



DCA Division of
NJ DEPARTMENT OF Community Affairs Local Government Services

Department of Community Affairs

Lt. Governor Sheila Y. Oliver
Commissioner

Jacquelyn A. Suárez
Director of Local Government Services

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Design-Build Law
and other procurement updates

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DCA NJ DEPARTMENT OF Community Affairs

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Design Build Law

- P.L. 2021, chapter 71
- Created new sections of the LPCL – 40A:11-53 through 60
- DLGS required to create rules
 - Stakeholder process
 - Rules adapted from School Development Authority, competitive contracting and other parts of the LPCL, and RFQ's used for water and wastewater public private contracting
- Rules in effect under special adoption on May 27, 2022, and concurrent proposal for final adoption
 - New section NJAC 5:34-10
 - Comment period open until September 3, 2022
 - See GovConnect for details

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Design Build Law

Key definitions under the law:

- “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.

Vs.

- “Design-bid-build” means the delivery system used in public projects in which a licensed 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.
- And many more definitions included!

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Design Build Law

Eligible projects:

- Construction projects that can be reasonably, and in good faith, estimated to have a cost equal to or exceeding \$5,000,000. Design-build project delivery shall not be utilized for projects that cannot be reasonably, and in good faith, estimated to have a cost equal to or exceeding \$5,000,000.
- "Design-build project" means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, or rehabilitation of all or any part of a facility or right-of-way, or of any other personal property necessary for, or ancillary to, any facility or right-of-way, and shall include fixtures, furnishings, and equipment, and shall also include, but is not limited to, site acquisition, site development, architectural and engineering services, construction management, legal services, financing costs and administrative costs and expenses incurred in connection with the project.
- "Public highway" means public roads, streets, expressways, freeways, parkways, motorways and boulevards, including bridges, tunnels, overpasses, underpasses, interchanges, rest areas, express bus roadways, bus pullouts and turnarounds, park-ride facilities, traffic circles, grade separations, traffic control devices, the elimination or improvement of crossings of railroads and highways, whether at grade or not at grade, bicycle and pedestrian pathways and pedestrian and bicycle bridges traversing public highways

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Design Build Law

Eligible projects continued:

- "Public transportation project" means in connection with public transportation service, passenger stations, shelters and terminals, automobile parking facilities, ferries and ferry facilities, including capital projects for ferry terminals, approach roadways, pedestrian accommodations, parking, docks, and other necessary land-side improvements, ramps, track connections, signal systems, power systems, information and communication systems, roadbeds, transit lanes or rights of way, equipment storage, pedestrian walkways and bridges connecting to passenger stations and servicing facilities, bridges, grade crossings, maintenance facilities and garage facilities.
- "Transportation project" means the construction or reconstruction of a public highway, public transportation project infrastructure, rail freight infrastructure, or other surface, underground, airborne, or waterborne transportation infrastructure for the movement of people and/or goods.

- QUESTION – WHAT TYPES OF PROJECTS DO YOU THINK WOULD BENEFIT FROM USING DESIGN BUILD?*

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Design Build Law

Getting Started:

- Governing body of a contracting unit may adopt a resolution to authorize utilization of design-build project delivery in lieu of a design-bid-build delivery system.
- Governing body must determine that, when compared to the design-bid-build process, design-build project delivery will facilitate a shorter overall design and construction process including, but not limited to, reducing the likelihood of work stoppages and change orders that would increase costs.
- Resolution shall also establish procedures for the solicitation and award following NJAC rules



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Design Build Law

Framework for a design build project:

- Hiring the design professional for architectural, engineering and/or surveying services – also provide technical advice, construction review services and professional expertise on behalf of contracting unit
 - Design professional cannot bid
- May also hire a construction manager
- Establish a technical review committee to evaluate statements of qualifications (phase 1) and design builder proposals (phase 2)
 - QPA, design professional, project manager, perhaps others such as municipal manager or BA, attorney and CFO
 - Must have no conflicts of interest



