

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

(a) Definitions for purposes of this section:

- (1) 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.
- (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.

(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).

(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 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.
- (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 licensed 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 its request for proposal a sealed envelope with all of the following:
 - a. The design-builder's price for providing the general conditions of the contract.
 - b. The design-builder's proposed fee for general construction services.
 - c. The design-builder's fee for design services.

(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 licensed 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.)