

CHAPTER 71
(CORRECTED COPY OF CORRECTED COPY)

AN ACT establishing procedures for awarding design-build contracts and supplementing various parts of the statutory law.

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

C.52:35B-1 Short title.

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

C.52:35B-2 Definitions.

2. As used in sections 2 through 9 of P.L.2021, c.71 (C.52:35B-2 through C.52:35B-9):

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

“Contracting unit” means a government entity that enters into contracts pursuant to P.L.2007, c.137 (C.52:18A-235 et seq.); or chapters 32, 33, or 34 of Title 52 of the Revised Statutes.

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

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

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

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

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

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

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

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

C.52:35B-3 Design-build contracts permitted.

3. a. If a contracting unit determines in its discretion that the design-build approach meets their needs better than the traditional design-bid-build approach established under New Jersey public procurement statutes for the project or projects under consideration, it shall be the public policy of this State to permit that contracting unit to enter into design-build contracts as defined in section 2 of P.L.2021, c.71 (C.52:35B-2), provided the following conditions are met:

(1) The contracting unit shall, prior to issuing solicitations, publish procedures consistent with regulations promulgated by the contracting unit, where applicable for the solicitation and award of design-build contracts, and shall adhere to sections 2 through 9 of P.L.2021, c.71 (C.52:35B-2 through C.52:35B-9) and those procedures; and

(2) The contracting unit shall, for each public project or projects under sections 2 through 9 of P.L.2021, c.71 (C.52:35B-2 through C.52:35B-9), make a determination based on the timeliness of the project or projects that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects.

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

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

d. Notwithstanding the provisions of sections 2 through 9 of P.L.2021, c.71 (C.52:35B-2 through C.52:35B-9) to the contrary, an independent State transportation authority which already has an established prequalification, project rating, or proposal process for design-build contracts as of the effective date of P.L.2021, c.71 (C.52:35B-1 et al.) may continue to award design-build contracts pursuant to that process.

C.52:35B-4 Procedures for awarding design-build contracts.

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

(1) The contracting unit shall either appoint a licensed and prequalified design professional, or designate an employee of the contracting unit licensed to provide architectural, engineering, or surveying services, to provide technical advice, construction review services, and professional expertise on behalf of the contracting unit;

(2) The contracting unit shall develop, with the assistance of the design professional or designated employee, performance criteria and a scope of work statement that defines the project and provides prospective design-builders with sufficient information regarding the contracting unit's requirements. The statement shall include: evaluation factor criteria and preliminary design documents, general budget parameters, and general schedule or delivery requirements to enable the design-builders to submit proposals which meet the contracting

unit's needs. When the design-build selection procedure is used and the contracting unit contracts for development of the scope of work statement, the design-builder shall contract for architectural or engineering services as defined by and in accordance with R.S.45:3-1 et seq., P.L.1938, c.342 (C.45:8-27 et seq.), and all other applicable licensing statutes;

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

(4) The contracting unit shall establish a technical review committee, which shall consist of a representative of the contracting unit, the contracting unit's project manager, and the contracting unit's authorized design professional. The contracting unit's attorney may advise the technical review committee. The technical review committee shall have the responsibility to evaluate bids based on rating and scoring proposals, and shall evaluate design-builders based on their qualifications. A member of the technical review committee shall not have a personal or financial interest in any of the design-builders submitting proposals.

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

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

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

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

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

g. The contracting unit shall separately evaluate the submissions described above, and award the contract in accordance with section 8 of P.L.2021, c.71 (C.52:35B-8).

C.52:35B-5 Evaluation factors included in request for proposal.

5. a. Each request for proposals shall contain evaluation factors prepared by a design professional or designated employee as defined in section 2 of P.L.2021, c.71 (C.52:35B-2). The design professional or designated employee that develops the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional or designated employee that developed the evaluation factors.

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

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

C.52:35B-6 Inclusions in solicitations for design-build contracts.

