

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. See: 44 N.J.R. 1318(a).

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

which undertakes and funds school facilities projects under the Act and which is the entity formed pursuant to P.L. 2007, c. 137, as successor to the New Jersey Schools Construction Corporation.

“Guaranteed maximum price” or “GMP” means the dollar amount, including, but not limited to, the design-builder’s fee, the costs of all work and any other prices, set forth in an offeror’s price proposal, as adjusted in accordance with the design-build contract, which is the maximum price the Authority shall pay the design-builder.

“Key team member” means individuals identified in the response by the offeror to the Authority’s RFQ or RFP, and upon award, are part of the team of the design-builder. Key team members have a responsible role in the successful completion of the design-build contract.

“Legal requirements” means all applicable Federal, State and local laws, acts, statutes, ordinances, codes, executive orders, rules and regulations in effect or hereinafter promulgated that apply to the design-builder’s performance of services or work under the agreement, including, but not limited to, the current versions of the Building Design Services Act, the New Jersey Uniform Construction Code, the DCA Homeland Security Best Practices Standards for Schools under Construction or Being Planned for Construction, the Occupational Safety and Health Act of 1970, the Soil, Erosion and Sediment Control Act, as well as any requirements of local or national authorities having jurisdiction over the project, as applicable.

“Notice of award” means a notice from the Authority to the offeror that the Authority intends to enter into a design-build contract with it for the services and work set forth in the request for proposals.

“Notice to proceed” means a written notice from the Authority setting the commencement date on which the design-builder is authorized to commence performing services and work pursuant to the design-build contract.

“Offeror” means any legal entity classified by the Department of the Treasury, Division of Property Management and Construction, and prequalified by the Authority, that may submit an offer in response to a request for qualifications or request for proposals for an award of a design-build contract.

“Performance specifications” means a description of an end result, objective or standard of performance that the design-builder is expected to exercise its ingenuity to achieve, selecting the means and assuming a corresponding responsibility for that selection.

“Prequalification” means the approval of an offeror by the Authority, pursuant to N.J.A.C. 19:38A, for the submission of a statement of qualifications and proposals for a design-build contract. The prequalification process is separate from short listing as elsewhere provided in these rules.

“Prescriptive specifications” means a description of the materials to be employed and/or the manner in which the work is to be performed that the design-builder is required to follow.

“Price proposal” means the GMP submitted by the offeror to provide the required design and construction and other services described in the RFP.

“Professional consultants” means consultants providing professional services associated with research, development, design, construction, construction administration, alteration, or improvement to real property, as well as incidental services that members of these professions and those in their employ may logically or justifiably perform. These consultants may provide services including, but not limited to, studies (including feasibility studies), investigations, surveys, evaluations, consultations, planning, programming, conceptual designs, plans and specifications, cost estimates, construction management, inspections, submittal review, testing, preparation of operating and maintenance manuals, and other related services.

“Punchlist” means the list of incomplete or defective work, including work that does not comply with applicable code or legal requirements, to be performed or remedied by the design-builder. Punchlist(s) shall be prepared by the bridging architect in conjunction with the Authority and CM prior to the issuance of the certificate of substantial completion.

“Request for proposals” or “RFP” means the document issued by the Authority in the second phase of a two-phase selection process that describes the procurement process and forms the basis for the design-build proposals.

“Request for qualifications” or “RFQ” means the document advertised by the Authority in the first phase of the two-phase selection process that describes the school facilities project in enough detail to let potential offerors determine if they wish to compete for a design-build contract and forms the basis for requesting qualifications submissions from which the most highly qualified offerors can be identified.

“Schedule” means the schedule prepared and submitted by the offeror in its technical proposal to the Authority, wherein the offeror identifies all critical, and certain noncritical, activities, contract milestones and the projected and actual time periods for completing such activities and contract milestones.

“School facilities project” means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, or capital maintenance of all or any part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings, and equipment, and shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal ser-

vices, financing costs and administrative costs and expenses incurred in connection with the project.

“SDA school district” means a school district that received education opportunity aid or preschool expansion aid in the 2007-2008 school year, as defined at P.L. 2007, c. 260, §39.

