

**§ 143-128.1A. Design-build contracts.**

- (a) Definitions for purposes of this section [are as follows]:
- (1) Design-builder. – As defined in G.S. 143-128.1B.
  - (1g) Design professional. – As defined in G.S. 143-128.1B.
  - (1p) First-tier subcontractor. – As defined in G.S. 143-128.1B.
  - (2) Governmental entity. – As defined in G.S. 143-128.1B.
  - (3) Licensed contractor. – As defined in G.S. 143-128.1B.
  - (4) Licensed subcontractor. – A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the project requires that it be licensed in accordance with Article 2 or Article 4 of Chapter 87 of the General Statutes.
  - (5) Unlicensed subcontractor. – A person or entity, not including design professionals or employees of the design-builder, that will be performing work under the design-builder and whose scope of work proposed for the project does not require that it be licensed in accordance with Article 2 or Article 4 of Chapter 87 of the General Statutes.
- (b) A governmental entity shall establish in writing the criteria used for determining the circumstances under which the design-build method 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 qualifications 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 (c) 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) A governmental entity shall issue a public notice of the request for qualifications 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 qualifications 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 participation.

- (7) Other information provided by the owner to potential design-builders in submitting qualifications for the project.
- (8) A statement directing each design-builder to submit in its response to the request for qualifications an explanation of its project team selection. The governmental entity may specify which one of the following project team selection options shall be used or, if not specified, the response shall consist of either of the following project team selection options:
  - a. A list of the licensed contractors, licensed subcontractors, and design professionals whom the design-builder proposes to use for the project's design and construction. If this project team selection option is used, the design-builder may self-perform some or all of the work with employees of the design-builder and, without bidding, also enter into negotiated subcontracts to perform some or all of the work with subcontractors, including, but not exclusively with, those identified in the list. In submitting its list, the design-builder may, but is not required to, include one or more unlicensed subcontractors the design-builder proposes to use. If this project team selection option is used, the design-builder may, at its election and with or without the use of negotiated subcontracts, accept bids for the selection of one or more of its first-tier subcontractors.
  - b. 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 subcontractor selection based upon the provisions of Article 8 of Chapter 143 of the General Statutes. If this project team selection option is used, the design-builder may also self-perform some of the work with employees of the design-builder, but shall not enter into negotiated contracts with first-tier subcontractors.

(d) Following evaluation of the qualifications of the design-builders, the three most highly qualified design-builders shall be ranked. 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 begin negotiations with the highest-ranked design-builder under G.S. 143-64.31 even though fewer than three responses were received. If the governmental entity deems it appropriate, the governmental entity may invite some or all responders to interview with the governmental entity.

(e) The design-builder shall be selected in accordance with Article 3D of this Chapter. Each design-builder shall certify, in the response to the request for qualifications in subsection (c) of this section, 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 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 in sub-subdivision (c)(8)a. or (c)(8)b. of this section after the contract has been awarded. For purposes of this subsection, "key personnel" shall mean either of the following:

- (1) For the project team selection option under sub-subdivision (c)(8)a. of this section, the licensed contractors, licensed subcontractors, and design professionals identified in the response to the request for qualifications.

- (2) For the project team selection option under sub-subdivision (c)(8)b. of this section, the licensed contractors and design professionals identified in the response to the request for qualifications. (2013-401, s. 4; 2014-42, s. 7; 2022-1, s. 2(a).)