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

- (1) The identity of the contracting unit which shall award the design-build contract;
- (2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of sections 2 through 9 of P.L.2021, c.71 (C.52:35B-2 through C.52:35B-9) and the regulations of the contracting unit;
- (3) The proposed terms and conditions for the design-build contract;
- (4) A description of the drawings, specifications, or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that shall be acceptable;
- (5) A schedule for planned commencement and completion of the design-build contract;
- (6) Budget limits for the design-build contract, if any;
- (7) Affirmative action, disadvantaged business or set-aside goals or requirements for the design-build contract, in accordance with the requirements of all rules, regulations, standards, or policies adopted by the contracting unit;
- (8) The required qualifications of the design-builder;
- (9) Requirements for contractors and the design professional to have performance bonds, payment bonds, and insurance, and to meet all the qualifications of the Division of Property Management and Construction in the Department of the Treasury or the Department of Transportation where applicable; and
- (10) A statement that the prospective design-builder is in compliance with all applicable laws, including the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the "Construction Industry Independent Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).

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

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

C.52:35B-7 Required members of design-build team.

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

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

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

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

e. All proposals shall be received and opened at a previously announced time, where a synopsis of each shall be publicly read and recorded consistent with the provisions of subsection f. of this section.

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

C.52:35B-8 Submission of received proposals.

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

b. The technical review committee shall score the technical proposals using the criteria and methodology set forth in the request for proposals in accordance with paragraph (2) of subsection a. of section 6 of P.L.2021, c.71 (C.52:35B-6) and make an award recommendation to the head of the contracting unit. The head of the contracting unit shall make the design-build contract award decision, consistent with the award recommendation.

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

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

e. The contracting unit shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of sections 2 through 9 of P.L.2021, c.71 (C.52:35B-2 through C.52:35B-9). The contracting unit shall solicit new proposals using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the contracting unit, including but not limited to an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.

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

g. When a design-builder receives notification from a public body that the proposal, which it has submitted, has not been accepted, the design-builder may, within 30 days, request to review the design-build proposals submitted, the technical review committee evaluation scores from the selection process, and the final recommendation of award document. The design-builder shall submit this request in writing.

C.52:35B-9 Regulations.

9. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, a contracting unit shall adopt, immediately upon filing with the Office of Administrative Law, regulations that the contracting unit deems necessary to implement the provisions of sections 2 through 9 of P.L.2021, c.71 (C.52:35B-2 through C.52:35B-9), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The contracting unit shall thereafter amend, adopt, or readopt the regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.18A:64-76.5 Definitions.

10. As used in sections 10 through 17 of P.L.2021, c.71 (C.18A:64-76.5 through C.18A:64-76.12):

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

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

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

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

“Design-build contract” means a contract between a contracting unit and a design-builder to provide labor, materials, and other construction services for a public project. A design-build contract may be conditional upon subsequent refinements in scope and price, and may

permit the contracting unit to make changes in the scope of the project without invalidating the design-build contract.

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

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

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

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

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

C.18A:64-76.6 Entry into design-build contracts permitted.

11. a. If a contracting unit determines in its discretion that the design-build approach meets their needs better than the traditional design-bid-build approach established under New Jersey public procurement statutes for the project or projects under consideration, it shall be the public policy of this State to permit that contracting unit to enter into design-build contracts as defined in section 10 of P.L.2021, c.71 (C.18A:64-76.5), provided the following conditions are met:

(1) The contracting unit shall, prior to issuing solicitations, publish procedures consistent with regulations promulgated by the Secretary of Higher Education, where applicable for the solicitation and award of design-build contracts, and shall adhere to sections 10 through 17 of P.L.2021, c.71 (C.18A:64-76.5 through C.18A:64-76.12) and those procedures; and

(2) The contracting unit shall, for each public project or projects under sections 10 through 17 of P.L.2021, c.71 (C.18A:64-76.5 through C.18A:64-76.12), make a determination based on the timeliness of the project or projects that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects.

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

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

C.18A:64-76.7 Procedures for awarding design-build contracts.