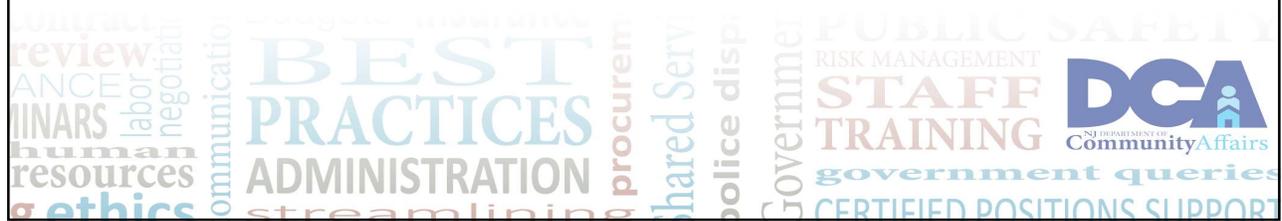
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Design Build Law

RFQ process continued:

4. Qualification evaluation factors, which shall include:

- i. experience level and degree of technical competence;
- ii. training of, and certifications held by, the professional and field workforce;
- iii. principal location of the bidder and key team members to the extent that it would materially impact project delivery;
- iv. performance capability;
- v. certifications, classifications and ratings possessed by the team as relevant to the project;
- vi. past performance of the individual members of the design-builder’s team;
- vii. measures taken to promote workforce diversity with respect to women and minorities; and
- viii. other technical factors as may be relevant to the project.



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Design Build Law

RFQ process continued:

5. A statement of the maximum number of bidders (min. of 2, max. of 6) to be prequalified to submit a statement of proposal.

6. A statement if the design-build contract is subject to any set-aside goals established pursuant to LPCL, as applicable.

7. Details of a stipend if offered by the contracting unit.



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Design Build Law

RFQ creation:

Must be crafted in such a way as to encourage free, fair and open competition without unfairly or illegally discriminating against otherwise capable design-builders.

No RFQ may:

1. Require any standard, restriction, condition, or limitation not directly related to the project's purpose, function or activity;
2. Discriminate on the basis of race, religion, sex, national origin, creed, color, ancestry, age, marital status, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality;
3. Require in the scope of work statement the furnishing of any "brand name" without allowing an equivalent, except that proprietary goods or services are permitted only if the need for same is directly related to the performance, completion, or undertaking of the project;
4. Require a financial statement to be provided with the statement of qualifications; or
5. Require that the bidder, or any key team member, be a resident of, or have their place of business located in, the county or municipality in which the contract will be awarded or performed.

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Design Build Law

Bidder Statement of Qualifications – minimum requirements:

1. An organizational chart of the bidder, and the key team members of the proposed design build team.
2. A list of current construction projects, and construction projects completed within the last 5 years, that are of similar size, scope, and complexity to the contracting unit's project, regardless of method of project delivery.
3. A listing of all the contracting unit's public works projects on which the design-builder and proposed design-build team have performed work within the past five years.
4. For transportation projects, the minimum classifications and aggregate rating limits to which the bidder and key team members and other subcontractors have been assigned by the New Jersey Department of Transportation, as applicable to the project. When a transportation project includes the installation, replacement, or rehabilitation of associated water, sewer, or stormwater infrastructure, the design-build team shall also possess classifications and aggregate rating limits issued by the DPMC that are relevant to such work.

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Design Build Law

Bidder Statement of Qualifications continued:

5. For all projects other than transportation projects, documentation that the bidder and, to the extent necessary for the project, key team members and other subcontractors have a current DPMC design build classification and such other DPMC classifications and ratings as may be necessary for the project.
6. A listing of all public works projects for which a contracting unit has made a determination of prior negative experience with respect to the design-builder or members of its proposed design-build team within the past five years pursuant to LPCL.
7. Training certification of the bidder's professional and field workforce, along with that of the members of the proposed design-build team.
8. Safety experience modification rating (EMR) of the bidder and construction members of its proposed design-build team.
9. Measures taken by the bidder and members of the proposed design-build team to promote workforce diversity with respect to women and minorities.

