
22 completed a registered apprenticeship, unless the contractor or
23 subcontractor certifies that every worker shall be paid not less than
24 the journeyworker's rate established for the apprenticeable trade
25 performed pursuant to P.L.1963, c.150 (C.34:11-56.25 et seq.).
- 26 b. The solicitation may include any other information which the
27 contracting unit in its discretion chooses to supply, including
28 without limitation, surveys, soils reports, drawings or models of
29 existing structures, environmental studies, photographs or
30 references to public records.
- 31 c. Notice of solicitations shall be advertised in the same manner
32 in which proposals generally are solicited for public projects.
- 33
- 34 7. a. Each design-build team shall include a licensed design
35 professional independent from the contracting unit's licensed
36 architect or engineer. The licensed design professional must be
37 named in any proposal submitted to the contracting unit.
- 38 b. Proposals shall be sealed and shall not be opened until
39 expiration of the time established for making proposals as set forth
40 in the solicitation.
- 41 c. Proposals shall identify each person to whom the design-
42 builder proposes to delegate obligations under the design-build
43 contract. Persons so identified will not be replaced without the
44 approval of the contracting unit.
- 45 d. Proposals shall establish the cost of the design-build contract
46 which will not be exceeded if the proposal is accepted without
47 change. Afterward, the maximum cost in the proposal may be

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

1 records relating to procurement transactions authorized under
2 P.L. , c. (C.) (pending before the Legislature as this bill).

3

4 10. The Division of Property Management and Construction in
5 the Department of the Treasury or the Department of
6 Transportation, where applicable, shall adopt regulations pursuant
7 to the "Administrative Procedures Act," P.L.1968, c.410 (C.52:14B-
8 1 et seq.), to effectuate the provisions of this act.

9

10 11. This act shall take effect immediately.

11

12

13

STATEMENT

14

15 This bill, known as the "Design-Build Construction Services
16 Procurement Act," sets forth the procedures for the awarding of
17 design-build contracts.

18 A design-build contract is a unique type of project delivery
19 system used in construction and renovation projects. Traditional
20 contracts are awarded using a design-bid-build system, where the
21 project contracting unit starts by hiring an architect. Once the
22 architect has finished the design phase, the project is put out for bid
23 to general contracting companies. The contractor with the lowest
24 bid is awarded the project, and is responsible for completing the job
25 according to the plans created by the architect.

26 With a design-build contract, the contracting unit awards the
27 entire project to a single company. It is typically awarded to a
28 contractor, though architects or engineers may be awarded a design-
29 build contract in some specialized cases. Once the contract is
30 signed, the contractor is responsible for all design and construction
31 work required to complete the project. This system allows the
32 contracting unit to deal with a single source throughout the duration
33 of the job, rather than coordinating between various parties, and is
34 intended to provide cost savings to the contracting unit.

35 When a design-build contract is awarded to a builder, he must
36 hire all architects and engineers required to complete design work.
37 The contracting unit is still given the right to approve or reject
38 design options, but is no longer responsible for coordinating or
39 managing the design team. Once the contracting unit approves the
40 design, the same contractor then oversees the construction process,
41 hiring subcontractors as needed.

ASSEMBLY TRANSPORTATION AND INDEPENDENT
AUTHORITIES COMMITTEE

STATEMENT TO
ASSEMBLY, No. 1285

with committee amendments

STATE OF NEW JERSEY

DATED: AUGUST 24, 2020

The Assembly Transportation and Independent Authorities Committee reports favorably and with committee amendments Assembly Bill No. 1285.

As amended and reported, this bill, known as the “Design-Build Construction Services Procurement Act,” sets forth the procedures for the awarding of design-build contracts for State and local contracting units.

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

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

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

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

This bill was pre-filed for introduction in the 2020-2021 session pending technical review. As amended and reported, the bill

includes the changes required by technical review, which has been performed.

