



# HOUSE BILL 869: Design-Build Clarifications.

2019-2020 General Assembly

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<b>Committee:</b>	House Commerce. If favorable, re-refer to Rules, Calendar, and Operations of the House	<b>Date:</b>	April 29, 2019
<b>Introduced by:</b>	Reps. Arp, Jarvis, Hunter	<b>Prepared by:</b>	Erika Churchill
<b>Analysis of:</b>	PCS to First Edition H869-CSST-24		Staff Attorney

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**OVERVIEW:** *The proposed committee substitute for House Bill 869 would clarify the design-build and design-build bridging statutes as to contents of the requests for qualifications and request for proposals.*

**CURRENT LAW:** Prior to 2013, State law authorized four contracting methods for large building construction projects: single-prime, separate-prime (also referred to as multi-prime), dual-bidding (bidding both single- and separate-prime simultaneously), and construction management at risk. In 2013, the General Assembly authorized, statewide, the use of the design-build method and the design-build bridging method as a permissible means of construction contracting. The design-build method allows for a construction project that delivers both design, whether architectural or engineering or both, and construction services under one contract with a single point of responsibility. The design-build bridging construction method is a two-step process that differs from design-build in two ways:

- With design-build bridging, the unit contracts separately with an architect or engineer to design 35% of the project, referred to in the statute as the "design criteria." The unit then solicits proposals from design-build firms based on the design criteria package and contracts with a design-builder to complete the design and perform construction. The design criteria package acts as "bridging" documents between initial project concept and the design-build phase.
- With the design-build bridging method, fees and price estimates are solicited in the request for proposals for design-build services and the contract for these services is awarded based on the lowest responsive, responsible bidder standard of award.

A design-builder is currently defined as "an appropriately licensed person, corporation, or entity that, under a single contract, offers to provide or provides design services and general contracting services." G.S. 143-128.1B. Architectural and engineering services must be performed by licensed architects and engineers, and contractor services must be performed by a licensed general contractor. It is possible for one individual to hold both an engineering license and a general contractor license, usually a design-builder is a corporation, firm, or joint venture that employs both licensed design professionals and licensed general contractors, or a construction firm that subcontracts with an architect or engineer. The statutes require the design-builder to certify that each licensed designer and subconsultant who is a member of the design-build team was selected based on "demonstrated competence and qualifications" under the qualifications-based selection process of the Mini-Brooks Act (G.S. 143-64.31).

## BILL ANALYSIS:

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**Section 1** would amend the **design-build authorization** statute to clarify that the governmental entity giving notice of the request for qualifications may specify one of the following to be included in the RFQ from the design-builder:

- (1) A list of the licensed contractors, licensed subcontractors, and licensed design professionals whom the design builder proposes to use for the project's design and construction. If this option is specified, the design-builder may self-perform some or all of the work and, without bidding, also enter into negotiated subcontracts to perform some or all of the work with licensed subcontractors. In submitting its list, the design-builder may opt to include one or more unlicensed subcontractors the design-builder proposes to use.
- (2) A list of the licensed contractors and design professionals whom the design builder proposes to use for the project's design and construction and an outline of the strategy the design builder plans to use for open contractor and subcontractor selection. That selection must be based upon the provisions of Article 8 of Chapter 143 of the General Statutes, Public Contracting. If this option is specified, the design-builder may self-perform some or all of the work but may not enter into negotiated contracts with first-tier subcontractors. First-tier subcontractors are those subcontractors who contract directly with the design builder, excluding design professionals.

**Section 2** would amend the **design-build bridging authorization** statute to do all of the following:

- Clarify that the governmental entity may not require the design builder to provide the costs of the subcontractor work in the design criteria package. The design builder may be required to disclose the costs of the subcontractor work after the contract has been executed. "Costs of the subcontractor work" is defined as the sum total amount of all first tier subcontract packages bid or proposed to be bid for the project.
- Specify that the design criteria package include both of the following:
  - The list of general conditions prepared by the governmental entity for which the design builder is to provide a fixed fee.
  - The form of the contract to be entered into by the successful design builder to whom the project is awarded.
- Specify that the governmental entity's notice for request for proposals include a requirement the design-builder submit a sealed statement containing the design-builder's fixed fees, excluding the costs of the subcontractor work, which shall list each of the following separately:
  - The price for providing the general conditions of the contract identified in the request for proposal.
  - The proposed fee for general construction services.
  - The fee for design services necessary to complete the project.

**Section 3** would make a conforming change to the statute governing the letting of public contracts.

**EFFECTIVE DATE:** October 1, 2019, and applies to contracts entered into, renewed, or amended on or after that date.