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STATE OF NEW JERSEY
214th LEGISLATURE

ADOPTED MAY 23, 2011

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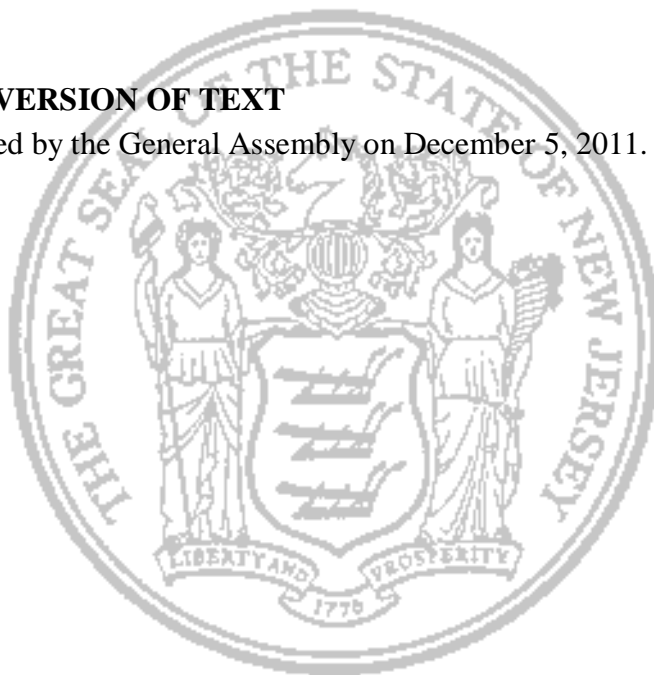
Assemblyman Giblin

SYNOPSIS

Establishes design-build delivery system for New Jersey Turnpike Authority projects.

CURRENT VERSION OF TEXT

As amended by the General Assembly on December 5, 2011.



(Sponsorship Updated As Of: 12/6/2011)

1 **AN ACT** concerning the procurement of certain goods and services
2 by the New Jersey Turnpike Authority, amending and
3 supplementing P.L.1948, c.454.
4

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

8 1. Section 4 of P.L.1948, c.454 (C.27:23-4) is amended to read
9 as follows:

10 4. As used in this act, the following words and terms shall have
11 the following meanings, unless the context shall indicate another or
12 different meaning or intent:

13 "Act" means P.L.1948, c.454 (C.27:23-1 et seq.), as amended
14 and supplemented.

15 "Authority" means the New Jersey Turnpike Authority, created
16 by section 3 of this act, or, if said authority shall be abolished, the
17 board, body or commission succeeding to the principal functions
18 thereof or to whom the powers given by this act to the authority
19 shall be given by law.

20 "Bonds" or "transportation revenue bonds" means any bonds,
21 refunding bonds, notes or other obligations issued by the authority
22 authorized under the provisions of this act or issued by or for the
23 Highway Authority.

24 "Commissioner" means the Commissioner of Transportation.

25 "Construction" or "construct" means the planning, designing,
26 construction, development, reconstruction, rehabilitation,
27 redevelopment, replacement, repair, extension, enlargement,
28 improvement, and betterment of highway and transportation
29 projects and includes the demolition, clearance and removal of
30 buildings or structures on land acquired, held, leased or used for
31 those projects, and shall also include, but need not be limited to, site
32 acquisition, site development, the services of design professionals,
33 such as engineers and architects, construction management, legal
34 services, financing costs, administrative costs, and all expenses
35 incurred in connection thereto, as well as the design, construction,
36 operation, and maintenance of an electronic toll collection
37 monitoring system.

38 "Cost" means all or any part of the expenses incurred in
39 connection with the acquisition, construction, operation,
40 management and maintenance of any real property, lands,
41 structures, real or personal property rights, rights-of-way,
42 franchises, easements, and interests acquired or used for a project;
43 any financing charges and reserves for the payment of principal,
44 premium and interest on bonds; the expenses of engineering,

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:

¹ Assembly floor amendments adopted December 5, 2011.

1 appraisal, architectural, accounting, financial, legal and other
2 consulting services; and other expenses as may be necessary,
3 desirable, convenient, or incident to the financing, acquisition,
4 construction, operation, improvement, management, repair, and
5 maintenance of a project.

6 "Credit Agreement" means loan agreement, lease agreement,
7 revolving credit agreement, agreement establishing a line of credit,
8 letter of credit, reimbursement to purchase bonds, purchase or sale
9 agreements, or commitments or other contracts or agreements
10 authorized and approved by the authority in connection with the
11 authorization, issuance, security, purchase, tender, redemption, or
12 payment of bonds.