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Design Build Law

Bidder Statement of Qualifications continued:

10. If the contract is subject to any set-aside goals established by the contracting unit pursuant law as applicable, documentation as to whether the design-builder and/or any key team members are a qualified minority business enterprise, a qualified women's business enterprise, a qualified small business enterprise, or a qualified veteran business enterprise.
11. If the design-build contract will be subject to a project labor agreement pursuant to law.
12. A copy of the bidder's Public Works Contractor Registration certificate along with a copy of the certificates of the proposed members of the bidder's design-build team required to be registered.
13. A certification that the bidder, along with the bidder's proposed design-build team, including individually named key team members, is in compliance with, and is not currently debarred from awards of State or local contracts.
14. A certification that the bidder, along with the bidder's proposed design-build team including individual key team members, is not debarred from awards of federal contracts for public work as defined in law.

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Design Build Law

Bidder Statement of Qualification evaluation process:

Technical review committee:

1. Verify PWCR's
2. Verify no state or federal debarment
3. Review of all aspects of the bidder statement of qualifications
4. Review of any applicable prior performance.
5. Select no fewer than 2, nor more than 6 bidders who shall be prequalified.



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Design Build Law

Request for proposals – Phase 2:

- The contracting unit shall issue a request for proposals to each bidder qualified no fewer than 14 days prior to the date established for submission of statements of proposal. The date fixed for receiving the proposals shall not fall on a Monday or any day directly following a State or federal holiday.
- A request for proposals shall be prepared by the contracting unit using a design professional or design official and must be crafted in such a way as to encourage free, fair, and open competition without unfairly or illegally discriminating against otherwise capable design-builders. No RFP shall contain the elements prohibited for RFQs pursuant to N.J.A.C. 5:34-10.6(d).



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Design Build Law

Request for proposals continued:

The request for proposals shall include, without limitation:

1. The technical proposal and price proposal forms
2. Proposed terms and conditions of the design-build contract
3. Instructions to bidders - submitting and receiving the statement of proposal.
4. Evaluation factor criteria, including the relative importance assigned to the factors and sub-factors with respect to the technical proposal and the price proposal. The evaluation factors may include, but need not be limited to, experience, design concepts, management approach, diversity, proposed technical solutions, plans for quality assurance and control, and the design-builder's understanding of the means and methods needed to complete the project on time and within budget.
5. A description of the drawings, specifications, or other submittals to be provided, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;
6. Site development requirements, including but not limited to parking, lighting, equipment, and landscaping;
7. Description of physical relationships between site elements;
8. Specific architectural style or concept;

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Design Build Law

Request for proposals continued:

9. Performance specifications and prescriptive specifications regarding materials, systems, performance criteria, energy efficiency, life cycle costs and known environmental issues;
10. Engineering, architectural and/or environmental reports (for example, geotechnical evaluations, building evaluations and/or environmental preliminary assessment);
11. Any documentation relative to the known soil conditions at the site including, but not limited to, any test results specifying the level of contamination, if any, of the soil that has been found at the site of the project;
12. If a project is located on a site with historical or suspected contamination, a line-item allowance or minimum unit price line item for soil testing and contaminated soil disposal, which shall be a good faith effort on the part of the contracting unit to reasonably estimate the total cost of testing and disposing of the soil;

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Design Build Law

Request for proposals continued:

13. Assignment of responsibility for obtaining required approvals and permits;
14. Budget limits for the work, if any;
15. Insurance requirements, and bonding or guarantees as may be required for public works projects under the LPCL;
16. A schedule for planned commencement and completion of the design-build contract;
17. Amount of the stipend, if any;
18. A statement pursuant to LPCL, N.J.S.A. 40A:11-23.1c indicating whether uniformed law enforcement officers will be required for the project;
19. A form listing all documentary and informational forms, certifications, and other documents required to submit with statement of proposal, along with a means by which the bidder can indicate their inclusion of said items with the statement of proposal;
20. A means of acknowledging of receipt of revisions or addenda to the RFP; and
21. The documents required to be submitted by the successful bidder upon notice of award.

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Design Build Law

Request for proposals – evaluation process:

Technical review committee:

1. Separate evaluations of technical and price proposals (2 envelopes)
2. List of bidder's key team members and their assignments
3. Surety company bond as specified in RFP
4. Acknowledgement of receipt of addenda
5. Statement regarding compliance with prevailing wage law act, PWCR and construction industry independent contractor act.
6. Control of necessary equipment
7. Any other required documentation.
8. Optional conference with prequalified bidders to ask questions and seek clarification.
9. Evaluate on the basis of pre-established criteria.
10. Must have considered at least 2 complete and responsive proposals.
11. Recommend award to the governing body.