“Short listing” or “short-listed” means the narrowing of the field of offerors through the selection of the most qualified offerors who have responded to an RFQ.

“Specification” means a written description prepared by the design-builder as part of the construction documents setting forth the detailed technical and functional characteristics of, or the discrete design for, an item of material, equipment or work to be incorporated into the school facilities project, or a requirement of the work to be performed. A specification may include a statement of any of the Authority’s requirements and may provide for inspection, testing or the preparation of a construction item before procurement. Specifications shall augment and complement the drawings and plans prepared by the design-builder.

“Statement of qualifications” or “SOQ” means the document(s) submitted by offerors in response to an RFQ that describes the qualifications and capabilities of the offeror and its key team members to perform the scope of services to be included in the design-build contract.

“Stipend” means a monetary amount which may be paid to unsuccessful offerors.

“Substantial completion” means that point in time on the school facilities project when all of the following have occurred:

1. All essential requirements of the design-build contract have been performed so that the purpose of the design-build contract is accomplished;
2. A temporary certificate of occupancy has been issued by the Department of Community Affairs;
3. The punchlist has been created;
4. The design-builder has delivered to the Authority the key(s) and/or code(s) for operation of the elevators;
5. There are no material omissions or technical defects or deficiencies, as identified by the Authority; and
6. The school facilities project is 100 percent ready for occupancy in accordance with its intended use.

“Technical evaluation committee” means the committee comprised of a majority of Authority representatives and an SDA school district representative(s) who are responsible for reviewing and evaluating responses by offerors to the RFQ and RFP.

“Technical proposal” means that portion of a design-build proposal which contains design solutions and other qualitative factors that are provided in response to the RFP.

“Two-phase selection process” means a procurement process in which the first phase consists of short listing, based on qualifications submitted in response to an RFQ, and the second phase consists of the submission of price and technical proposals in response to an RFP.

“Uniform Construction Code” means the New Jersey Uniform Construction Code, as set forth in N.J.A.C. 5:23, and all applicable subcodes, as such codes are amended from time to time.

“Weighted criteria process” means a form of best value selection in which a percentage of evaluation weight is pre-established for qualitative factors and for price, and the award of a design-build contract is based upon the highest total points earned by an offeror.

“Work” means all design and construction services performed by the design-builder and its subcontractors and suppliers, including providing all material, equipment, tools and labor, necessary to complete the construction, as described in and reasonably inferable from the construction documents and the design-build contract.

19:36-1.3 Disclosure and publicity

(a) Applications and submissions received by the Authority under this chapter which are government records as defined in the Open Public Records Act, P.L. 2001, c. 404, shall be made available to persons who request their release as provided by State law.

(b) Press releases and other public dissemination of information by the SDA school district and the design-builder concerning the school facilities project shall acknowledge Department approval and Authority funding of the school facilities project.

19:36-1.4 Access and record retention

(a) The Authority shall make available records and accounts pertaining to school facilities projects to the State Comptroller and the State Auditor in their investigations, examinations and inspections of the activities related to the financing and undertaking of school facilities projects. The Authority shall also cooperate, upon request, in sharing information with other entities.

(b) Either the Authority or the design-builder, in the sole discretion of the Authority, shall keep some or all of those records and accounts and shall require all contracted parties to keep those records and accounts for school facilities project activities as necessary in order to evidence compliance with the Act and all applicable regulations and requirements. Such records shall be retained for 10 years following substantial completion of a school facilities project and any additional period required for the resolution of litigation, claims or audit findings.

SUBCHAPTER 2. TECHNICAL EVALUATION COMMITTEE

19:36-2.1 Applicability

This subchapter establishes the technical evaluation committee and outlines its responsibilities for the evaluation and scoring of the qualifications of offerors that have submitted responses to an RFQ, and the evaluation and scoring of the technical proposals of offerors that have submitted proposals in response to an RFP.

19:36-2.2 Composition and responsibilities of technical evaluation committee

(a) When the design and construction of a school facilities project will be undertaken pursuant to a design-build contract, the Authority will designate a technical evaluation committee to review and evaluate responses by offerors to the RFQ and RFP. The members of the technical evaluation committee shall consist of a majority of Authority representatives and a representative(s) of the SDA school district in which the school facilities project is located, if such district elects to participate.