13 "Department" means the Department of Transportation.

14 "Design-build delivery system" means a project delivery method
15 in which there is a single contract between the authority and a
16 design-build entity to furnish the architectural, engineering, and
17 related design services of a project in addition to the labor,
18 materials, supplies, equipment, and construction services for any
19 project.

20 "Design-build entity" means a proprietorship, partnership,
21 limited liability company, limited liability partnership, joint
22 venture, corporation, or any other legal entity that provide design
23 and construction services under a single contract.

24 "Feeder road" means any road or highway project that in the
25 determination of the authority is necessary, desirable or convenient
26 to create or facilitate access to a transportation project.

27 "Garden State Arts Center" means the Garden State Arts Center,
28 sometimes referred to as the PNC Bank Arts Center, a highway
29 project of the authority.

30 "Highway project" means the acquisition, operation,
31 improvement, management, repair, construction, including express
32 E-ZPass where determined by the authority, and maintenance of the
33 New Jersey Turnpike and of the Garden State Parkway, including
34 the demolition and removal of toll houses and toll barriers, and of
35 the Garden State Arts Center, as transferred to the authority
36 pursuant to P.L.2003, c.79 (C.27:23-41 et al.), and of any other
37 highway or feeder road at the locations and between the termini as
38 may hereafter be established by the authority or by law and
39 acquired or constructed under the provisions of this act by the
40 authority, and shall include but not be limited to all bridges, parking
41 facilities, public highways, feeder roads, tunnels, overpasses,
42 underpasses, interchanges, traffic circles, grade separations,
43 entrance and exit plazas, approaches, toll houses, service areas,
44 stations and facilities, communications facilities, administration,
45 storage and other buildings and facilities, and other structures
46 directly or indirectly related to a transportation project, intersecting
47 highways and bridges and feeder roads which the authority may

1 deem necessary, desirable, or convenient in its discretion for the
2 operation, maintenance or management, either directly or indirectly,
3 of a transportation project, and includes any planning, design or
4 other preparation work necessary for the execution of any highway
5 project, and adjoining park or recreational areas and facilities,
6 directly or indirectly related to the use of a transportation project as
7 the authority shall find to be necessary and desirable, and the costs
8 associated therewith.

9 "Land and improvements" means any area or lands, any interest,
10 right or title in land, including but not limited to, any reversionary
11 right, fee, license or leasehold interest and any real or personal
12 property, structure, facility, building or equipment.

13 "Owner" means all individuals, copartnerships, associations,
14 private or municipal corporations and all political subdivisions of
15 the State having any title or interest in any property, rights,
16 easements and interests authorized to be acquired by this act.

17 "Parking facility" means any area or place, garage, building, or
18 other improvement or structure for the parking or storage of motor
19 or other vehicles, including but not limited to all real property and
20 personal property, driveways, roads and other structures or areas
21 necessary, useful or convenient for access to a facility from a public
22 street, road or highway, or from any project; meters, mechanical
23 equipment necessary, useful or convenient for or in connection with
24 that parking or storage; and any structures, buildings, space or
25 accommodations, whether constructed by the authority or by the
26 lessee, to be leased for any business, commercial or other use,
27 including the sale of gasoline or accessories for, or the repair or
28 other servicing of automobiles and other motor vehicles, or motorist
29 services, if, in the opinion of the authority, the inclusion, provision
30 and leasing is necessary, desirable or convenient to assist in
31 defraying the expenses of the authority and make possible the
32 operation of the parking facility at reasonable rates.

33 "Public highway" means all public highways, roads and streets in
34 the State, whether maintained by the State or by any county, city,
35 borough, town, township, village or other political subdivision.

36 "Real property" means lands within the State, above or below
37 water, and improvements thereof or thereon, or any riparian or other
38 rights or interests therein.

39 "Request for proposal" means a document issued by the authority
40 to solicit technical proposals from prequalified design-build entities
41 for a project.

42 "Request for qualifications" means a document issued by the
43 authority to prequalify potential design-build entities.

44 "Stipend" means the fee paid to a design-build entity by the
45 authority in exchange for design, construction information, or
46 materials prepared by the design-build entity and retained by the
47 authority.