COMMITTEE AMENDMENTS

The committee amended the bill to include definitions for the terms “contracting unit,” “local contracting unit,” and “State contracting unit.” The amendments also remove a provision that specifically references requirements for employee apprenticeship programs and replaces that provision with one that requires all prospective design-builders to comply with all applicable laws, including the New Jersey State Prevailing Wage Act, the Public Works Contractor Registration Act, and the Construction Industry Independent Contractor Act.

The amendments also change the title of the bill to reflect that the bill applies to both State and local contracting units by supplementing Title 52 of the Revised Statutes instead of Title 40A of the New Jersey Statutes.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 1285

with committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 12, 2020

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1285 (2R), with committee amendments.

As amended and reported, this bill, known as the “Design-Build Construction Services Procurement Act,” sets forth the procedures for the awarding of design-build contracts for State and local contracting units.

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

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

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

The bill requires that certain State contracting units adopt rules and regulations to govern the award of design-build contracts by those contracting units. The bill requires the Office of the Secretary of Higher Education to adopt rules and regulations to govern the award of design-build contracts by state colleges and county colleges. The bill requires the Department of Community Affairs to adopt rules and regulations to govern the award of design-build contracts by certain

local contracting units. The bill further requires the Department of Education to adopt rules and regulations to govern the award of design-build contracts by school districts.

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

COMMITTEE AMENDMENTS:

The committee amendments divide the bill so that certain State contracting units, state colleges, county colleges, certain local contracting units, and school districts may be subject to different rules and regulations in awarding of design-build contracts.

The amendments require that:

(1) certain State contracting units adopt rules and regulations to govern the award of design-build contracts by those contracting units;

(2) the Office of the Secretary of Higher Education adopt rules and regulations to govern the award of design-build contracts by state colleges and county colleges;

(3) the Department of Community Affairs adopt rules and regulations to govern the award of design-build contracts by certain local contracting units; and

(4) the Department of Education to adopt rules and regulations to govern the award of design-build contracts by school districts.

The amendments provide for the composition of design-build teams and allow individual contracting units to designate employees to provide architectural, engineering, or surveying services under the bill. The amendments also require the head of a contracting unit to make design-build contract award decisions, consistent with certain recommendations.

The amendments also clarify the proposals of qualification and second proposal provisions of the bill, and make additional technical changes.

FISCAL IMPACT:

The Office of Legislative Services projects the bill's provision requiring the State and local contracting units to pay stipends of up to three percent of a project's estimated cost to designer-builders in certain instances will result in indeterminate cost increases to the State and local governments.

STATEMENT TO
[First Reprint]
ASSEMBLY, No. 1285

with Assembly Floor Amendments
(Proposed by Assemblyman GREENWALD)

ADOPTED: OCTOBER 29, 2020

These Assembly floor amendments would require:

- a contracting unit to offer a stipend to any design-builder providing design, construction information, or materials presented in response to a request for second proposals in order to encourage the submission of proposals and to increase competition;
- that solicitations for each design-build contract include affirmative action, disadvantaged business; or set-aside goals or requirements for the design-build contract that are in accordance with the requirements of all rules, regulations, standards, or policies adopted by the contracting unit;
- the technical review committee to score the technical proposals using the criteria and methodology set forth in the request for proposals instead of just having the contracting unit accept the proposal which it considers most advantageous to the contracting unit after a thorough review and scoring of both parts of a design-bid proposal;
- the contracting unit to make public the sealed price bid for each proposal submitted to the contracting unit by a design-builder as well as the design-builder to be awarded the contract for the project; and
- the contracting unit to evaluate the received technical proposals and price bid against the published factors and weighting to arrive at a composite score.

The amendments make the bill identical to Senate Bill No. 2874(1R).

