

§ 143-128.1B. Design-build bridging contracts.

(a) Definitions for purposes of this section [are as follows]:

- (1) Costs of the subcontractor work. – The sum total amount of all first-tier subcontract packages bid or proposed to be bid under subsection (f) of this section.
- (1a) Design-build bridging. – A design and construction delivery process whereby a governmental entity contracts for design criteria services under a separate agreement from the construction phase services of the design-builder.
- (2) Design-builder. – An appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and general contracting services where services within the scope of the practice of professional engineering or architecture are performed respectively by a licensed engineer or licensed architect and where services within the scope of the practice of general contracting are performed by a licensed general contractor.
- (3) Design criteria. – The requirements for a public project expressed in drawings and specifications sufficient to allow the design-builder to make a responsive bid proposal.
- (4) Design professional. – Any professional licensed under Chapters 83A, 89A, or 89C of the General Statutes.
- (5) First-tier subcontractor. – A subcontractor who contracts directly with the design-builder, excluding design professionals.
- (5g) General conditions. – A specific list compiled by the government entity that identifies items for which the design-builder is to be compensated but are not ascribable to any particular on-site construction activity. This term shall not include either of the following:
 - a. Construction work to be bid pursuant to subsection (f) of this section.
 - b. Design services of a design professional.
- (6) Governmental entity. – Every officer, board, department, commission, or commissions charged with responsibility of preparation of specifications or awarding or entering into contracts for the erection, construction, alteration, or repair of any buildings for the State or for any county, municipality, or other public body.
- (7) Licensed contractor. – A person or entity whose scope of work proposed for the project requires that it be licensed in accordance with the provisions of Article 1 of Chapter 87 of the General Statutes.

(b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which engaging a design criteria design professional is appropriate for a project, and such criteria shall, at a minimum, address all of the following:

- (1) The extent to which the governmental entity can adequately and thoroughly define the project requirements prior to the issuance of the request for proposals for a design-builder.
- (2) The time constraints for the delivery of the project.
- (3) The ability to ensure that a quality project can be delivered.
- (4) The capability of the governmental entity to manage and oversee the project, including the availability of experienced staff or outside consultants who are experienced with the design-build method of project delivery.
- (5) A good-faith effort to comply with G.S. 143-128.2, G.S. 143-128.4, and to recruit and select small business entities. The governmental entity shall not limit or otherwise preclude any respondent from submitting a response so long

as the respondent, itself or through its proposed team, is properly licensed and qualified to perform the work defined by the public notice issued under subsection (d) of this section.

- (6) The criteria utilized by the governmental entity, including a comparison of the advantages and disadvantages of using the design-build delivery method for a given project in lieu of the delivery methods identified in subdivisions (1), (2), and (4) of G.S. 143-128(a1).

(b1) The governmental entity, as a criterion in subsection (b) of this section, shall not require the design-builder to provide the costs of the subcontractor work in the design criteria package.

(c) On or before entering into a contract for design-build services under this section, the governmental entity shall select or designate a staff design professional, or a design professional who is independent of the design-builder, to act as its design criteria design professional as its representative for the procurement process and for the duration of the design and construction. If the design professional is not a full-time employee of the governmental entity, the governmental entity shall select the design professional on the basis of demonstrated competence and qualifications as provided by G.S. 143-64.31. The design criteria design professional shall develop design criteria in consultation with the governmental entity. The design criteria design professional shall not be eligible to submit a response to the request for proposals nor provide design input to a design-build response to the request for proposals. The design criteria design professional shall prepare a design criteria package equal to thirty-five percent (35%) of the completed design documentation for the entire construction project. The design criteria package shall not require the design-builder to include the costs of the subcontractor work in its response and shall include all of the following:

