

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**【**¹“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**【**¹“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 ²“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).

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 contractors ⁴and 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 that⁴ 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)⁴ The 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 Affairs⁴ , 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)⁴ The 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 the⁴]. 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 the⁴] Department of ⁴['Transportation'] Community
23 Affairs⁴, where applicable ⁴['.] ⁴Each 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
16 ³32. 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 constraint ⁴.

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 from ⁴ the selection process ⁴, and the final recommendation
18 of award document ⁴. 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 ⁴Division of Property Management and Construction in the
 8 Department of the Treasury or the⁴ Department of
 9 ⁴Transportation 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

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 ⁴registered
 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 the⁴]. ____ 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 the⁴] 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 contractors ⁴and 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 ⁴they 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 qualifications ⁴, 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, request ⁴["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 process ⁴, 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, the ⁴Department 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 the ⁴Department 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. The ⁴Department 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 ^{4, 4}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.