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Design Build Law

Request for proposals – award of contract:

Governing body:

- May award contract as recommended without change.
- May authorize further negotiation
 - a preliminary design-build contract is awarded with successful proposal price set as the maximum cost
 - Parties may agree to further modifications of the contract prior to a final contract award.
- Award a final contract after negotiations

OR

- If fail to reach a negotiated agreement, may authorize a notice of award to be issued to next highest ranked bidder.

OR

- Reject all proposals

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Design Build Law

Post award evaluation of design-builder:

- Every design-builder is subject to evaluation in the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out.
- The design-builder's performance evaluations will be used by the contracting unit in evaluating and scoring bidders as to their prior experience on contracting unit projects, in accordance with the provisions of this chapter.
- Evaluation of construction performance will use the following evaluation ratings:
 - 1. Outstanding (O) or 100 percent--far exceeds the contract requirements by consistently exhibiting excellent performance. Always meets, and almost always exceeds the contract requirements;
 - 2. Very Good (VG) or 90 percent--often exceeds the contract requirements and frequently provides a high level of performance. Typically meets and often exceeds the contract requirements;
 - 3. Satisfactory (S) or 80 percent--provides an acceptable level of performance consistently meeting the contract requirements;
 - 4. Marginal (M) or 70 percent--performs slightly below the requirements of the contract, meeting the contract requirements on an intermittent basis; and
 - 5. Unsatisfactory (U) or 60 percent--fails to meet important contract requirements, resulting in a negative impact on the entire project.

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new jersey
department of community affairs
division of local government services

Local Finance Notice
November 1, 2021

Discussion and Update on Various Public Works Contracting Issues

This Notice reminds local government and school district contracting units of public works contractor registration, prevailing wage, debarment, and equal opportunity/affirmative action requirements. Also reviewed is a recent law expanding the types of projects for which a contracting unit may require a project labor agreement. Local Finance Notices [2004-9](#), [2005-15](#), [2007-12](#), and [2010-4](#) are hereby supplemented by this Notice. Local Finance Notice 2020-18 is repealed and superseded by this Notice.

National cooperative contracts cannot be utilized for public works projects and as such are not covered by this Notice. Contracting units shall continue to adhere to [Local Finance Notice 2012-10](#) regarding use of national cooperative contracts. The Division will be issuing further guidance on the use of public works contracts awarded by the State or by DLGS-registered cooperative purchasing systems, as this issue warrants individual treatment.

Public Works Contractor Registration and Prevailing Wage

Contact Information

Director's Office
V. 609.292.6613
F. 609.633.6243

Local Assistance Bureau
V. 609.292.6858
F. 609.633.6243

Financial Regulation and Assistance
V. 609.292.4806
F. 609.984.7388

Local Finance Board
V. 609.292.0479
F. 609.633.6243

Administrative Services Unit
V. 609.292.6126
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Philip D. Murphy
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Jacquelyn A. Suárez
Director

LFN 2021-20
November 1, 2021

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Russia-Belarus prohibition

Key Points:

- P.L. 2022, chapter 3 – signed March 9, 2022
- Requires Treasury to develop a list of persons and entities
- Cannot enter into, renew or extend a contract with anyone on the Treasury list

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What do you have to do?

Goods and Services:

1. Wait for Treasury to promulgate Russia-Belarus list
2. Then, before goods and services contract:
 - Require a vendor certification – can request it at bid but not required to be submitted – need it before award, renewal, extension
 - Review Treasury’s Russia-Belarus list
 - No award, renewal or extension if on the list

Construction:

1. Do nothing, business as usual
2. This will be picked up by the State when issuing / renewing PWCR

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Where else does this apply?

