

the law enforcement unit's investigator, the Commission, or by logging in, in the presence of the investigator or the Commission, at the renewal candidate's discretion.

(f) Consistent with N.J.A.C. 13:1-11.5(b)9, the employing law enforcement unit shall perform a verification check of the renewal candidate's lack of participation with any foreign terrorist organization, domestic terrorist group, criminal organization, hate group, or a group that advocates for, espouses, or promotes the commission of acts of force and violence, or any other unlawful means, to overthrow a local, state, or Federal government of the United States.

1. As part of the licensure renewal process, the renewal candidate shall certify to the employing law enforcement agency that the candidate has not participated with any foreign terrorist organization, domestic terrorist group, criminal organization, hate group, or a group that advocates for, espouses, or promotes the commission of acts of force and violence, or any other unlawful means, to overthrow a local, state, or Federal government of the United States in the last three years.

Recodify existing (e)-(g) as (g)-(i) (No change in text.)

SUBCHAPTER 17. CONFIDENTIAL RECORDS

13:1-17.1 Confidential records

(a)-(b) (No change.)

(c) Unauthorized disclosure of confidential records that were obtained as part of an individual's application for licensing or renewal, as described herein, will subject the disclosing party to potential adverse administrative, licensure action, and/or criminal charges.

TRANSPORTATION

(a)

DIVISION OF PROCUREMENT BUREAU OF CONSTRUCTION SERVICES Design-Build Construction Contracts Proposed New Rules: N.J.A.C. 16:44B

Authorized By: Diane Gutierrez-Scaccetti, Commissioner,
Department of Transportation.

Authority: P.L. 2021, c. 71; N.J.S.A. 6:1-29, 6:1-44, 27:1A-5,
27:1A-6, and 52:35B-1 et seq.; and 23 CFR Part 636.

Calendar Reference: See Summary below for explanation of
exception to calendar requirement.

Proposal Number: PRN 2024-011.

Submit written comments by March 16, 2024, to:

Alexander C. Owen
Administrative Practice Officer
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625-0600
Fax: (609) 530-4638

Submit electronically to NJDOTRules@dot.nj.gov.

This rule may be viewed or downloaded from the Department of
Transportation's website at [http://www.nj.gov/transportation/about/
rules/proposals.shtm](http://www.nj.gov/transportation/about/rules/proposals.shtm).

The agency proposal follows:

Summary

This chapter implements N.J.S.A. 52:35B-1 through 10 (P.L. 2021, c. 71, effective April 30, 2021), the Design-Build Construction Services Procurement Act, which describes the procedures for the awarding of design-build contracts for State and local contracting units.

Generally, government entities use a "design-bid-build" process for procurement and delivery of public works construction projects. In the

"design-bid-build" process, design and construction work are split using separate companies, contracts, and work. Construction contracts are awarded to the lowest responsible design-builder that demonstrates the ability to complete the project specified in the final design provided in the bid specifications.

As used by several State agencies, in a design-build project, there is a single contract to provide final design and construction. The design-builder is responsible for all the work needed to complete the process. In design-build, the design-builders work in tandem with design professionals and other members of a contractor's design-build team. Using this design-build method will allow the New Jersey Department of Transportation (Department) to work with a single design-builder throughout a project, rather than dealing with several companies under individual contracts. This method should create a shorter design and construction process, while possibly reducing the need for work stoppages and change orders, which increase project costs.

The Department will use a two-phase selection process for awarding the contracts. The first phase will consist of a statement of qualifications (SOQ) and the second phase will include both a technical proposal and price bid. Solicitations for design-builder proposals will be posted on the Department's website and will include the required procedures and criteria necessary for the project. Design-builders submitting SOQs must be pre-qualified with the Department and must meet all work classification standards. SOQs will be publicly read on a date specified by the Department. SOQs will be reviewed, and a shortlist will be created. Those on the shortlist will be required to submit further documentation including technical and price information. The full proposals will be opened simultaneously, and a design-builder will be chosen. The Commissioner of the Department will have final approval or rejection of the contract award.

The proposed new rules provide the procedures by which design-builders may enter into design-build contracts with the Department.

Subchapter 1 provides the purpose and scope of the chapter.

Subchapter 2 provides the definitions which are used throughout the chapter.

Subchapter 3 provides general provisions and requirements for design-builders.

Subchapter 4 provides the requirements for solicitations.

Subchapter 5 provides provisions relating to statements of qualification.

Subchapter 6 provides provisions relating to proposals.

Subchapter 7 provides provisions relating to stipends.

