

ASSEMBLY, No. 1561
STATE OF NEW JERSEY
215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

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SYNOPSIS

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

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel

AN ACT concerning the procurement of certain goods and services by the New Jersey Turnpike Authority, amending and supplementing P.L.1948, c.454.

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

1. Section 4 of P.L.1948, c.454 (C.27:23-4) is amended to read as follows:

4. As used in this act, the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

"Act" means P.L.1948, c.454 (C.27:23-1 et seq.), as amended and supplemented.

"Authority" means the New Jersey Turnpike Authority, created by section 3 of this act, or, if said authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this act to the authority shall be given by law.

"Bonds" or "transportation revenue bonds" means any bonds, refunding bonds, notes or other obligations issued by the authority authorized under the provisions of this act or issued by or for the Highway Authority.

"Commissioner" means the Commissioner of Transportation.

"Construction" or "construct" means the planning, designing, construction, development, reconstruction, rehabilitation, redevelopment, replacement, repair, extension, enlargement, improvement, and betterment of highway and transportation projects and includes the demolition, clearance and removal of buildings or structures on land acquired, held, leased or used for those projects, and shall also include, but need not be limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs, administrative costs, and all expenses incurred in connection thereto, as well as the design, construction, operation, and maintenance of an electronic toll collection monitoring system.

"Cost" means all or any part of the expenses incurred in connection with the acquisition, construction, operation, management and maintenance of any real property, lands, structures, real or personal property rights, rights-of-way, franchises, easements, and interests acquired or used for a project; any financing charges and reserves for the payment of principal, premium and interest on bonds; the expenses of engineering, appraisal, architectural,

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

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

"Department" means the Department of Transportation.

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

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

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

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

"Highway project" means the acquisition, operation, improvement, management, repair, construction, including express E-ZPass where determined by the authority, and maintenance of the New Jersey Turnpike and of the Garden State Parkway, including the demolition and removal of toll houses and toll barriers, and of the Garden State Arts Center, as transferred to the authority pursuant to P.L.2003, c.79 (C.27:23-41 et al.), and of any other highway or feeder road at the locations and between the termini as may hereafter be established by the authority or by law and acquired or constructed under the provisions of this act by the authority, and shall include but not be limited to all bridges, parking facilities, public highways, feeder roads, tunnels, overpasses, underpasses, interchanges, traffic circles, grade separations, entrance and exit plazas, approaches, toll houses, service areas, stations and

facilities, communications facilities, administration, storage and other buildings and facilities, and other structures directly or indirectly related to a transportation project, intersecting highways and bridges and feeder roads which the authority may deem necessary, desirable, or convenient in its discretion for the operation, maintenance or management, either directly or indirectly, of a transportation project, and includes any planning, design or other preparation work necessary for the execution of any highway project, and adjoining park or recreational areas and facilities, directly or indirectly related to the use of a transportation project as the authority shall find to be necessary and desirable, and the costs associated therewith.

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

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

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

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

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

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

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

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

"Transfer Date" means, with respect to the assumption by the authority of the powers, duties, assets and responsibilities of the New Jersey Highway Authority, the date on which the Chair of the authority and the commissioner certify to the Governor that: (i) all bonds issued by the New Jersey Highway Authority cease to be outstanding within the meaning of the resolutions pursuant to which those bonds were issued; and (ii) upon which the authority assumes all debts, and statutory responsibilities and obligations of the New Jersey Highway Authority.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Requirements for construction experience, design experience, financial, personnel, and equipment resources available from design-build entities for the project and experience

in other design-build delivery systems similar projects, provided that these requirements may not unduly restrict competition;

(3) A scope of work statement and schedule;

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

(5) The form of contract to be awarded;

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

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

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

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

(10) Any other factor the authority deems appropriate.

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

4. (New section) a. The authority shall prepare and solicit a request for proposals from the list of qualified design-build entities as determined by the authority pursuant to subsection c. of section 3 of P.L. , c. (C.) (pending before the Legislature as this bill). The request for proposals shall include any information a design-build entity may need, including, but not limited to, the weighted criteria to be used to score the request for proposals and require separate submissions for a technical proposal, price bid, and any other information the authority deems appropriate. The request for proposals shall establish and provide the date on which the technical proposal and price bids are to be submitted to the authority by the qualified design-build entities. The technical proposal and price bids shall be clearly identified and include the date and time of the submittal deadline.

b. The authority shall offer a stipend, based upon the project size and type, but not to exceed one percent of the project's estimated cost, to any design-build entity whose design, construction information, or materials presented in a request for proposals the authority

desires to retain for its exclusive use. A design-build entity may accept the authority's offer of a stipend for use of its design, construction information, or materials or may decline such offer, in which case the authority may not retain or use in any manner any of the design, construction information, or materials presented to the authority by the corresponding design-build entity.

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

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

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

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

(3) Estimated cost range for design and construction;

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

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

(6) Permit requirements and applicable development fees;

(7) A statement that the authority may provide an appropriate owner control insurance program for the project;

(8) Copies of the contract documents that the successful design-build entity will be expected to enter into; and

(9) Any other information deemed relevant to the project by the authority.

c. The technical review committee shall score the technical proposals using the criteria in the request for proposals. The technical review committee shall then submit a technical proposal score for each design-build entity submitting a proposal to the authority.

6. (New section) a. (1) The authority shall set a minimum technical proposal score that a design-build entity must meet or exceed in order to be eligible to be awarded the design-build delivery system contract. Any proposal that does not meet the minimum technical proposal score shall be rejected.

(2) The price bid shall be sealed until such time after the technical review committee has evaluated and scored the technical proposal submitted by the design-build entities. The authority shall then make public the technical proposal score for each design-build entity that meets or exceeds the minimum technical proposal score established by the authority and shall publicly open and review the sealed price bid. The priced bid shall contain all design, construction, engineering, inspection, and construction costs of the project.

b. The authority shall award the design-build delivery system contract to the design-build entity that has the lowest priced bid.

c. The authority shall make public the sealed price bid for each proposal submitted to the authority by a design-build entity that meets or exceeds the minimum technical proposal score established by the authority. The authority shall also make public the design-build entity awarded the contract for the project.

7. (New section) Within 90 days of the effective date of this act, the authority, in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall promulgate rules and regulations to effectuate the purposes of P.L. , c. (C.) (pending before the Legislature as this bill).

8. This act shall take effect on the first day of the sixth month following enactment.

STATEMENT

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

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

The bill requires the authority to establish a technical review committee to evaluate and score the technical proposal submitted with the request for proposals by the qualified design-build entities in accordance with the weighted criteria established by the technical review committee. This technical proposal score shall be made public by the authority, who shall also make public the sealed price bid submitted in the request for proposals by the qualified design-build entities.

Under the bill, the authority is to award the design-build delivery system contract to the design-build entity that meets or exceeds the minimum technical proposal score set by the authority and has the lowest priced bid.

Finally, the bill provides that the authority is to offer a stipend, based upon the project size and type, but not to exceed one percent of the project’s estimated cost, to any design-

build entity whose design, construction information, or materials presented in a request for proposals the authority desires to retain for its exclusive use. A design-build entity may accept the authority's offer of a stipend for use of its design, construction information, or materials or may decline such offer, in which case the authority may not retain or use in any manner any of the design, construction information, or materials presented to the authority by the corresponding design-build entity.