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.



An Act establishing procedures for awarding design-build contracts and supplementing Title 52 of the Revised Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

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

2. As used in this act:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Affirmative action, disadvantaged business or set-aside goals or requirements for the design-build contract, as determined by the contracting unit;

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

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

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

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

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

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

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

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

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

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

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

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

b. A contracting unit must 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.

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

d. The contracting unit shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of this chapter. The contracting unit shall solicit new proposals using the same evaluation factors, budget constraints, or qualifications.

e. Proposals may be withdrawn for any reason at any time prior to acceptance.

f. 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 from the public body a written explanation of the selection process. The design-builder shall submit this request in writing.

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

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

11. This act shall take effect immediately.

STATEMENT

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.