(b) Each member of the technical evaluation committee shall be responsible for:

1. Independently evaluating and scoring the statements of qualifications submitted by offerors in response to an RFQ; and
2. Evaluating and scoring, in consultation with the other members of the technical evaluation committee, the technical proposals submitted by offerors in accordance with the weighted criteria process set forth in the RFP.

SUBCHAPTER 3. PROFESSIONAL CONSULTANT SERVICES

19:36-3.1 Applicability

This subchapter provides for the retention by the Authority of professional consultants to act in the SDA's interests during the school facilities project; namely, a bridging architect to develop minimum design requirements, performance specifications and other project requirements and a construction manager to provide management and technical support during the school facilities project.

19:36-3.2 Engagement of bridging architect

The Authority may retain a bridging architect, pursuant to the Authority's rules, Procedures for the Selection of Architects, Engineers and Land Surveyors, at N.J.A.C. 19:38C, for the duration of the school facilities project, to prepare a design-build information package, review the docu-

ments prepared by design-builders and provide other professional services on behalf of the Authority.

19:36-3.3 Design-build information package

(a) A design-build information package shall be prepared by the Authority, using a design professional either on staff of the Authority and/or the bridging architect.

(b) As a prerequisite to the completion of the design-build information package, the schematic design for the school facilities project must have been approved by the SDA school district, the Authority and the Department, in accordance with the requirements of N.J.A.C. 6A:26, and the Department shall have issued the preliminary project report approving the school facilities project, pursuant to N.J.S.A. 18A:7G-5(h)(2).

(c) The design-build information package may include, but need not be limited to, the following:

1. A description of the school facilities project, including:
 - i. Building type and size;
 - ii. Site development requirements, such as, parking and site requirements and playground equipment;
 - iii. Description of physical relationships between building spaces and between buildings and other site elements; and
 - iv. Specific architectural style or concept;
2. Educational specifications and schematic design documents for the school facilities project;
3. Performance specifications and prescriptive specifications regarding materials, systems, performance criteria, energy efficiency, life cycle costs and environmental issues;
4. Assignment of responsibility for obtaining required approvals and permits;
5. Engineering, architectural and/or environmental reports (for example, geotechnical evaluations, building evaluations and/or environmental preliminary assessment); and
6. The terms and conditions for the payment of a stipend.

19:36-3.4 Engagement of construction manager

(a) The Authority may retain a construction manager, pursuant to the Authority's rules, Procedures for the Selection of Architects, Engineers and Land Surveyors, at N.J.A.C. 19:38C, for the duration of the school facilities project.

(b) The services of the construction manager may include, but need not be limited to, technical support in the area of scheduling, cost estimating, document control and inspection

of construction during all phases of the school facilities project.

19:36-3.5 Conflicts of interest

Professional consultants who assist the Authority in the preparation of an RFQ or an RFP will not be permitted to participate as an offeror or join a team submitting a statement of qualifications in response to the RFQ or a proposal in response to the RFP.

SUBCHAPTER 4. TWO PHASE SELECTION PROCESS FOR DESIGN-BUILDERS

19:36-4.1 Applicability

This subchapter establishes the Authority's criteria and procedures for the use of a two-phase design-build selection process, in which it initially ranks offerors based on statements of qualifications and then selects a short list of offerors to receive the RFP. The second phase involves the submission of price and technical proposals in response to the RFP and an award of the design-build contract to the offeror whose proposals receive the highest overall score.

19:36-4.2 Necessity for prequalification

(a) Only those offerors holding a valid notice of prequalification issued by the Authority, in accordance with the procedures in N.J.A.C. 19:38A, shall be eligible to submit a statement of qualifications in response to an RFQ or proposals in response to an RFP. The prequalification of an offeror must be valid on the due date for the submission of a statement of qualifications and on the due date for the submission of technical and price proposals.