Subchapter 8 provides provisions relating to the Technical Review Committee and the shortlist.

Subchapter 9 provides provisions relating to the Design-Builder Selection Committee and establishes the award process of the design-build contract.

This notice of proposal is exempted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5, as the Department is providing a 60-day comment period for this notice.

Social Impact

The proposed new rules will aid in the Department's continued commitment to preserving and improving the quality of the State's transportation network. The Department will select projects to utilize the design-build approach that better meet the Department's needs when compared to the traditional design-bid-build method. The procedures established in the proposed new rules provide protection for the interests of the driving public and of the design-builders by balancing the general public's interest in transparency, while protecting the proprietary information and trade secrets of design-builders submitting design-build proposals. The proposed new rules should allow projects to be completed faster and result in less congestion caused by construction because design-build leverages designer-contractor innovation and provides flexibility within defined public commitments and project goals to complete projects more efficiently and faster than possible with the traditional design-bid-build process. The proposed new rules help clarify and ensure a well-organized, consistent, and predictable process that will protect public interests while attracting design-builders to the Department's design-build projects. The proposed new rules should have a positive social impact.

Economic Impact

The proposed new rules establish procedures to enable the Department to utilize the design-build approach for projects under consideration. The extent of information that must be provided to design-builders in the solicitation, along with requests for proposals, aims to provide as much information as possible concerning the project. This will allow for fully informed responses from which the Department can select the most advantageous proposal based on price and other factors.

Traditionally, public contracts are awarded using a design-bid-build approach. The process under the design-build approach will allow the Department to award the design and construction of an entire project to a single design-builder. Empowering one entity to manage the project delivery from start to finish may result in a more organized and efficient workflow. The proposed new rules are likely to have a positive economic impact because a more organized and efficient workflow may result in a better process that can accomplish more, faster, and for less taxpayer money.

Federal Standards Statement

The proposed new rules are consistent with the requirements at 23 CFR Part 636. Therefore, a Federal standards analysis pursuant to Executive Order No. 27 (1994) P.L. 1995, c. 65 is not required.

Jobs Impact

The proposed new rules are anticipated to have a favorable impact on the workforce in the State. The Department will continue to provide a variety of design-bid-build and design-build opportunities for design professionals and contractors to compete for contracts and such contracts will enable them to employ New Jersey citizens to perform the contract requirements.

Agriculture Industry Impact

The proposed new rules are not intended to regulate farming, crop, or animal production.

Regulatory Flexibility Analysis

The proposed new rules apply to all design-builders who want to participate in design-build projects with the Department. Some of the design-builders may be small businesses, as the term is defined in the New Jersey Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. The Department has determined that the proposed new rules are necessary to accomplish the goals of the chapter. All design-builders will be required to submit qualifications; work classification limits; financial information; drawings and specifications; and schedules for commencement and completion. There are no lesser or differing standards for small businesses.

Housing Affordability Impact Analysis

This chapter provides the processes by which design-builders may enter into design-build contracts with the Department. The Department believes that it is extremely unlikely that the proposed new rules will have any impact on the affordability of housing in New Jersey or the average costs associated with housing because the Department does not engage in housing construction.

Smart Growth Development Impact Analysis

This chapter provides the processes by which design-builders may enter into design-build contracts with the Department. The proposed new rules have had no impact housing production within Planning Areas 1 and 2, or within designated centers, pursuant to the State Development and Redevelopment Plan and will have no impact on smart growth.

Racial and Ethnic Community Criminal Justice and Public Safety Impact

This chapter provides the processes by which design-builders may enter into design-build contracts with the Department. The Department believes that it is extremely unlikely that the proposed new rules will have any impact on pretrial detention, sentencing, probation, or parole policies concerning adults or juveniles in the State. Therefore, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 44B

DESIGN-BUILD CONSTRUCTION CONTRACTS

SUBCHAPTER 1. PURPOSE AND SCOPE

16:44B-1.1 Purpose

The purpose of this chapter is to provide the processes by which design-builders may enter into design-build contracts with the New Jersey Department of Transportation (Department).

16:44B-1.2 Scope

This chapter implements N.J.S.A. 52:35B-1 et seq., the Design-Build Construction Services Procurement Act, which establishes the procedures for the awarding of design-build contracts for State and local contracting units and provides that the Department may follow a two-phase selection process.

SUBCHAPTER 2. DEFINITIONS

16:44B-2.1 Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner of the New Jersey Department of Transportation or such person as the Commissioner may designate, when legally possible.

“Department” means the New Jersey Department of Transportation.