1 "Transfer Date" means, with respect to the assumption by the
2 authority of the powers, duties, assets and responsibilities of the
3 New Jersey Highway Authority, the date on which the Chair of the
4 authority and the commissioner certify to the Governor that: (i) all
5 bonds issued by the New Jersey Highway Authority cease to be
6 outstanding within the meaning of the resolutions pursuant to which
7 those bonds were issued; and (ii) upon which the authority assumes
8 all debts, and statutory responsibilities and obligations of the New
9 Jersey Highway Authority.

10 "Transportation project" or "project" means, in addition to
11 highway projects, any other transportation facilities or activities
12 determined necessary or appropriate by the authority in its
13 discretion to fulfill the purposes of the authority, and the costs
14 associated therewith.

15 (cf: P.L.2003, c.79, s.8)

16
17 2. (New section) a. Notwithstanding section 1 of P.L.1968,
18 c.461 (C.27:23-6.1) or any other law, rule, or regulation to the
19 contrary, the authority may, in its discretion, and in the exercise of
20 its power to make and enter into contracts and agreements necessary
21 or incidental to the performance of its duties and the execution of
22 its powers, use a design-build delivery system for the procurement
23 of any project of the authority which will serve the public interest.
24 In determining whether the authority shall use a design-build
25 delivery system for a project, the authority shall consider the
26 following factors:

27 (1) The extent to which the authority can adequately define the
28 project requirements in a proposed scope of the design and
29 construction desired;

30 (2) The time constraints for delivery of the project;

31 (3) The capability and experience of contractors with a design-
32 build delivery system or similar experience;

33 (4) The suitability of the project for use of a design-build
34 delivery system with respect to time, schedule, costs, and quality
35 factors;

36 (5) The capability of the authority to manage the project,
37 including the employment of experienced personnel or outside
38 consultants;

39 (6) The capability of the authority to oversee the project with
40 design-build entities who are familiar and experienced with a
41 design-build delivery system or similar experience;

42 (7) The original character of the product or the services;

43 (8) The work to be performed on the project is necessary to the
44 authority's achievement of its statutory responsibilities; and

45 (9) Any other factor the authority deems relevant in making its
46 determination.

1 The authority shall provide in a written statement its reasons for
2 using a design-build delivery system for a project. This statement,
3 along with other relevant project information, shall be available
4 upon request.

5 b. After considering the factors set forth in subsection a. of this
6 section and deciding to proceed with a design-build delivery
7 system, the authority shall establish a two-phase procedure for
8 awarding design-build delivery system contracts as provided for in
9 sections 3 and 4 of P.L. , c. (C.) (pending before the
10 Legislature as this bill).

11

12 3. (New section) a. After the authority has determined to
13 utilize a design-build delivery system pursuant to subsection b. of
14 section 2 of P.L. , c. (C.) (pending before the Legislature
15 as this bill), the authority shall prepare a request for qualifications
16 to qualify design-build entities.

17 b. The request for qualifications shall include, but not be
18 limited to, the following criteria, which shall be weighted by the
19 authority:

20 (1) The minimum qualifications of design-build entities
21 necessary to meet the requirements for acceptance;

22 (2) Requirements for construction experience, design
23 experience, financial, personnel, and equipment resources available
24 from design-build entities for the project and experience in other
25 design-build delivery systems similar projects, provided that these
26 requirements may not unduly restrict competition;

27 (3) A scope of work statement and schedule;

28 (4) Documents and reference materials made available by the
29 authority defining the project requirements;

30 (5) The form of contract to be awarded;

31 (6) A description of the request for proposal requirements;

32 (7) The maximum time allowed for design and construction;

33 (8) The authority's estimated cost of design and construction;

34 (9) A statement that "past performance" or "experience" does
35 not include the exercise or assertion of a person's legal rights; and

36 (10) Any other factor the authority deems appropriate.

37 c. The authority shall evaluate the qualifications of the design-
38 build entities responding to the request for qualifications and
39 prepare a list of at least two, but no more than five, design-build
40 entities that meet the criteria established pursuant to subsection b.
41 of this section, and shall solicit from those entities a request for
42 proposals in accordance with section 4 of P.L. , c. (C.)
43 (pending before the Legislature as this bill).

44

45 4. (New section) a. The authority shall prepare and solicit a
46 request for proposals from the list of qualified design-build entities
47 as determined by the authority pursuant to subsection c. of section 3

1 of P.L. , c. (C.) (pending before the Legislature as this bill).
2 The request for proposals shall include any information a design-
3 build entity may need, including, but not limited to, the weighted
4 criteria to be used to score the request for proposals and require
5 separate submissions for a technical proposal, price bid, and any
6 other information the authority deems appropriate. The request for
7 proposals shall establish and provide the date on which the
8 technical proposal and price bids are to be submitted to the
9 authority by the qualified design-build entities. The technical
10 proposal and price bids shall be clearly identified and include the
11 date and time of the submittal deadline.

