

**SENATE, No. 2597**

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**STATE OF NEW JERSEY**  
**217th LEGISLATURE**

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INTRODUCED SEPTEMBER 29, 2016

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Senator PAUL A. SACCO**

**District 36 (Bergen and Passaic)**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



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,  
45 appraisal, architectural, accounting, financial, legal and other

**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.

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

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

12 "Department" means the Department of Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

46 "Transfer Date" means, with respect to the assumption by the  
47 authority of the powers, duties, assets and responsibilities of the  
48 New Jersey Highway Authority, the date on which the Chair of the

1 authority and the commissioner certify to the Governor that: (i) all  
2 bonds issued by the New Jersey Highway Authority cease to be  
3 outstanding within the meaning of the resolutions pursuant to which  
4 those bonds were issued; and (ii) upon which the authority assumes  
5 all debts, and statutory responsibilities and obligations of the New  
6 Jersey Highway Authority.

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

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

13

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

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

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

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

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

33 (5) The capability of the authority to manage the project,  
34 including the employment of experienced personnel or outside  
35 consultants;

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

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

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

42 (9) Any other factor the authority deems relevant in making its  
43 determination.

44 The authority shall provide in a written statement its reasons for  
45 using a design-build delivery system for a project. This statement,  
46 along with other relevant project information, shall be available  
47 upon request.

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

7  
8        3. (New section) a. After the authority has determined to  
9 utilize a design-build delivery system pursuant to subsection b. of  
10 section 2 of P.L. , c. (C. ) (pending before the Legislature  
11 as this bill), the authority shall prepare a request for qualifications  
12 to qualify design-build entities.

13        b. The request for qualifications shall include, but not be  
14 limited to, the following criteria, which shall be weighted by the  
15 authority:

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

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

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

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

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

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

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

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

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

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

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

40  
41        4. (New section) a. The authority shall prepare and solicit a  
42 request for proposals from the list of qualified design-build entities  
43 as determined by the authority pursuant to subsection c. of section 3  
44 of P.L. , c. (C. ) (pending before the Legislature as this bill).  
45 The request for proposals shall include any information a design-  
46 build entity may need, including, but not limited to, the weighted  
47 criteria to be used to score the request for proposals and require  
48 separate submissions for a technical proposal, price bid, and any

1 other information the authority deems appropriate. The request for  
2 proposals shall establish and provide the date on which the  
3 technical proposal and price bids are to be submitted to the  
4 authority by the qualified design-build entities. The technical  
5 proposal and price bids shall be clearly identified and include the  
6 date and time of the submittal deadline.

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

18  
19 5. (New section) a. The authority shall create a technical  
20 review committee whose purpose and function shall be to evaluate  
21 and score the technical proposal submitted to the authority by  
22 qualified design-build entities in accordance with section 4 of  
23 P.L. , c. (C. ) (pending before the Legislature as this bill).  
24 The technical review committee shall establish and provide a  
25 detailed description of the criteria to be used in the technical  
26 proposal and shall weight the established criteria for the technical  
27 proposal as the committee sees fit. The technical review committee  
28 shall have the authority to reject any technical proposal submitted  
29 by a qualified design-build entity it deems incomplete for any  
30 reason.

31 b. The technical proposal shall be reviewed by the technical  
32 review committee appointed by the authority pursuant to subsection  
33 a. of this section. This technical proposal shall include, but need  
34 not be limited to, the following criteria, which shall be weighted by  
35 the technical review committee in accordance with subsection a. of  
36 this section:

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

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

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

43 (4) A critical path method, bar schedule of the work to be  
44 performed, or similar schematic;

45 (5) Design plans and specifications, technical reports, and  
46 calculations;

47 (6) Permit requirements and applicable development fees;

- 1 (7) A statement that the authority may provide an appropriate  
2 owner control insurance program for the project;
- 3 (8) Copies of the contract documents that the successful design-  
4 build entity will be expected to enter into; and
- 5 (9) Any other information deemed relevant to the project by the  
6 authority.
- 7 c. The technical review committee shall score the technical  
8 proposals using the criteria in the request for proposals. The  
9 technical review committee shall then submit a technical proposal  
10 score for each design-build entity submitting a proposal to the  
11 authority.  
12
- 13 6. (New section) a. (1) The authority shall set a minimum  
14 technical proposal score that a design-build entity must meet or  
15 exceed in order to be eligible to be awarded the design-build  
16 delivery system contract. Any proposal that does not meet the  
17 minimum technical proposal score shall be rejected.
- 18 (2) The price bid shall be sealed until such time after the  
19 technical review committee has evaluated and scored the technical  
20 proposal submitted by the design-build entities. The authority shall  
21 then make public the technical proposal score for each design-build  
22 entity that meets or exceeds the minimum technical proposal score  
23 established by the authority and shall publicly open and review the  
24 sealed price bid. The priced bid shall contain all design,  
25 construction, engineering, inspection, and construction costs of the  
26 project.
- 27 b. The authority shall award the design-build delivery system  
28 contract to the design-build entity that has the lowest priced bid.
- 29 c. The authority shall make public the sealed price bid for each  
30 proposal submitted to the authority by a design-build entity that  
31 meets or exceeds the minimum technical proposal score established  
32 by the authority. The authority shall also make public the design-  
33 build entity awarded the contract for the project.  
34
- 35 7. (New section) Within 90 days of the effective date of this  
36 act, the authority, in accordance with the provisions of the  
37 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
38 seq.), shall promulgate rules and regulations to effectuate the  
39 purposes of P.L. , c. (C. ) (pending before the Legislature as  
40 this bill).  
41
- 42 8. This act shall take effect on the first day of the sixth month  
43 following enactment.



## STATEMENT

This bill allows the New Jersey Turnpike Authority (“authority”) the power to make and enter into contracts to use a design-build delivery system for the procurement of authority projects which will serve the public interest. A design-build delivery system is defined to mean a project delivery method in which there is a single contract between the authority and a design-build entity to furnish the architectural, engineering, and related design services of a project, in addition to the labor, materials, supplies, equipment, and construction services for any project. The bill establishes various factors which the authority is to consider in determining whether to use a design-build delivery system for a project.

The authority is to establish the following two-phase procedure for awarding design-build delivery system contracts: (1) request for qualifications; and (2) request for proposals. The request for qualifications prepared by the authority shall be used to qualify at least two, but no more than five, design-build entities from which the authority may solicit a request for proposals for a project. The proposal submitted by a design-build entity shall include a separate technical proposal, price bid, and any other information that the authority deems appropriate.

The bill requires the authority to establish a technical review committee to evaluate and score the technical proposal submitted with the request for proposals by the qualified design-build entities in accordance with the weighted criteria established by the technical review committee.

The authority shall set a minimum technical proposal score that a design-build entity must meet or exceed in order to be eligible to be awarded the design-build delivery system contract. The technical proposal score and sealed price bid of each design-build entity that meets or exceeds the minimum technical proposal score established by the committee shall be made public by the authority. The authority is to award the design-build delivery system contract to the design-build entity with the lowest priced bid.

Finally, the bill provides that the authority is to offer a stipend, based upon the project size and type, but not to exceed one percent of the project’s estimated cost, to any design-build entity whose design, construction information, or materials presented in a request for proposals the authority desires to retain for its exclusive use. A design-build entity may accept the authority’s offer of a stipend for use of its design, construction information, or materials or may decline such offer, in which case the authority may not retain or use in any manner any of the design, construction information, or materials presented to the authority by the corresponding design-build entity.