1. Banking
2. Insurance
3. Redevelopers
4. PILOTS or other tax abatements

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Model Certification

Prohibited Russia-Belarus Activities & Iran Investment Activities	
Person or Entity	
Part 1: Certification	
<p>COMPLETE PART 1 BY CHECKING <u>ONE OF THE THREE BOXES BELOW</u></p> <p>Pursuant to law, any person or entity that is a successful bidder or proposer, or otherwise proposes to enter into or renew a contract, for goods or services must complete the certification below prior to contract award to attest, under penalty of perjury, that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list or Chapter 25 list as a person or entity engaging in prohibited activities in Russia, Belarus or Iran. Before a contract for goods or services can be amended or extended, a person or entity must certify that neither the person or entity, nor any parent entity, subsidiary, or affiliate, is identified on the Department of Treasury's Russia-Belarus list. Both lists are found on Treasury's website at <insert link here> and www.state.nj.us/treasury/purchase/pdf/Chapter25List.pdf. As applicable to the type of contract, the above-referenced lists must be reviewed prior to completing the below certification.</p>	

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New Prevailing Wage Requirement

New Requirements for Public Works Contracts - 06/13/2022

P.L. 2021, c. 301 requires a contractor submitting the lowest bid for a contract that is subject to the Prevailing Wage Act, if that bid is 10 percent or more lower than the next lowest bid, to certify to the public body that the prevailing wage rates required by the Act shall be paid. If the bidder does not provide the certification prior to the award of the contract, the public body shall award the contract to the next lowest responsible and responsive bidder.

Further, P.L. 2021, c. 301 also amended N.J.S.A. 34:11-56.27 to require that any contract for public work expressly stipulate that workers performing work under the contract shall not be paid less than the required prevailing wage rate. Contractors and their sureties shall be liable to the public body, any lessee to whom the public body is leasing a property or premises or to any lessor from whom the public body is leasing or will be leasing a property or premises, for any excess costs occasioned by the termination of their right to proceed with the work, or such part of the work as to which there has been a failure to pay required wages.

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New Prevailing Wage Requirement

New Requirements for Public Works Contracts - continued

The New Jersey Department of Labor and Workforce Development (NJDOLE) is proposing new rules at N.J.A.C. 12:60-9.1 and 9.2 and N.J.A.C. 12:60-9 Appendix, in order to establish standard language for both the contractor certification and the prevailing wage contractual provision. Although those rules have not yet been finally adopted, as the law is currently in effect, contracting units should begin inserting prevailing wage language into their contracts for public work, and requiring contractors coming in 10 percent or more lower than the next lowest bid to complete the required certification. The language and form of certification in the rule proposal below may be instructive when drafting contracts for public works and advising public works contractors on the new requirement.

The NJDOLE rule proposal was published in the June 6, 2022 New Jersey Register at https://www.nj.gov/labor/assets/PDFs/Legal%20Notices/Notices%20of%20Proposal/54_NJR1009a_June62022.pdf.

Written comments must be submitted no later than August 5, 2022 to David Fish, Executive Director of Legal and Regulatory Services for the NJ Department of Labor and Workforce Development, by email at david.fish@dol.nj.gov or by mail to: NJ Department of Labor and Workforce Development, PO Box 110 - 13th Floor, Trenton, New Jersey 08625-0110

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New Prevailing Wage Requirement

New Requirements for Public Works Contracts - continued

This is in effect now and the DOL proposed rules contain a model certification which you can use!

LOWEST BIDDER PREVAILING WAGE CERTIFICATION

In the matter of an award of a)	STATE OF NEW JERSEY
contract for public work for a)	DEPARTMENT OF LABOR AND
project described as:)	WORKFORCE DEVELOPMENT
)	DIVISION OF WAGE &
[Enter project description here])	HOUR COMPLIANCE
)	
)	
)	Certification of Lowest Bidder

_____, of full age and under oath, duly provides the following sworn statement:

(1) I am the owner and/or highest-ranking official or officer of a company or firm named _____, which holds a currently valid public works contractor registration pursuant to the New Jersey Public Works Contractor Registration Act, N.J.S.A. 34:11-56.48 et seq., certificate number _____.

(2) I submitted a bid for a contract award in the above identified project and the public body has informed me that I am the lowest bidder by 10 percent or more as compared to the next lowest bid submitted.

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Questions?

lpcl@dca.nj.gov