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

(1) The contracting unit shall either appoint a licensed and prequalified design professional, or designate an employee of the contracting unit licensed to provide architectural, engineering, or surveying services, to provide technical advice, construction review services, and professional expertise on behalf of the contracting unit;

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

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

(4) The contracting unit shall establish a technical review committee, which shall consist of a representative of the contracting unit, the contracting unit's project manager, and the contracting unit's authorized design professional. The contracting unit's attorney may advise the technical review committee. The technical review committee shall have the responsibility to evaluate bids based on rating and scoring proposals, and shall evaluate design-builders based on their qualifications. A member of the technical review committee shall not have a personal or financial interest in any of the design-builders submitting proposals.

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

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

d. The contracting unit may offer a stipend, based upon the project size and type, which shall not exceed three percent of the project's estimated cost, to any design-builder providing design, construction information, or materials presented in response to a request for second

proposals. This stipend is intended to encourage the submission of proposals and to increase competition.

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

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

g. The contracting unit shall separately evaluate the submissions described above, and award the contract in accordance with section 16 of P.L.2021, c.71 (C.18A:64-76.11).

C.18A:64-76.8 Evaluation factors included in request for proposals.

13. a. Each request for proposals shall contain evaluation factors prepared by a design professional or designated employee as defined in section 10 of P.L.2021, c.71 (C.18A:64-76.5). The design professional or designated employee that develops the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional or designated employee that developed the evaluation factors.

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

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

C.18A:64-76.9 Inclusions in solicitations for design-build contract.

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

- (1) The identity of the contracting unit which shall award the design-build contract;
- (2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of sections 10 through 17 of P.L.2021, c.71 (C.18A:64-76.5 through C.18A:64-76.12) and the regulations of the contracting unit;
- (3) The proposed terms and conditions for the design-build contract;
- (4) A description of the drawings, specifications, or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that shall be acceptable;
- (5) A schedule for planned commencement and completion of the design-build contract;
- (6) Budget limits for the design-build contract, if any;

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

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

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

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

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

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

C.18A:64-76.10 Inclusions in design-build team.

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

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

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

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

e. All proposals shall be received and opened at a previously announced time, where a synopsis of each shall be publicly read and recorded consistent with the provisions of subsection f. of this section.

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

C.18A:64-76.11 Submission of received proposals.

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

b. The technical review committee shall score the technical proposals using the criteria and methodology set forth in the request for proposals in accordance with paragraph (2) of subsection a. of section 14 of P.L.2021, c.71 (C.18A:64-76.9) and make an award recommendation to the head of the contracting unit. The head of the contracting unit shall make the design-build contract award decision, consistent with the award recommendation.

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

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

e. The contracting unit shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of sections 10 through 17 of P.L.2021, c.71 (C.18A:64-76.5 through C.18A:64-76.12). The contracting unit shall solicit new proposals using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the contracting unit, including but not limited to an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.

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

g. When a design-builder receives notification from a public body that the proposal, which it has submitted, has not been accepted, the design-builder may, within 30 days, request to review the design-build proposals submitted, the technical review committee evaluation scores from the selection process, and the final recommendation of award document. The design-builder shall submit this request in writing.

C.18A:64-76.12 Regulations.

17. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the Secretary of Higher Education shall adopt, immediately upon filing with the Office of Administrative Law, regulations that the Secretary of Higher Education deems necessary to implement the provisions of sections 10 through 17 of P.L.2021, c.71 (C.18A:64-76.5 through C.18A:64-76.12), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The Secretary of Higher Education shall thereafter amend, adopt, or readopt the regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.18A:64A-25.24a Definitions.

18. As used in sections 18 through 25 of P.L.2021, c.71 (C.18A:64A-25.24a through C.18A:64A-25.24h):

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

“Contracting unit” means a government entity that enters into contracts pursuant to the “County College Contracts Law,” P.L.1982, c.189 (C.18A:64A-25.1 et seq.).

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

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

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

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

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

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

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

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

C.18A:64A-25.24b Entry into design-build contracts permitted.