STATEMENT TO
[Third Reprint]
ASSEMBLY, No. 1285

with Assembly Floor Amendments
(Proposed by Assemblyman GREENWALD)

ADOPTED: JANUARY 11, 2021

These Assembly floor amendments would:

- revise the required qualifications for design professionals under the bill;
- provide that contracting units may enter into design-build contracts if it determines in its discretion that the design-build approach meets their needs better than the traditional design-bid-build approach;
- permit an independent State transportation authority that already has an established prequalification, project rating, or proposal process for design-build contracts in place as of the bill's effective date to continue to award design-build contracts pursuant to that process;
- remove the contracting unit's attorney from the technical review committee, but allow the attorney to advise the committee;
- prohibit a member of the technical review committee from having a personal or financial interest in any of the design-builders submitting proposals;
- increase the maximum number of design-builders specified in a solicitation that are to be selected to submit proposals to six;
- make it optional for a contracting unit to offer a stipend;
- require that solicitations for each design-build contract include requirements for the design professional to have performance bonds, payment bonds, and insurance, and to meet certain other qualifications if applicable;
- provide that all proposals be received and opened at a previously announced time, where a synopsis of each is publicly read and recorded consistent with the bill's confidentiality provisions;
- provide that the contracting unit make public the sealed price bid for each proposal submitted to the contracting unit by a design-builder after the award decision is made;
- provide that the contracting unit solicit new proposals using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the contracting unit, including but not limited to an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint;

- provide that when a design-builder receives notification from a public body that the proposal, which it has submitted, has not been accepted, the design-builder may, within 30 days, request to review the design-build proposals submitted, technical review committee evaluation scores from the selection process, and the final recommendation of award document;
- delete references to the Division of Property Management and Construction in the Department of the Treasury and the Department of Transportation, and replace with references to the appropriate rulemaking agencies;
- exclude the Department of Transportation from the requirement that design-build construction projects be encouraged to adhere to the Leadership in Energy and Environmental Design Green Building Rating System or a comparable sustainable development system;
- provide that, for local government contracting units, the technical review committee make an award recommendation to the governing body of the contracting unit, and that the governing body of the contracting unit make the design-build contract award decision, consistent with the award recommendation;
- require that a project or projects under consideration by a local government or public school contracting unit have a cost equal to or exceeding \$5 million in order to be contracted for through a design-build contract;
- permit the State Comptroller to review all design-build contracts awarded by local government or public school contracting units;
- have the Department of Community Affairs, in consultation with the Department of Education, adopt the regulations under the bill for public school design-build contracts; and
- eliminate the requirement that the State compile all proceedings, records, contracts, and other public records relating to procurement transactions authorized under the bill and provide that these materials be accessible to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), except as otherwise may be provided under the bill.

SENATE, No. 2874

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED SEPTEMBER 14, 2020

Sponsored by:

Senator TROY SINGLETON

District 7 (Burlington)

Senator JOSEPH P. CRYAN

District 20 (Union)

Senator STEVEN V. OROHO

District 24 (Morris, Sussex and Warren)

SYNOPSIS

Establishes procedures for awarding of design-build contracts.

CURRENT VERSION OF TEXT

As introduced.



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

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

3

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

6

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

9

10 2. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

18

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19

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

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

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

40

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

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

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

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

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

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE, No. 2874

with committee amendments

STATE OF NEW JERSEY

DATED: OCTOBER 8, 2020

The Senate Community and Urban Affairs Committee reports favorably and with committee amendments Senate Bill No. 2874.

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

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

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

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

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

COMMITTEE AMENDMENTS:

The committee amended the bill to require:

- a contracting unit to offer a stipend to any design-builder providing design, construction information, or materials

presented in response to a request for second proposals in order to encourage the submission of proposals and to increase competition;

- that solicitations for each design-build contract include affirmative action, disadvantaged business; or set-aside goals or requirements for the design-build contract that are in accordance with the requirements of all rules, regulations, standards, or policies adopted by the contracting unit;
- the technical review committee to score the technical proposals using the criteria and methodology set forth in the request for proposals instead of just having the contracting unit accept the proposal which it considers most advantageous to the contracting unit after a thorough review and scoring of both parts of a design-bid proposal;
- the contracting unit to make public the sealed price bid for each proposal submitted to the contracting unit by a design-builder as well as the design-builder to be awarded the contract for the project; and
- the contracting unit to evaluate the received technical proposals and price bid against the published factors and weighting to arrive at a composite score.