12 b. The authority shall offer a stipend, based upon the project
13 size and type, but not to exceed one percent of the project's
14 estimated cost, to any design-build entity whose design,
15 construction information, or materials presented in a request for
16 proposals the authority desires to retain for its exclusive use. A
17 design-build entity may accept the authority's offer of a stipend for
18 use of its design, construction information, or materials or may
19 decline such offer, in which case the authority may not retain or use
20 in any manner any of the design, construction information, or
21 materials presented to the authority by the corresponding design-
22 build entity.

23
24 5. (New section) a. The authority shall create a technical
25 review committee whose purpose and function shall be to evaluate
26 and score the technical proposal submitted to the authority by
27 qualified design-build entities in accordance with section 4 of
28 P.L. , c. (C.) (pending before the Legislature as this bill).
29 The technical review committee shall establish and provide a
30 detailed description of the criteria to be used in the technical
31 proposal and shall weight the established criteria for the technical
32 proposal as the committee sees fit. The technical review committee
33 shall have the authority to reject any technical proposal submitted
34 by a qualified design-build entity it deems incomplete for any
35 reason.

36 b. The technical proposal shall be reviewed by the technical
37 review committee appointed by the authority pursuant to subsection
38 a. of this section. This technical proposal shall include, but need
39 not be limited to, the following criteria, which shall be weighted by
40 the technical review committee in accordance with subsection a. of
41 this section:

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

46 (2) The maximum time allowable for design and construction;

47 (3) Estimated cost range for design and construction;

- 1 (4) A critical path method, bar schedule of the work to be
2 performed, or similar schematic;
- 3 (5) Design plans and specifications, technical reports, and
4 calculations;
- 5 (6) Permit requirements and applicable development fees;
- 6 (7) A statement that the authority '~~will~~ may' provide an
7 appropriate owner control insurance program for the project;
- 8 (8) Copies of the contract documents that the successful design-
9 build entity will be expected to enter into; and
- 10 (9) Any other information deemed relevant to the project by the
11 authority.
- 12 c. The technical review committee shall score the technical
13 proposals using the criteria in the request for proposals. The
14 technical review committee shall then submit a technical proposal
15 score for each design-build entity submitting a proposal to the
16 authority.
- 17
- 18 6. (New section) a. '(1) The authority shall set a minimum
19 technical proposal score that a design-build entity must meet or
20 exceed in order to be eligible to be awarded the design-build
21 delivery system contract. Any proposal that does not meet the
22 minimum technical proposal score shall be rejected.
- 23 (2)¹ The price bid shall be sealed until such time after the
24 technical review committee has evaluated and scored the technical
25 proposal submitted by the design-build entities. The authority shall
26 then make public the technical proposal score for each design-build
27 entity 'that meets or exceeds the minimum technical proposal score
28 established by the authority' and shall publicly open and review the
29 sealed price bid. The priced bid shall contain all design,
30 construction, engineering, inspection, and construction costs of the
31 project.
- 32 b. The authority shall award the design-build delivery system
33 contract to the design-build entity that has the lowest '~~adjusted~~
34 score. The adjusted score shall be determined by the authority to be
35 the technical proposal score given to the design-build entity divided
36 by that design-build entity's sealed price bid. The design-build
37 entity selected by the authority shall be the responsive and
38 responsible design-build entity with the lowest adjusted score
39 unless all proposals are rejected by the authority ~~priced bid~~¹.
- 40 c. The authority shall make public the '~~technical proposal~~
41 ~~score and the~~'¹ sealed price bid for each proposal submitted to the
42 authority by a '~~prequalified~~'¹ design-build entity 'that meets or
43 exceeds the minimum technical proposal score established by the
44 authority'¹. The authority shall also make public the design-build
45 entity awarded the contract for the project.

1 7. (New section) Within 90 days of the effective date of this
2 act, the authority, in accordance with the provisions of the
3 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
4 seq.), shall promulgate rules and regulations to effectuate the
5 purposes of P.L. , c. (C.) (pending before the Legislature as
6 this bill).

7

8 8. This act shall take effect on the first day of the sixth month
9 following enactment.