19. a. If a contracting unit determines in its discretion that the design-build approach meets their needs better than the traditional design-bid-build approach established under New Jersey public procurement statutes for the project or projects under consideration, it shall be the public policy of this State to permit that contracting unit to enter into design-build

contracts as defined in section 18 of P.L.2021, c.71 (C.18A:64A-25.24a), provided the following conditions are met:

(1) The contracting unit shall, prior to issuing solicitations, publish procedures consistent with regulations promulgated by the Secretary of Higher Education, where applicable for the solicitation and award of design-build contracts, and shall adhere to sections 18 through 25 of P.L.2021, c.71 (C.18A:64A-25.24a through C.18A:64A-25.24h) and those procedures; and

(2) The contracting unit shall, for each public project or projects under sections 18 through 25 of P.L.2021, c.71 (C.18A:64A-25.24a through C.18A:64A-25.24h), make a determination based on the timeliness of the project or projects that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects.

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

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

C.18A:64A-25.24c Procedures for awarding design-build contracts.

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

(1) The contracting unit shall either appoint a licensed and prequalified design professional, or designate an employee of the contracting unit licensed to provide architectural, engineering, or surveying services, to provide technical advice, construction review services, and professional expertise on behalf of the contracting unit;

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

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

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

shall not have a personal or financial interest in any of the design-builders submitting proposals.

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

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

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

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

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

g. The contracting unit shall separately evaluate the submissions described above, and award the contract in accordance with section 24 of P.L.2021, c.71 (C.18A:64A-25.24g).

C.18A:64A-25.24d Evaluation factors contained in proposals.

21. a. Each request for proposals shall contain evaluation factors prepared by a design professional or designated employee as defined in section 18 of P.L.2021, c.71 (C.18A:64A-25.24a). The design professional or designated employee that develops the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional or designated employee that developed the evaluation factors.

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

c. The contracting unit, in consultation with the design professional or designated employee, shall determine the scope and level of detail required for the evaluation factors. The evaluation factors should be detailed enough to permit qualified persons to submit

proposals in accordance with the solicitation, given the nature of the public project and the level of design to be provided in the proposal.

C.18A:64A-25.24e Inclusions in solicitations for design-build contract.

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

- (1) The identity of the contracting unit which shall award the design-build contract;
- (2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of sections 18 through 25 of P.L.2021, c.71 (C.18A:64A-25.24a through C.18A:64A-25.24h) and the regulations of the contracting unit;
- (3) The proposed terms and conditions for the design-build contract;
- (4) A description of the drawings, specifications, or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that shall be acceptable;
- (5) A schedule for planned commencement and completion of the design-build contract;
- (6) Budget limits for the design-build contract, if any;
- (7) Affirmative action, disadvantaged business or set-aside goals or requirements for the design-build contract, in accordance with the requirements of all rules, regulations, standards, or policies adopted by the contracting unit;
- (8) The required qualifications of the design-builder;
- (9) Requirements for contractors and the design professional to have performance bonds, payment bonds, and insurance, and to meet all the qualifications of the Division of Property Management and Construction in the Department of the Treasury or the Department of Transportation where applicable; and
- (10) A statement that the prospective design-builder is in compliance with all applicable laws, including the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the "Construction Industry Independent Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).

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

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

C.18A:64A-25.24f Inclusions on design-build team.

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

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

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

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

e. All proposals shall be received and opened at a previously announced time, where a synopsis of each shall be publicly read and recorded consistent with the provisions of subsection f. of this section.

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

C.18A:64A-25.24g Submission of received proposals.

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

b. The technical review committee shall score the technical proposals using the criteria and methodology set forth in the request for proposals in accordance with paragraph (2) of subsection a. of section 22 of P.L.2021, c.71 (C.18A:64A-25.24e) and make an award recommendation to the head of the contracting unit. The head of the contracting unit shall make the design-build contract award decision, consistent with the award recommendation.

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

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

e. The contracting unit shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of sections 18 through 25 of P.L.2021, c.71 (C.18A:64A-25.24a through C.18A:64A-25.24h). The contracting unit shall solicit new proposals using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the contracting unit, including but not limited to an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.