Governor Murphy Takes Action on Legislation

04/30/2021

TRENTON – Today, Governor Murphy signed the following bills into law:

S-3414/A-5378 (Sweeney, Greenstein/DeAngelo, Egan, Johnson) – Promotes workforce diversity in public works projects; revises “public works projects” definition to permit project labor agreements for more projects

A-1145/S-1739 (Freiman, Egan, Karabinchak/Oroho, Beach) – Establishes "Electronic Permit Processing Review System"

A-1285/SS for S-2874 (Greenwald, Chiaravalloti, Moen/Singleton, Cryan, Oroho) w/STATEMENT
- Establishes procedures for awarding of design-build contracts

[Copy of Statement](#)

A-3199/S-2315 (Murphy, Benson, Vainieri Huttel/Beach, Scutari) – Prohibits discrimination against living organ donors in relation to life, health, and long-term care insurance

A-5057/S-3190 (Danielsen, Speight, Taliaferro/Smith, Bateman) – Authorizes NJ Infrastructure Bank to finance aviation and marine infrastructure projects; makes various other changes to bank’s enabling act

**GOVERNOR'S STATEMENT UPON SIGNING
ASSEMBLY BILL NO. 1285
(Fourth Reprint)**

Today I am pleased to sign Assembly Bill No. 1285 (Fourth Reprint), which sets forth procedures for the awarding of design-build contracts for State and local contracting units. Design-build is a method of project delivery in which one entity -- the design-build team -- works under a single contract with the contracting unit to provide design and construction services. Once the contract is signed, a single contractor is responsible for all design and construction work required to complete the project. This system allows the contracting unit to deal with a single source throughout the duration of the job, rather than coordinating between various parties.

State contracting typically utilizes a design-bid-build approach, under which design and construction are split -- separate entities, separate contracts, and separate work. While current law does not expressly prohibit the use of design-build by State and local contracting units, the general statutory scheme for construction contracting discourages its use by calling for separate plans, specifications, and bids for each aspect of a construction project. Moreover, New Jersey bidding laws generally mandate that construction contracts above a specified amount be awarded to the lowest responsible bidder after public advertising for bids and bidding. Design-build projects are rarely, if ever, structured to award the project to the lowest bidder because cost is only one factor in the design-build approach, which places primary emphasis on design and quality.

Several State agencies currently utilize design-build through a special grant of statutory authority with a high degree of success. New Jersey Transit Corporation, the New Jersey Building Authority, when designing historic buildings and correctional facilities, State colleges pursuant to a public-private partnership, and the New Jersey Schools Development Authority ("SDA") all have the ability to benefit from design-build under current law.

For over 10 years, the SDA has utilized the design-build delivery methodology in connection with its school construction projects. It is clear that the SDA's experience with design-build informed many of the policy directions chosen in the bill. I commend the sponsors for using the SDA's successful design-build model in crafting this Legislation. While the bill's language, at times, could be read to deviate from the SDA's regulatory framework, extensive discussions with the bill's sponsors made clear that the intent of this bill is to build on the thriving model developed by the SDA and that the SDA's effective design-build procedures should be continued following the bill's enactment.

I am grateful to my legislative partners for advancing this bill to bring greater efficiency and effectiveness to the State's procurement processes. Design-build provides State and local contracting units the ability to have an open and transparent dialogue with their contractors and greater control of projects from their inception point through completion. Importantly, the use of design-build will allow contracting units to select the bidder whose bid will be most advantageous to the contracting unit based on price and other factors integral to the design-build process.

As with any novel idea, we understand that as contracting units implement the design-build process, further changes to the framework established in the bill may be warranted based on our collective experiences. This bill represents a critical first step in rethinking the traditional design-bid-build model used by contracting units to achieve greater efficiencies in completing construction and renovation projects. I look forward to continuing to work with my legislative partners to yield better project delivery through innovation and collaboration in the procurement process.

Date: April 30, 2021

/s/ Philip D. Murphy

Governor

Attest:

/s/ Parimal Garg

Chief Counsel to the Governor