(b) The Authority may establish appropriate and special prequalification requirements as may be necessary in order to ensure competitive technical and price proposals, or as may be dictated by the unique or specialized nature of the work to be performed under the design-build contract.

19:36-4.3 Request for qualifications

(a) The Authority shall publicly advertise an RFQ. The RFQ shall contain the following information:

1. A general description of the school facilities project;
2. The scope of work;
3. The minimum qualification requirements for offerors, including, but not limited to, the appropriate classifications and aggregate rating limits assigned by the New Jersey Department of Treasury, Division of Property Management and Construction;

4. A request for the submission of a statement of qualifications which will describe the qualifications of prospective offerors;

5. The phase one evaluation factors upon which the most qualified offerors will be determined;

6. The anticipated technical evaluation factors to be utilized in the second phase of the selection process;

7. A statement of the maximum number of offerors anticipated to be selected to submit phase two proposals; and

8. Any other requirements, as determined in the sole discretion of the Authority.

(b) Offerors desiring to submit technical and price proposals shall submit a statement of qualifications and an organizational chart of the offeror and its key team members and the other information required by the RFQ.

19:36-4.4 Short listing of offerors

(a) The technical evaluation committee shall review and evaluate the responsive submissions of offerors and determine the relative ability of each such offeror to perform the work under the design-build contract. The evaluation of the qualifications of each offeror may include, but need not be limited to, consideration of the following factors:

1. Experience of the prospective offeror on projects of similar size, scope and complexity;

2. Experience of key team members on projects of similar size, scope and complexity;

3. Experience of the prospective offeror on design-build projects of similar size, scope and complexity;

4. Experience of the key team members on design-build projects of similar size, scope and complexity;

5. Experience of the prospective offeror or its key team members on projects in New Jersey of similar size, scope and complexity; and

6. Any other pertinent information necessary to establish the qualifications of the prospective offeror to undertake the design-build contract.

(b) At the conclusion of the first phase of the selection process, the technical evaluation committee shall develop a short list of the most highly qualified offerors who shall be invited to participate in the second phase of the process. The short list will be submitted to the Authority's Senior Director of Procurement who shall publish the short list on the Authority's website at www.njsda.gov and notify in writing the offerors selected for the short list.

19:36-4.5 Request for proposals

(a) Only offerors that have been short listed during the RFQ process will be permitted to submit a proposal in response to an RFP.

(b) The RFP shall include, without limitation:

1. The design-build information package;
2. Technical and price proposal forms;
3. The design-build contract;
4. Instructions to offerors;
5. The criteria for evaluation of proposals and their relative weight;
6. A description of the drawings, specifications, or other submittals to be submitted with the technical proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable;
7. Budget limits for the work;
8. Requirements for proposal bonds, performance bonds, payment bonds and insurance;
9. Schedule requirements, as set forth in the RFQ;
10. Amount of the stipend, if any;
11. The documents required to be submitted upon the notice of award, pursuant to N.J.A.C. 19:36-6.1(c); and
12. Any other information that the Authority in its discretion chooses to supply.

19:36-4.6 Selection process

(a) The Authority shall issue an RFP for the school facilities project to the offerors who were short listed in the phase one RFQ process.

(b) The Authority may provide for a pre-proposal conference at a designated date, time and location at which offerors that have been short listed may ask questions and seek clarification concerning any of the information, data or documents contained within the RFP. Pre-proposal conferences may be mandatory or optional, as stated in the RFP.

(c) The RFP shall require the submission of a proposal in two parts: a technical proposal and a separate price proposal. The technical and price proposals shall be evaluated separately, in accordance with the evaluation factors and process set forth in the RFP. The evaluation factors may include, but need not be limited to, design concepts, management approach, proposed technical solutions and the other factors listed at N.J.S.A. 52:18A-243(d), as applicable.

(d) The technical proposal shall include preliminary design drawings, outline specifications, technical reports, calcula-

tions, permit requirements, a management plan, schedule and other information and/or data requested in the RFP.

(e) The price proposal shall be submitted in a separate sealed envelope and include a guaranteed maximum price for all design and construction of the school facilities project. The envelope shall indicate clearly that it is the price proposal and shall identify the offeror's name, project number and any other information required by the RFP. The price proposals shall remain sealed until such time as provided in (g) below.