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

“Design-build project” means a project delivery system that combines all or some portions of the design and construction phases of a construction project into a single contract including, but not limited to, design and regulatory permit approvals.

“Design-builder” means the entity, whether natural person, partnership, joint stock company, corporation, trust, professional corporation, business association, design-build team, joint venture, or other legal business entity or successor, that proposes to design and construct any public project, who is registered pursuant to the provisions at N.J.S.A. 34:11-56.48 et seq., classified by the New Jersey Division of Property Management and Construction or the New Jersey Department of Transportation, where relevant, to perform work on a design-build project, and prequalified pursuant to N.J.A.C. 16:44-3 and 16:44A-3.1.

“Design professional” means the entity, whether natural person, partnership, joint stock company, corporation, trust, professional corporation, business association, joint venture, or other legal business entity or successor that provides licensed and prequalified architectural, engineering, or surveying services in accordance with N.J.S.A. 45:3-1 et seq., and 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 the Department will consider for the first phase of the selection process, and will 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.

“Key persons” means individuals identified and included by a design-builder in the phase one and phase two submissions as having a responsible role in the successful completion of the design-build contract.

“Price bid” means a sealed proposal containing the cost of providing the required design and construction and other services described in the request for proposals.

“Proposal” means an offer to enter into a design-build contract in response to a request for proposals.

“Publicly read” means a posting by the Department at <https://www.BidExpress.com> and/or <https://www.state.nj.us/transportation/business/procurement/> of the list of the design-builders who

submitted a statement of qualifications; the shortlist; or the design-builder awarded the design-build contract, if any.

"Request for proposals" or "RFP" means the written document issued by the Department, including all required documentation, in the second phase of a two-phase selection process to be used to identify the design-builder offering the best value to the Department.

"Shortlist" means the list of design-builders selected to participate in the second phase of a two-phase selection process. The maximum number, as specified in the solicitation, shall be at least two and shall not exceed six.

"Solicitation" means a written document including all additional information issued by the Department in the first phase of the two-phase selection process that describes the project in enough detail to allow potential design-builders to determine if they wish to compete for the design-build contract and that requests information from design-builders regarding the qualifications, experience, and organizational structure of the design-builder's team, which information can be used by the Department to establish a shortlist of the design-builders to receive the request for proposals for the design-build project.

"Statement of qualifications" or "SOQ" means the document(s) submitted by a design-builder in response to a solicitation issued by the Department that describes the qualifications and capabilities of the design-builder and the design-builder's key persons, who will perform the scope of services to be included in a design-build contract.

"Technical proposal" means the written description, including any drawings, specifications, or other items, of the proposed approach to managing and accomplishing all project activities during the design and construction of the design-build project that is provided by the design-builder in response to the request for proposals.

"Two-phase selection process" means a procurement process in which the first phase submission consists of a statement of qualifications in response to a solicitation. The second phase submission consists of the price bid and technical proposals in response to the request for proposals.

"Work classification limit" means the maximum dollar amount of the classification assigned for which a design-builder shall be allowed to bid in a particular work type on an individual project in phase one of a two-phase selection process.

SUBCHAPTER 3. GENERAL PROVISIONS

16:44B-3.1 General provisions

(a) Design-builders shall:

1. Be registered with the New Jersey Department of Labor and Workforce Development, Division of Wage and Hour Compliance, pursuant to the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 through 56.57;
2. Have a valid business registration with the New Jersey Department of the Treasury, Division of Revenue, pursuant to N.J.S.A. 52:32-44;
3. Comply with the requirements at N.J.S.A. 10:5-1 et seq., Law Against Discrimination, and N.J.A.C. 17:27, Equal Employment Opportunity and Affirmative Action Rules;
4. Satisfy the prequalification and work classification requirements stated in the solicitation prior to submitting a statement of qualifications in response to the design-build solicitation; and
5. Comply with any and all applicable Federal or State statutory or regulatory bidding and contract requirements.

16:44B-3.2 Federal Highway Administration approval and authorization

All Federal aid design-build highway projects shall comply with 23 CFR Part 636 and all applicable Federal statutes and regulations, as required.

SUBCHAPTER 4. SOLICITATION REQUIREMENTS

16:44B-4.1 Solicitation requirements

(a) Projects will be solicited by public notice pursuant to the requirements at N.J.S.A. 27:7-29. Solicitations will also be posted on the Department's website at: <https://www.state.nj.us/transportation/business/procurement/> and the Department's electronic bidding provider at: <https://www.BidExpress.com>.

