

ACEC NEW JERSEY SUPPORTS THE USE OF DESIGN-BUILD FOR DESIGN AND CONSTRUCTION OF HIGHWAY/BRIDGE PROJECTS IN NEW JERSEY

ACEC NEW JERSEY believes in the value of a project delivery system that guides the design of public and private facilities, is in the best interest of the owner, utilizes a Qualifications-Based Selection (QBS) procedure for the design professionals¹, provides unbiased protection for the present and future infrastructure, and protects the health, welfare and life safety of the public.

ACEC NEW JERSEY recognizes that the traditional design-bid-build project delivery system is utilized for the majority of constructed projects. This system provides the owner and the public a degree of assurance that the constructed facilities are appropriate for the project requirements.

ACEC NEW JERSEY also acknowledges design-build as an effective alternative project delivery system that is used in certain circumstances for private and public projects. This system is an integrated approach that provides the owner with design and construction services under one contract with a single source of project responsibility. A qualifications-based design-build approach to delivery can offer the following benefits:

- Allows Owners to select the design/build teams that demonstrates the best experience, capabilities, technical approach and quality of personnel matched to the needs of the project and Owner;
- Generates better construction plans that facilitate bidding and construction;
- Fosters collaboration and the development of innovative cost effective design solutions generating substantial initial and lifetime project cost savings and lower ownership and operating costs;
- Ensures opportunities to meet critical SBE/DBE goals and targets;
- Produces design solutions that safeguard the public health and safety.

As the design professional, architects and engineers may engage in a variety of roles in design-build execution agreements, as the lead entity, in a joint venture relationship with a contractor, as lead designer in a sub-contract role to a contractor or as a sub-consultant to the lead designer.

Design-build is used in a number of public and private construction projects across the State of New Jersey, including in higher education, water and wastewater, ports, and transit projects. It is commonly used across the country and in surrounding states. It is recognized and supported by the Federal Highway Administration (FHWA). But, currently, New Jersey State law does not allow for this approach to be applied to any public highway/bridge project within the State, at any level of government. Therefore, recognizing the many benefits of this approach, ACEC NEW JERSEY strongly supports the State Legislature and Governor updating the law to allow its application to future state, county, and local highway/bridge transportation projects.

¹ In New Jersey, Architects, but not engineers, are currently permitted to participate directly in design/build contracts. *See*. N.J.A.C. 13:27-7A *et al.*

As a public policy issue, when design-build is utilized, ACEC NEW JERSEY endorses a two-step procedure and implementation process sometimes referred as the bridging method as the one that best protects the interests of the owner, design professional, contractor, and the public, as follows.

Phase 1: Selection of Owner’s Design Consultant

- a) A registered design professional should be retained to represent the owner throughout the entire project as the Owner’s Design Consultant. The Owner’s Design Consultant should be selected based on their qualifications and experience.

- b) The Owner’s Design Consultant should prepare preliminary design and related Contract Documents. ACEC NEW JERSEY recommends that the Owner’s Design Consultant should develop these related Contract Documents to a level that provides sufficient design concepts such that the owner can receive competitive, fixed-price proposals based on the related Contract Documents for the full project from the design-build teams.

- c) The Owner’s Design Consultant should be retained by the owner for the duration of the design-build contract to provide oversight and Quality Assurance of the design-build team’s work and act as a representative of the Owner in a variety of roles.

Phase 2: Selection of Design-Build Team

- a) The design-build team should include one or more registered design professional(s). These design professionals must be independent from the Owner’s Design Consultant and should have the necessary qualifications and expertise to successfully execute the design of the project. The design-build design professional(s) should be named in the proposal and retained for the duration of the design-build project to provide design services, documentation and review. Design professionals should not be changed after the proposal is accepted by the client. The design professionals should develop and refine the design provided in the RFP to the final design level needed by the contractor to construct the project and to meet the Owner’s requirements.

- b) The Owner should select the design-build team on the basis of solicited proposals based on criteria developed by the Owner. A two-step Qualification Based Selection process should be utilized as follows:

Step I: A request for Qualifications (RFQ) is issued by the owner and design-build teams are shortlisted on the basis of qualifications and experience criteria listed in the RFQ. A short list of the three most technically qualified teams is recommended.

Step II: In response to an Owner’s Request for Proposal (RFP), shortlisted teams are requested to submit qualifying evidence, a project scope, design approach and sealed cost proposal for the project upon which a final selection is made considering the best value to the owner in accordance with the Owner’s procurement requirements. The qualifying evidence shall be graded on a pass/fail basis and the design approach shall be evaluated only if a passing grade is achieved. After evaluation, the sealed cost proposal shall be opened. At that point, ACEC NEW JERSEY strongly recommends that the basis for evaluating best value design-build proposals be both clearly articulated by the Owner in the RFP such that a clear and well defined evaluation process is utilized to determine the

value and quality of each team's proposal to allow the Owner to make the appropriate award.

As Step II services performed by the designer may be relied upon by the contractor in preparation of his proposal, the designer should be compensated for these services, by the lead entity. To offset the cost of preparing detailed proposals in Step II, financial stipends should be specified in the RFP and paid by the Owner to responsive, shortlisted teams.

c) The design-build team should coordinate all design and construction efforts so as to preserve and enhance the quality of the project and to ensure that the Owner's design intent is achieved.

d) Open channels for communication between the Owner and the design-builder should be provided for as a part of the working relationships. ACEC NEW JERSEY also recommends that provisions and procedures be implemented for communication among all parties, including the design-build team, the Owner's design consultant and the Owner of the design-build project.