- (1) Programmatic needs, interior space requirements, intended space utilization, and other capacity requirements.
- (2) Information on the physical characteristics of the site, such as a topographic survey.
- (3) Material quality standards or performance criteria.
- (4) Special material requirements.
- (5) Provisions for utilities.
- (6) Parking requirements.
- (7) The type, size, and location of adjacent structures.
- (8) Preliminary or conceptual drawings and specifications sufficient in detail to allow the design-builder to make a proposal which is responsive to the request for proposals.
- (9) Notice of any ordinances, rules, or goals adopted by the governmental entity.
- (10) The list of general conditions prepared by the governmental entity for which the design-builder is to provide a fixed fee in accordance with sub-subdivision (10)a. of subsection (d) of this section. For this purpose, as examples, general conditions could include without exclusion the following: on-site construction office and storage trailers; electrical and other utility services during construction; on-site construction superintendent, construction supervisors, and clerical staff; trash collection; security; and other temporary measures. Unless expressly dictated by the contract, the inclusion or exclusion of any particular item in the list shall not be construed to control the means and methods used by the design-builder or eliminate any discretion on whether to use a given item in the prosecution of the work. The inclusion or exclusion of any particular item in the list shall have no bearing on the actual amounts for

which the design-builder is to be compensated under the executed contract documents.

- (11) The form of the contract to be entered into by the successful design-builder to whom the project is awarded pursuant to subsection (e) of this section. The form of the contract may, upon discretion of the governmental entity, allow for multiple phases, termination for convenience and rights arising therefrom, and the subsequent setting of guaranteed maximum prices.
- (12) A statement directing each design-builder to submit in its response to the request for qualifications an explanation of its proposed plan for its good-faith compliance with G.S. 143-128.2.

(d) A governmental entity shall issue a public notice of the request for proposals that includes, at a minimum, general information on each of the following:

- (1) The project site.
- (2) The project scope.
- (3) The anticipated project budget.
- (4) The project schedule.
- (5) The criteria to be considered for selection and the weighting of the selection criteria.
- (6) Notice of any rules, ordinances, or goals established by the governmental entity, including goals for minority- and women-owned business participation and small business entities.
- (7) The thirty-five percent (35%) design criteria package prepared by the design criteria design professional.
- (8) Other information provided by the owner to design-builders in submitting responses to the request for proposals for the project.
- (9) A statement providing that each design-builder shall submit in its request for proposal response an explanation of its project team selection, which shall consist of a list of the licensed contractor and design professionals whom the design-builder proposes to use for the project's design and construction.
- (10) A statement providing that each design-builder shall submit in a separate sealed envelope, contemporaneously with the response to the request for proposals, the design-builder's fixed fees, excluding the costs of the subcontractor work, for designing and constructing the project in accordance with requirements set forth by the government entity's criteria and the terms and conditions set forth in the form of the contract under subdivision (11) of subsection (c) of this section for each of the following, listed separately by item:
 - a. The general conditions identified in the request for proposal.
 - b. The general construction services not otherwise provided for in this subdivision.
 - c. The design-builder's design services necessary to complete the project.

(e) Following evaluation of the qualifications of the design-builders, the governmental entity shall rank the design-builders who have provided responses, grouping the top three without ordinal ranking. If after the solicitation for design-builders not as many as three responses have been received from qualified design-builders, the governmental entity shall again solicit for design-builders. If as a result of such second solicitation not as many as three responses are received, the governmental entity may then make its selection. From the grouping of the top three design-builders, the governmental entity shall select the design-builder who is the lowest responsive, responsible bidder based on the cumulative amount of fees provided in accordance with subdivision (d)(10) of this section and taking into consideration quality, performance, and

the time specified in the proposals for the performance of the contract. Each design-builder shall certify to the governmental entity that each design professional who is a member of the design-build team, including subconsultants, was selected based upon demonstrated competence and qualifications in the manner provided by G.S. 143-64.31.

(f) The design-builder shall accept bids based upon the provisions of this Article from first-tier subcontractors for all construction work under this section.

(g) The design-builder shall provide a performance and payment bond to the governmental entity in accordance with the provisions of Article 3 of Chapter 44A of the General Statutes. The design-builder shall obtain written approval from the governmental entity prior to changing key personnel, as listed under subdivision (d)(9) of this section, after the contract has been awarded. (2013-401, s. 4; 2014-42, s. 6; 2022-1, s. 2(b).)