

NEW JERSEY REGISTER
VOLUME 33, NUMBER 16

MONDAY, AUGUST 20, 2001

RULE ADOPTION
LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS

**NEW JERSEY STATE BOARD OF ARCHITECTS
DESIGN BUILD CONTRACTS**

Additions to proposals are indicated by <<+ Text +>>; deletions from proposals are indicated by <<- Text ->>. Changes in tables are made but not highlighted.

Adopted New Rules: N.J.A.C. 13:27-7A

Proposed: June 4, 2001 at 33 N.J.R. 1858(a).

Adopted: July 12, 2001 by the State Board of Architects, Kyu Jung Whang, President. Filed: July 31, 2001 as R.2001 d.305, without change.

Authority: N.J.S.A. 45:3-3.

Effective Date: August 20, 2001.

Expiration Date: February 18, 2005.

Summary of Public Comment and Agency Response:

No comments were received.

Federal Standards Statement

A Federal standards analysis is not required for the adopted new rules because the subject matter is not subject to Federal standards.

Full text of the adoption follows:

SUBCHAPTER 7A. DESIGN BUILD CONTRACTS

<< NJ ADC 13:27-7A.1 >>

13:27-7A.1 Definitions

The following words and terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

"Architect" means an individual defined by N.J.A.C. 13:27-3.1 or business entity licensed or otherwise duly authorized by law to render architectural services within the State of New Jersey.

"Contractor" means any natural person or legal entity that enters into a design build contract with an owner or developer. The term "contractor" as defined herein is specifically distinguished from the term independent contractor as used to define the professional relationship between an architect and a contractor pursuant to N.J.S.A. 45:3-17 and 45:3-18.

"Design build contract" means a written contract, entered into between a contractor and an owner or developer, which

provides both for the construction or alteration of a building, group of buildings, structure, or group of structures within the State of New Jersey and for the performance of architectural services by an architect retained by the contractor pursuant to a separate written contract.

"Fundamental change" means a modification which substantially and materially alters a basic design or creates a substitution which will result in substantial financial damage if not disclosed to the owner.

"Immediate family" means a person's spouse and children, the person's siblings and parents, the person's spouse's siblings and parents, and the spouses of the person's children.

"Owner or developer" means any natural person or legal entity, including a private business corporation or a public body, such as the State, State agencies, authorities, and other governmental subdivisions which hold title or other legal interest in real property or the buildings located or to be located thereon and which enter into design build contracts for the construction or alteration of such buildings.

"Significant beneficial interest" means an ownership or other legal or financial interest in a contractor held by an architect or any member, associate, shareholder, officer, or employee of an architect's firm or the immediate family of any such party.

<< NJ ADC 13:27-7A.2 >>

13:27-7A.2 Design build contract; notice

(a) Before an architect may perform architectural services for a contractor in connection with a design build contract, the architect shall ascertain that the contract between the contractor and the owner or developer contains the following notice:

NOTICE

This is a design build contract. Pursuant to N.J.A.C. 13:27-7A.1, a design build contract is a written contract entered into between a contractor and an owner or developer which provides both for the construction or alteration of a building and for the performance of architectural services by an architect engaged by the contractor pursuant to a separate written contract. The architect or architectural firm that will be providing architectural services to the contractor in connection with this design build contract will be: _____.

The architect's address and telephone number are: _____.

The architect is contractually obligated to provide services to the contractor. The owner or developer and the architect may, at any time, discuss issues pertinent to the design of the building which is the subject of the design build contract.

<< NJ ADC 13:27-7A.3 >>

13:27-7A.3 Contractual provisions between architect and contractor

(a) In addition to any other contractual terms and conditions agreed to by the parties, the separate written contract between the architect and the contractor shall expressly provide that:

1. The architect shall, at all times, provide architectural services as an independent contractor pursuant to N.J.S.A. 45:3-17 and 45:3-18 and not as an employee of the contractor;
2. In providing architectural services, the architect shall, at all times, exercise independent, professional judgment consistent with established standards of architectural practice, the rules of professional conduct set forth at N.J.A.C. 13:27-5, and such other statutory and regulatory requirements as may be applicable;
3. The architect may, at any time, discuss with the owner or developer issues pertinent to the design of the building

which is the subject of the design build contract; and

4. The contractor and the architect shall provide written notice to the owner or developer at least 30 days before the contract between the architect and the contractor is terminated, or before the performance of services by the architect is in any other way suspended or discontinued.

<< NJ ADC 13:27-7A.4 >>

13:27-7A.4 Disclosure of significant beneficial interest

(a) When an architect has a significant beneficial interest in a contractor for whom the architect performs architectural services in connection with a design build contract, prior to the parties entering into the contract, the architect shall:

1. Disclose the significant beneficial interest to the owner or developer in writing and obtain the owner or developer's written consent indicating that the owner or developer is aware of the significant beneficial interest, understands that the architect is bound to a standard of independent professional judgment consistent with N.J.A.C. 13:27-7A.3(a)2, and that the owner or developer consents to the architect's participation in the project; and

2. Ascertain that the contract between the contractor and the owner or developer discloses the significant beneficial interest and states that regardless of the significant beneficial interest, the architect shall comply with a standard of independent professional judgment consistent with N.J.A.C. 13:27-7A.3(a)2.

<< NJ ADC 13:27-7A.5 >>

13:27-7A.5 Design or construction documents; notice of changes

Where an architect has knowledge that an owner has accepted and is relying upon any design or construction documents prepared by the architect, and where the architect is requested or directed by any party to make fundamental changes in those design or construction documents, the architect shall give immediate written notice of the proposed change(s) to the owner and to the contractor. The architect shall not proceed with the changes unless the owner or developer and the contractor agree to the changes in the signed writings.

<< NJ ADC 13:27-7A.6 >>

13:27-7A.6 Contract retention

An architect shall retain a copy of any contract entered into with a contractor in connection with a design build project for 10 years from the date of the contract.

33 N.J.R. 2815(a)