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

g. When a design-builder receives notification from a public body that the proposal, which it has submitted, has not been accepted, the design-builder may, within 30 days,

request to review the design-build proposals submitted, the technical review committee evaluation scores from the selection process, and the final recommendation of award document. The design-builder shall submit this request in writing.

C.18A:64A-25.24h Regulations.

25. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the Secretary of Higher Education shall adopt, immediately upon filing with the Office of Administrative Law, regulations that the Secretary of Higher Education deems necessary to implement the provisions of sections 18 through 25 of P.L.2021, c.71 (C.18A:64A-25.24a through C.18A:64A-25.24h), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The Secretary of Higher Education shall thereafter amend, adopt, or readopt the regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.40A:11-53 Definitions.

26. As used in sections 26 through 33 of P.L.2021, c.71 (C.40A:11-53 through C.40A:11-60):

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

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

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

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

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

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

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

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

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

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

C.40A:11-54 Entry into design-build contracts permitted.

27. a. If a contracting unit determines in its discretion that the design-build approach meets their needs better than the traditional design-bid-build approach established under New Jersey public procurement statutes for the project or projects under consideration, it shall be the public policy of this State to permit that contracting unit to enter into design-build contracts as defined in section 26 of P.L.2021, c.71 (C.40A:11-53), provided the following conditions are met:

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

(2) The contracting unit shall, prior to issuing solicitations, publish procedures consistent with regulations promulgated by the Department of Community Affairs, where applicable for the solicitation and award of design-build contracts, and shall adhere to sections 26 through 33 of P.L.2021, c.71 (C.40A:11-53 through C.40A:11-60) and those procedures; and

(3) The contracting unit shall, for each public project or projects under sections 26 through 33 of P.L.2021, c.71 (C.40A:11-53 through C.40A:11-60), make a determination based on the timeliness of the project or projects that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects.

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

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

d. Any design-build contract awarded pursuant to sections 26 through 33 of P.L.2021, c.71 (C.40A:11-53 through C.40A:11-60) may be reviewed by the Office of the State Comptroller.

C.40A:11-55 Procedures for awarding design-build contracts.

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

(1) The contracting unit shall either appoint a licensed and prequalified design professional, or designate an employee of the contracting unit licensed to provide architectural, engineering, or surveying services, to provide technical advice, construction review services, and professional expertise on behalf of the contracting unit;

(2) The contracting unit shall develop, with the assistance of the design professional or designated employee, performance criteria and a scope of work statement that defines the

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

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

(4) The contracting unit shall establish a technical review committee, which shall consist of a representative of the contracting unit, the contracting unit's project manager, and the contracting unit's authorized design professional. The contracting unit's attorney may advise the technical review committee. The technical review committee shall have the responsibility to evaluate bids based on rating and scoring proposals, and shall evaluate design-builders based on their qualifications. A member of the technical review committee shall not have a personal or financial interest in any of the design-builders submitting proposals.

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

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

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

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

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

g. The contracting unit shall separately evaluate the submissions described above, and award the contract in accordance with section 32 of P.L.2021, c.71 (C.40A:11-59).

C.40A:11-56 Evaluation factors contained in proposals.

29. a. Each request for proposals shall contain evaluation factors prepared by a design professional or designated employee as defined in section 26 of P.L.2021, c.71 (C.40A:11-53). The design professional or designated employee that develops the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional or designated employee that developed the evaluation factors.

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

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

C.40A:11-57 Inclusions in solicitations for design-build contracts.

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

- (1) The identity of the contracting unit which shall award the design-build contract;
- (2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of sections 26 through 33 of P.L.2021, c.71 (C.40A:11-53 through C.40A:11-60) and the regulations of the contracting unit;
- (3) The proposed terms and conditions for the design-build contract;
- (4) A description of the drawings, specifications, or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that shall be acceptable;
- (5) A schedule for planned commencement and completion of the design-build contract;
- (6) Budget limits for the design-build contract, if any;
- (7) Affirmative action, disadvantaged business or set-aside goals or requirements for the design-build contract, in accordance with the requirements of all rules, regulations, standards, or policies adopted by the contracting unit;
- (8) The required qualifications of the design-builder;
- (9) Requirements for contractors and the design professional to have performance bonds, payment bonds, and insurance, and to meet all the qualifications of the Division of Property Management and Construction in the Department of the Treasury or the Department of Transportation where applicable; and
- (10) A statement that the prospective design-builder is in compliance with all applicable laws, including the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the "Construction Industry Independent Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).