(b) Each design-build solicitation by the Department may include, but not be limited to, the following:

1. The procedures to be followed for submitting a statement of qualifications, the criteria for evaluation and their relative weight, and the procedures for making awards, including a reference to the requirements at N.J.S.A. 52:35B-2 through 9 and this chapter;

2. The proposed terms and conditions for the design-build contract;

3. A description of the drawings, specifications, or other items to be submitted in response to the request for proposals in the form of a technical proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that shall be acceptable;

4. A schedule for planned commencement and completion of the design-build contract;

5. Affirmative action, disadvantaged business or small business goals or requirements for the design-build contract, in accordance with the requirements of all rules, regulations, standards, or policies adopted by the Department;

6. The required qualifications of the design-builder;

7. Requirements for design-builders and the design professional to have performance bonds, payments bonds, and insurance, and to meet all the qualifications of the Department;

8. The required work classification limit of the design-builder;

9. Offer of a stipend, if any;

10. The maximum number of design-builders the Department will identify on the shortlist. The maximum number specified in the solicitation will be at least two and shall not exceed six; and

11. A statement that the prospective design-builder is in compliance with all applicable laws, including the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq., the Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., and the Construction Industry Independent Contractor Act, N.J.S.A. 34:20-1 et seq.

(c) The solicitation may include any other information that the Department, 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.

SUBCHAPTER 5. STATEMENT OF QUALIFICATIONS

16:44B-5.1 Statement of qualifications (SOQ) evaluation factors

The solicitation will include the evaluation factors and the relative importance assigned to the evaluation factors and any sub-factors to be considered by the Department to determine the shortlist.

16:44B-5.2 Submittal of statement of qualifications

(a) The submission of an SOQ is an acknowledgement that the design-builder has completely reviewed the solicitation, along with the proposed terms and conditions of the design-build contract, and fully understands and agrees to all the requirements, terms, and conditions set forth therein.

(b) An SOQ will only be accepted from a design-builder pre-qualified with the Department pursuant to N.J.A.C. 16:44-3 and 16:44A-3.1.

(c) An SOQ will only be accepted from a design-builder that has been classified in at least one construction work type and at least one design work type as required in the solicitation.

(d) An SOQ will only be accepted from a design-build firm if the work classification limit is not exceeded.

(e) An SOQ shall identify the key persons to whom the design-builder will delegate obligations under the design-build contract. The key persons so identified shall not be replaced without the approval of the Department. The Department will have a reasonable basis for withholding approval.

(f) No SOQ will be accepted after the solicitation has been closed.

(g) The identity of all design-builders who submitted a SOQ will be publicly read on a date established by the Department.

SUBCHAPTER 6. PROPOSALS

16:44B-6.1 Proposal requirements

(a) Proposals shall be sealed and shall not be opened until expiration of the time established for making proposals as described in the solicitation.

(b) Proposals shall identify the key person to whom the design-builder delegates obligations under the design-build contract. The key person

shall not be replaced without the approval of the Department. The Department will have a reasonable basis for withholding approval.

(c) Proposals shall establish the cost of the design-build contract, which shall not be exceeded if the proposal is accepted without any change. Afterward, the maximum cost in the proposal may be converted to a fixed price to be negotiated by agreement between the Department and the design-builder.

(d) Proposals shall contain a statement that the prevailing wage rate is accounted for in the price bid proposal by the design-builder and that if awarded the contract, all workers employed in the design-build project shall be paid at least the prevailing wage determined by the Commissioner of the Department of Labor and Workforce Development, pursuant to the provisions of the New Jersey Prevailing Wage Act, N.J.S.A. 34:11-56.25 et seq.

16:44B-6.2 Proposal receipt, rejection, and withdrawal

(a) Unless and until a proposal is accepted, the drawings, specifications, and other information in the proposal shall remain the property of the design-builder. Once a proposal is accepted, the disclosure of the proposal and the information in the proposal, and the ownership of the drawings, specifications, and other information in the proposal, shall be determined in accordance with existing law and the terms of the design-build contract.

(b) The Department will have the right to reject any and all proposals. The Department may issue a new solicitation using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the Department including, but not limited to, an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.

(c) A proposal submitted pursuant to N.J.S.A. 52:35B-1 et seq., may be withdrawn for any reason at any time prior to acceptance.

16:44B-6.3 Technical review committee evaluation of proposals

(a) Pursuant to N.J.S.A. 52:35B-4 et seq., the technical review committee will evaluate, score, and rank the proposals and make a recommendation to the Design-Builder Selection Committee.