1. Each price proposal shall be accompanied by a proposal bond as specified in the RFP.

2. The Authority shall examine all documents required to be submitted with the technical proposal for completeness and conformity with the requirements of the RFP. If the Authority determines that a technical proposal received must be rejected as non-responsive, it shall notify the offeror in writing of the rejection of its proposal and the reason for the rejection within 10 business days of its receipt, unless there are circumstances that require additional time.

3. The submission of technical and price proposals is conclusive evidence that the offeror has completely reviewed the RFP and the design-build contract and fully understands and agrees to all of the requirements, terms and conditions set forth therein.

(f) The technical evaluation committee may conduct interviews with each offeror prior to ranking the offerors. The technical evaluation committee shall evaluate each technical proposal in accordance with the evaluation criteria and the weight assigned to each, as set forth in the RFP. The technical review committee shall then total and submit the scores for each technical proposal to the Authority's Senior Director of Procurement Services.

(g) The Senior Director of Procurement Services shall open the price proposals and assign the maximum price points to the lowest total dollar proposal. Each higher price proposal will have a point deduction equal to the amount which is the percentage difference by which the price exceeds the low price proposed, multiplied by the weight assigned for price in the RFP.

1. The Authority shall examine all documents required to be submitted with the price proposal for completeness and conformity with the requirements of the RFP. Adjustments will be made by the Authority where necessary to establish the correct total price proposal. If the Authority determines that a price proposal received must be rejected as being non-responsive, it shall notify the offeror in writing of the rejection of its proposal as being non-responsive and the reason for the rejection within five business days of the opening of price proposals, unless there are circumstances that require additional time.

(h) The Senior Director of Procurement Services shall determine the combined scores for each offeror based on their technical and price proposals, with consideration of price at least equal to the consideration given to all other factors. The offeror with the highest overall score shall be recommended to the Board of the Authority for an award of the design-build contract. If the recommendation is approved, the Authority will notify the successful design-builder.

19:36-4.7 Rejection of proposals

(a) Proposals received after the submission date and time prescribed in the advertisement and RFP shall be rejected, except where the Authority, in its sole discretion, finds good cause.

(b) The Authority may reject any proposal for lack of responsiveness or when it is otherwise deemed to be in the public interest to do so. The Authority may reject all proposals for excessive cost, insufficient competition or any other reason that it determines to be in the public interest. The Authority may cancel an award at any time before the execution of the design-build contract by all parties.

(c) Proposals will be considered irregular and may be rejected for failure to comply with the RFP for reasons that may include, but are not limited to, the following:

1. If the proposals are on forms other than those furnished by the Authority, or if the forms are altered or any part thereof is detached or incomplete;
2. If the proposals are not properly signed or sealed;
3. If there are unauthorized additions, conditions or alternate proposals, or irregularities of any kind that may tend to make the proposal incomplete, indefinite or ambiguous as to its meaning;
4. If the proposal contains any provisions reserving the right to accept or reject an award, or in any way submits a contingent proposal to enter into a design-contract pursuant to any award;
5. If the proposals contain any alterations to any prices or amounts that have been established by the Authority in the RFP;
6. If the price proposal fails to contain a price for an alternate or allowance required by the RFP;
7. If the price proposal is not accompanied by a bond as required by the RFP;
8. If the offeror fails to acknowledge addenda, letters and other notices required to be acknowledged that have been sent by the Authority or the construction manager;
9. If the offeror fails to identify subcontractors in the proposals required to be named by the RFP;
10. If the offeror submits a price proposal that exceeds the firm's aggregate rating; or

11. If the Authority deems it advisable to do so in the interest of the State or the public interest.

SUBCHAPTER 5. PAYMENT OF STIPENDS BY THE AUTHORITY

19:36-5.1 Criteria for payment of stipend

(a) At the discretion of the Authority, a stipend may be paid to eligible offerors who submit responsive but unsuccessful proposals in response to the RFP. The decision to do so shall be based on the Authority's analysis of the estimated proposal development costs, the complexity of the school facilities project and the anticipated degree of competition during the procurement process. The purpose of the stipend is to encourage competition by offering to compensate responsive, but unsuccessful offerors, for a portion of the estimated proposal development costs and as consideration for the future use of the offeror's work product by the Authority.

