

CHAPTER 36**PROCEDURES FOR PROCUREMENT OF DESIGN BUILD CONTRACTS FOR SCHOOL FACILITIES PROJECTS FOR THE SCHOOLS CONSTRUCTION PROGRAM****Authority**

P.L. 2000, c. 72 (N.J.S.A. 18A:7G-26) and P.L. 2007, c. 137, specifically, §§9(c) and (d) and 36.

Source and Effective Date

R.2009 d.102, effective February 27, 2009.
See: 41 N.J.R. 1513(a).

Chapter Expiration Date

Pursuant to Executive Order No. 1(2010), the chapter expiration date is extended from February 27, 2010 until the completion of the review of administrative regulations and rules by the Red Tape Review Group, and until such time as the extended regulation or rule is readopted pursuant to the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

Chapter Historical Note

Chapter 36, P.L. 2000, c.72, Section 5(s) Community Early Childhood Education Facilities, was adopted as R.2003 d.449, effective November 17, 2003. See: 35 N.J.R. 2603(a), 35 N.J.R. 5251(b). Chapter 36, P.L. 2000, c.72, Section 5(s) Community Early Childhood Education Facilities, expired on November 17, 2008.

Chapter 36, Procedures for Procurement of Design Build Contracts for School Facilities Projects for the Schools Construction Program, was adopted as special new rules by R.2009 d.102, effective February 27, 2009. See: Source and Effective Date.

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SUBCHAPTER 1. GENERAL PROVISIONS**19:36-1.1 Purpose and applicability of rules**

(a) These rules are adopted by the New Jersey Schools Development Authority (the "Development Authority," "Authority" or "SDA") to establish requirements and procedures for a pilot program for the procurement of design-build contracts for up to six school facilities projects. Section 4 of P.L. 2007, c. 137 confers broad powers on the Development Authority to enter into contracts for the "planning, design, construction, reconstruction, improvement, equipping, furnishing, operation and maintenance" of a school facilities project. This statutory authority includes the procurement of design, construction and other project-related services in one contract when the Authority determines that a single point of responsibility for a combination of these services is in the best interests of a school facilities project. The Development Authority shall audit the design-build projects under the pilot program on a semi-annual basis.

(b) These rules provide for the Authority to retain a design professional, as a "bridging architect," pursuant to N.J.A.C. 19:38C, for the duration of the school facilities project, to prepare a design-build information package, which outlines the conceptual program, schematic design and performance specifications to be followed by the design-builder, and review the work of the design-builder to ensure that the design meets the requirements of the Authority and the SDA school district. The rules further provide for the engagement of a construction manager (CM) by the Authority to serve as the Authority's representative during the school facilities project and provide such services as project oversight and reporting, value engineering services and cost estimating.

(c) These rules provide for the Authority to select design-builders according to the proposals that offer the "best value" to the SDA, based upon a combination of cost and qualitative factors, with consideration given to price at least equal to the

consideration given to all other factors combined. The rules provide for the following two-phase selection process:

1. The public advertisement of a request for qualifications (RFQ) that describes the school facilities project, outlines the scope of work for the project and solicits responses outlining the qualifications of offerors; and

2. The issuance of a request for proposals (RFP) to a "short list" of offerors, selected on the basis of their responses to the RFQ, which outlines the criteria to be used for selection and the weight that will be given to each of these criteria in the evaluation process, and which solicits technical and price proposals.

(d) These rules further provide for a technical evaluation committee, comprised of representatives of the Authority and the SDA school district, to provide technical review and evaluation services, including evaluating and ranking the qualifications of offerors during the RFQ process and evaluating and scoring technical proposals submitted to the Authority in response to an RFP.

(e) Design-build project delivery offers the potential for such benefits as a shorter overall design and construction process, greater cost reliability and reduced risk through enhanced project coordination. In order to achieve such results, these rules provide the Authority with the flexibility to adjust the design-build process, for example, to vary the level of design in the initial design-build information package and/or select and weight the qualitative factors to be addressed in a technical proposal according to the specific needs and complexities of the school facilities project.

19:36-1.2 Definitions

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

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended, and P.L. 2007, c. 137.

"Best value selection" means a selection process in which proposals contain both a price proposal and a technical proposal, and the award of the design-build contract is based upon a combination of price and qualitative considerations.

"Bridging architect" means the person, or entity duly licensed and registered in the State of New Jersey to practice architecture or engineering that is engaged by the Authority to develop preliminary design work and performance criteria, as well as provide other services, such as construction administration services, in connection with the design and construction of the school facilities project.

"Compensation" means payment(s) due to the design-builder for services rendered or work performed or pursuant to the design-build contract.

"Construction documents" means the plans, specifications and other documents prepared by the design-builder that set forth in detail the design for, and other necessary requirements relating to, the construction of the school facilities project, based on the requirements set forth in the design-build information package.

"Construction manager" or "CM" means the person or firm engaged by the Authority to act as the Authority's representative for the school facilities project and to provide construction management services, including oversight and reporting services, in connection with construction of the project.

"Contract milestones" means the dates identified in the school facilities project schedule by which the design-builder must complete certain critical activities to advance the project.

"DCA" means the New Jersey Department of Community Affairs.

"DCA building permit" means the building permits issued by DCA pursuant to the New Jersey Uniform Construction Code.

"Deliverables" means any documents required to be produced by, or work product generated by the design-builder, pursuant to the design-build contract.

"Department" means the New Jersey Department of Education.

"Design-build contract" means an agreement between the Authority and the design-builder governing the design and construction of the school facilities project and all other documents setting forth the obligations of the design-builder with respect to the design and construction of the project, including, but not limited to, a design-builder's technical proposal.

"Design-build information package" means the package of information that is included in the RFP, which sets forth the minimum design requirements, performance specifications and other project requirements, for the purpose of furnishing sufficient information so that offerors may prepare technical and price proposals.

"Design-build project delivery" means a project delivery method that combines all or some portions of the design and construction phases of a school facilities project, including without limitation, design, regulatory permit approvals and utility relocation and construction into a single contract.

"Design-builder" means the entity contractually responsible for delivering the design and construction and, if applicable, other services for the school facilities project in accordance with the design-build contract.

"Development Authority," "Authority" or "SDA" means the New Jersey Schools Development Authority, an entity