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

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

C.40A:11-58 Inclusions on design-build team.

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

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

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

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

e. All proposals shall be received and opened at a previously announced time, where a synopsis of each shall be publicly read and recorded consistent with the provisions of subsection f. of this section.

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

C.40A:11-59 Submission of received proposals.

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

b. The technical review committee shall score the technical proposals using the criteria and methodology set forth in the request for proposals in accordance with paragraph (2) of subsection a. of section 30 of P.L.2021, c.71 (C.40A:11-57) and make an award recommendation to the governing body of the contracting unit. The governing body of the contracting unit shall make the design-build contract award decision, consistent with the award recommendation.

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

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

e. The contracting unit shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of sections 26 through 33 of P.L.2021, c.71 (C.40A:11-53 through C.40A:11-60). The contracting unit shall solicit new proposals using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the contracting unit, including but not limited to an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.

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

g. When a design-builder receives notification from a public body that the proposal, which it has submitted, has not been accepted, the design-builder may, within 30 days, request to review the design-build proposals submitted, the technical review committee evaluation scores from the selection process, and the final recommendation of award document. The design-builder shall submit this request in writing.

C.40A:11-60 Regulations.

33. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the Department of Community Affairs shall adopt, immediately upon filing with the Office of Administrative Law, regulations that the Department of Community Affairs deems necessary to implement the provisions of sections 26 through 30 of P.L.2021, c.71 (C.40A:11-53 through C.40A:11-57), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The Department of Community Affairs shall thereafter amend, adopt, or readopt the regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.18A:18A-61 Definitions.

34. As used in sections 34 through 41 of P.L.2021, c.71 (C.18A:18A-61 through C.18A:18A-68):

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

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

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

“Design-bid-build” means the delivery system used in public projects in which a licensed and prequalified design professional or designated employee develops the project design in its entirety; the contracting unit then solicits bids and awards the contract to the lowest

responsible bidder that demonstrates the ability to complete the project specified in the design.

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

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

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

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

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

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

C.18A:18A-62 Entry into design-build contracts permitted.

35. a. If a contracting unit determines in its discretion that the design-build approach meets their needs better than the traditional design-bid-build approach established under New Jersey public procurement statutes for the project or projects under consideration, it shall be the public policy of this State to permit that contracting unit to enter into design-build contracts as defined in section 34 of P.L.2021, c.71 (C.18A:18A-61), provided the following conditions are met:

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

(2) The contracting unit shall, prior to issuing solicitations, publish procedures consistent with regulations promulgated by the Department of Community Affairs, in consultation with the Department of Education, where applicable for the solicitation and award of design-build contracts, and shall adhere to sections 34 through 41 of P.L.2021, c.71 (C.18A:18A-61 through C.18A:18A-68) and those procedures; and

(3) The contracting unit shall, for each public project or projects under sections 34 through 41 of P.L.2021, c.71 (C.18A:18A-61 through C.18A:18A-68), make a determination based on the timeliness of the project or projects that it is in the best interest of the public to enter into a design-build contract to complete the public project or projects.

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

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

d. Any design-build contract awarded pursuant to sections 34 through 41 of P.L.2021, c.71 (C.18A:18A-61 through C.18A:18A-68) may be reviewed by the Office of the State Comptroller.

C.18A:18A-63 Procedures for awarding design-build contracts.