(b) The terms and conditions for the payment of a stipend shall be included in the RFP.

(c) If a stipend is provided to an unsuccessful offeror, the work produced within that offeror's technical proposal shall be provided to the Authority for its use in connection with the design-build contract awarded, or in connection with a subsequent procurement, without obligation to pay any additional compensation to the unsuccessful offeror.

(d) Offerors submitting a response to the RFP which is determined by the Authority in its sole discretion to be non-responsive or irregular, pursuant to N.J.A.C. 19:36-4.7, will not be entitled to a stipend.

SUBCHAPTER 6. CONTRACTS

19:36-6.1 Contract approval and execution

(a) Except as may otherwise be specifically provided in this chapter, the engagement of a design-builder shall be subject to approval by the Authority or its staff and executed by staff in accordance with Authority procedures.

(b) Prior to the execution of a design-build contract, the offeror that was provided a notice of award shall exist in the legal status in which it will perform its responsibilities pursuant to the design-build contract.

(c) The Authority will send the successful design-builder a notice of award letter. The notice of award letter shall contain a list of the additional documents required to be submitted by the design-builder with the executed contract. The Authority will specify the time within which the executed contract and required documents must be returned.

(d) Each payment and each performance bond must be in an amount at least equal to the total contract price.

1. All bonds shall comply with the requirements of this chapter and relevant State statutes. All bonds submitted by the design-builder shall be issued only in accordance with N.J.S.A. 2A:44-143 through 147 to the design-builder and shall indicate aggregate bonding limits.

2. Bonds shall be issued only by companies authorized to transact business in the State of New Jersey.

(e) If the design-builder fails to return the executed contract and performance and payment bonds and other required documents within the time specified by the Authority, the Authority may take whatever action is appropriate and authorized by law including, but not limited to, proceeding to recover under the proposal bond submitted with the price proposal in accordance with N.J.A.C. 19:36-4.6(e).

(f) All contracts executed pursuant to this chapter shall provide for, among other things, termination for the convenience of the Authority and for cause.

(g) After execution by the Authority, a copy of the signed contract will be sent to the design-builder.

SUBCHAPTER 7. PROTESTS

19:36-7.1 Scope and purpose

(a) This subchapter sets forth the procedures that govern challenges to the form of the RFQ or the RFP, the ranking of offerors during the RFQ phase and the scoring of technical proposals of offerors.

(b) For purposes of this subchapter, protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

19:36-7.2 Protests, hearing procedures, time limitations

(a) A challenge to the following actions of the Authority shall be made as follows:

1. RFQ process or documents: An offeror that intends to submit a statement of qualifications for the first phase of the design-build procurement and that objects to the RFQ process or documents, must submit a written protest to the Authority's Senior Director of Procurement at least three business days prior to the opening of the statements of qualifications, setting forth in detail the grounds for such protest. The protest must contain all arguments, materials or other documents that may support the protestor's position. The Authority may disregard any such protest, which is filed less than three business days prior to the scheduled opening of statements of qualifications, or which

fails to provide the specific reasons for and arguments supporting the protest.

2. RFP process or documents: An offeror that intends to submit proposals for the second phase of the design-build procurement and that objects to the RFP process or documents, must submit a written protest to the Authority's Senior Director of Procurement at least three business days prior to the opening of the technical proposals, setting forth in detail the grounds for such protest. The protest must contain all arguments, materials or other documents that may support the protestor's position. The Authority may disregard any such protest, which is filed less than three business days prior to the scheduled opening of technical proposals, or which fails to provide the specific reasons for and arguments supporting the protest.

3. Short listing: An offeror protesting its failure to be short listed, or the short listing of another offeror, must submit a written protest to the Senior Director of Procurement setting forth the specific grounds for challenging the short listing. The protest must contain all arguments, materials or other documents that may support the protestor's position and a statement as to whether the protestor requests the opportunity for an informal hearing. A firm protesting the short list must submit a written protest within five business days of the public announcement of the short list on the Authority's website, www.njsda.gov.