(b) Pursuant to N.J.S.A. 52:35B-4.f, the technical review committee will evaluate each 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 design-builder's sealed bid.

(c) Where there is a question as to whether a proposal is within the design-builder's work classification or, where it reasonably appears that a design-builder may not have the work classification that will allow it to bid on a project for which request for proposals are being sought, the proposal will be opened provisionally. If the proposal is for a different work type or in a dollar amount greater than the design-builder's maximum work classification limit, the proposal may be rejected.

SUBCHAPTER 7. STIPEND

16:44B-7.1 Stipend

(a) Pursuant to N.J.S.A. 52:35B-4.d, the Department may, in its sole discretion, offer a stipend, based upon the project size and type, which shall not exceed three percent of the Department's estimated cost of the project, to any design-builder providing design, construction information, or materials presented in response to a request for second proposals. Nothing in this subsection shall require the Department to offer a stipend, nor does it provide entitlement to a stipend if one is not offered. Stipends are meant to encourage the submission of second proposals and to increase competition. If the Department, in its sole discretion, offers a stipend, and then rejects all submitted proposals, the stipend may be paid pursuant to the terms of the request for proposals.

(b) The Department in its sole discretion may deny a stipend to a design-builder for an incomplete or otherwise non-responsive second proposal.

SUBCHAPTER 8. TECHNICAL REVIEW COMMITTEE AND THE SHORTLIST SELECTION

16:44B-8.1 Technical Review Committee

The Technical Review Committee will, at a minimum, consist of a representative of the Department, the Department's project manager, and the Department's authorized design professional. The Department's attorney may advise the Committee.

16:44B-8.2 Technical Review Committee shortlist selection

(a) The Technical Review Committee will evaluate and score the SOQs received based on the specified evaluation factors in the request for proposals, select the highest qualified number of design-builders specified in the solicitation, and request that the shortlist design-builders submit a second proposal.

(b) The ranking and scores of all design-builders that submitted a SOQ to create the shortlist will be publicly read on a date established by the Department.

SUBCHAPTER 9. DESIGN-BUILDER SELECTION COMMITTEE AND DESIGN-BUILD CONTRACT AWARD PROCESS

16:44B-9.1 Design-Builder Selection Committee

The Design-Builder Selection Committee will consist of five voting members which shall be appointed by the Commissioner.

16:44B-9.2 Design-build contract award process

(a) The Design-Builder Selection Committee (DBSC) will select the winning design-builder, consistent with the award recommendation of the Technical Review Committee.

(b) The Commissioner will have final approval or rejection of the award recommendation of the DBSC.

(c) The design-builder awarded the design-build contract, the final ranking, price, and scoring of the shortlist will be publicly read on a previously established date by the Department.

TREASURY—GENERAL

(a)

BOARD OF TRUSTEES OF THE POLICE AND FIREMEN'S RETIREMENT SYSTEM

Police and Firemen's Retirement System Investment Rules

Proposed Repeals and New Rules: N.J.A.C. 17:4A-1.3 and 1.4

Proposed Amendments: N.J.A.C. 17:4A-1.1, 1.2, 1.5, 2.2, 3.1, 3.3 through 3.13, 4.2, 4.4, 5.2, 6.2, 6.4, 7.2, 8.2, 8.4, 9.2, 9.4, 10.2, 10.4, 11.2, 11.4, 12.2, 12.4, 13.2, 14.2, 14.4, 15.2, 15.4, 16.2, 16.4, 17.2, 17.4, 18.2, 18.4, 19.2, 19.4, 20.2, 20.4, 21.2, 21.4, 22.2, 23.2, 23.4, 24.2, 24.4, 25.2, 25.4, 26.2, and 26.4

Proposed Repeals: N.J.A.C. 17:4A-2.1, 2.3, 3.2, 4.1, 4.3, 5.1, 5.3, 6.1, 6.3, 7.1, 7.3, 8.1, 8.3, 9.1, 9.3, 10.1, 10.3, 11.1, 11.3, 12.1, 12.3, 13.1, 13.3, 14.1, 14.3, 15.1, 15.3, 16.1, 16.3, 17.1, 17.3, 18.1, 18.3, 19.1, 19.3, 20.1, 20.3, 21.1, 21.3, 22.1, 22.3, 23.1, 23.3, 24.1, 24.3, 25.1, 25.3, 26.1, and 26.3

Authorized By: The Board of Trustees of the Police and Firemen's Retirement System of New Jersey, Ed Donnelly, Chair

Authority: N.J.S.A. 43:16A-1 et seq.; and P.L. 2018, c. 55.

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2024-012.