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

(1) The contracting unit shall either appoint a licensed and prequalified design professional, or designate an employee of the contracting unit licensed to provide architectural, engineering, or surveying services, to provide technical advice, construction review services, and professional expertise on behalf of the contracting unit;

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

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

(4) The contracting unit shall establish a technical review committee, which shall consist of a representative of the contracting unit, the contracting unit's project manager, and the contracting unit's authorized design professional. The contracting unit's attorney may advise the technical review committee. The technical review committee shall have the responsibility to evaluate bids based on rating and scoring proposals, and shall evaluate design-builders based on their qualifications. A member of the technical review committee shall not have a personal or financial interest in any of the design-builders submitting proposals.

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

architect-engineer and construction members of the team, and other appropriate technical and qualification factors as determined by the Department of Community Affairs, in consultation with the Department of Education, where applicable. Each solicitation for proposals of qualification shall establish the relative importance assigned to the evaluation factors and sub-factors to be considered.

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

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

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

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

g. The contracting unit shall separately evaluate the submissions described above, and award the contract in accordance with section 40 of P.L.2021, c.71 (C.18A:18A-67).

C.18A:18A-64 Evaluation factors contained in proposals.

37. a. Each request for proposals shall contain evaluation factors prepared by a design professional or designated employee as defined in section 34 of P.L.2021, c.71 (C.18A:18A-61). The design professional or designated employee that develops the evaluation factors shall be disqualified from submitting a proposal to enter into the design-build contract, and the design-builder shall not be permitted to delegate services under the design-build contract to the design professional or designated employee that developed the evaluation factors.

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

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

C.18A:18A-65 Inclusions in solicitations for design-build contracts.

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

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

(2) The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of sections 34 through 41 of P.L.2021, c.71 (C.18A:18A-61 through C.18A:18A-68) and the regulations of the contracting unit;

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

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

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

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

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

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

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

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

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

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

C.18A:18A-66 Inclusions on design-build team.

39. a. Each design-build team shall include a licensed or prequalified design professional or independent from the contracting unit's licensed architect or engineer. The licensed or prequalified design professional or designated employee shall be named in any proposal submitted to the contracting unit.

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

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

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

e. All proposals shall be received and opened at a previously announced time, where a synopsis of each shall be publicly read and recorded consistent with the provisions of subsection f. of this section.

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

C.18A:18A-67 Submission of received proposals.

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

b. The technical review committee shall score the technical proposals using the criteria and methodology set forth in the request for proposals in accordance with paragraph (2) of subsection a. of section 38 of P.L.2021, c.71 (C.18A:18A-65) and make an award recommendation to the head of the contracting unit. The head of the contracting unit shall make the design-build contract award decision, consistent with the award recommendation.

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

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

e. The contracting unit shall have the right to reject any and all proposals, except for the purpose of evading the provisions and policies of sections 34 through 41 of P.L.2021, c.71 (C.18A:18A-61 through C.18A:18A-68). The contracting unit shall solicit new proposals using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the contracting unit, including but not limited to an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.

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

g. When a design-builder receives notification from a public body that the proposal, which it has submitted, has not been accepted, the design-builder may, within 30 days, request to review the design-build proposals submitted, the technical review committee evaluation scores from the selection process, and the final recommendation of award document. The design-builder shall submit this request in writing.

C.18A:18A-68 Regulations.

41. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), to the contrary, the Department of Community Affairs, in

consultation with the Department of Education, shall adopt, immediately upon filing with the Office of Administrative Law, regulations that the Department of Community Affairs, in consultation with the Department of Education, deems necessary to implement the provisions of sections 34 through 41 of P.L.2021, c.71 (C.18A:18A-61 through C.18A:18A-68), which regulations shall be effective for a period not to exceed 180 days from the date of the filing. The Department of Community Affairs, in consultation with the Department of Education, shall thereafter amend, adopt, or readopt the regulations pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

C.52:35B-10 Proceedings, records, contracts accessible to public.

42. All proceedings, records, contracts, and other public records relating to procurement transactions authorized under P.L.2021, c.71 (C.52:35B-1 et al.) shall be accessible to the public pursuant to P.L.1963, c.73 (C.47:1A-1 et seq.), except as otherwise may be provided under P.L.2021, c.71 (C.52:35B-1 et al.).

43. This act shall take effect immediately.

Approved April 30, 2021.