4. Technical and price proposal scoring: An offeror protesting the scoring of its technical and/or price proposals, or those of another offeror, must submit a written protest to the Senior Director of Procurement setting forth the specific grounds for challenging such scorings. The protest must contain all arguments, materials or other documents that may support the protestor's position and a statement as to whether the protestor requests the opportunity for an informal hearing. The protestor must submit a written protest within five business days of the public advertisement of the offerors' scores.

19:36-7.3 Hearing procedures

(a) Hearing procedures shall be as follows:

1. The Authority, in its sole discretion, shall determine whether to grant the opportunity for an informal hearing regarding a protest. Informal hearings are for fact-finding purposes for the benefit of the Authority and the Authority shall have the sole discretion as to whether to hold a hearing. Alternatively, the Authority may determine that sufficient information already exists in the record so that a decision may be made without a hearing, and the Authority may waive the hearing and issue a final agency decision accordingly. In the event that the Authority determines that a hearing is not necessary, a written decision will be issued by the Authority within 48 hours of receipt of all documents related to the protest.

2. Informal hearings will be held, where feasible, within five business days of the receipt of the request. Hearings will be heard, where practicable, by an impartial hearing officer designated by the Senior Director of Procurement. The hearing officer shall issue a final written decision within 10 calendar days of the conclusion of the hearing unless, due to the circumstances of the hearing, a greater time is required. For all protests of the RFQ or RFP processes and documents, the written decision will issue prior to the opening of statements of qualification or proposals, respectively. If a decision based upon a protest results in a modification of the aforesaid process or documents, such decision shall be conveyed to all potential offerors by addendum.

3. In an informal hearing, the Senior Director of Procurement may, in instances where public exigency exists or where there is potential for substantial savings to the State, modify or amend the time frames or any other requirements provided in this section. In these instances, the Senior Director of Procurement shall document, for the record, the rationale for such amendment and give adequate notice to the parties involved.

SUBCHAPTER 8. ROLES AND GENERAL REQUIREMENTS FOR DESIGN-BUILDERS

19:36-8.1 Design and construction

(a) The design-builder shall employ or contract with the architect of record and shall be responsible for the technical integrity of final project design, constructability, extensions of the design, and operability and maintainability, pursuant to the design-build information package and/or in the design-build contract.

(b) The role of the design-builder may include, but need not be limited to, the management and control of quality, cost and the integrated schedule for design, permit applications, material and equipment acquisition, construction, training for operation and maintenance, inspection and close out of the school facilities project.

(c) The Authority's review and approval of interim design submissions and/or construction documents is for the purpose of mutually establishing a conformed set of contract documents compatible with the requirements of the work. Neither the Authority's nor the construction manager's review and approval of interim design submissions or construction documents shall be deemed to transfer design liability from the design-builder to the Authority.

(d) The design-builder shall submit the completed plans and specifications for the school facilities project to the Department for approval of final educational adequacy, pursuant to N.J.A.C. 6A:26-5.4. Upon the approval of the plans and specifications by the Commissioner, the design-builder shall submit them to the DCA for review and approval in accordance with N.J.A.C. 5:23-4.24.

19:36-8.2 Costs in excess of guaranteed maximum price

The design-builder shall be responsible for cost overruns in excess of the GMP, as properly adjusted, pursuant to the terms of the design-build contract. If the design-builder's cost of work and fee are less than the GMP as properly adjusted, the cost savings shall be shared by the design-builder and the Authority in accordance with the terms of the design-build contract.

19:36-8.3 Deletion or substitution of key team members

(a) If at any time during the design-build selection process or after award of the design-build contract, an offeror or design-builder, as applicable, wishes to delete or substitute a key team member that was specifically identified by name in the response to the RFQ or RFP, it must request and receive written approval from the Authority.

(b) Unauthorized changes to key team members of the offeror or design-builder that were specifically identified in the response to the RFQ and/or RFP at any time during the design-build selection process may result in the elimination of the offeror from further consideration.