

REQUIREMENTS AND PROCEDURES
for
THE PROCUREMENT OF DESIGN-BUILD CONTRACTS
for
PENNSAUKEN TOWNSHIP
CAMDEN COUNTY, NEW JERSEY



PROCUREMENT OF DESIGN BUILD CONTRACTS

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SECTION 1 - GENERAL PROVISIONS

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1.1 – PURPOSE AND APPLICABILITY OF RULES

- (a) These rules are adopted by the contracting unit of Pennsauken Township to establish requirements and procedures for the procurement of design-build contracts and are intended to be consistent with the rules promulgated by the Division of Community Affairs at N.J.A.C. 5:34-10.1 to -10.19. Section 3 of P.L. 2021, c. 71 confers broad powers on the contracting unit to enter into contracts for the “planning, designing and observing the construction of the project or projects.” This statutory authority includes the procurement of design, construction, and other project-related services in one contract when the contracting unit determines that a single point of responsibility for a combination of these services is in the best interests of a facilities project.
- (b) These rules allow for the contracting unit to engage a design professional (i.e. a licensed and prequalified design professional, or an employee of the contracting unit licensed to provide architectural, engineering, or surveying service), to assist the contracting unit, with developing performance criteria and a scope of work statement that defines the project and provide prospective design-builders with sufficient information to ensure that the design meets the requirements of the contracting unit.
- (c) These rules provide for the contracting unit to select design-builders according to the proposals that are the most advantageous to the contracting unit, based upon a “best value selection” process premised on 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 project, outlines the scope of work for the project and solicits responses outlining the qualifications of bidders; and
 - 2. The issuance of a request for proposals (RFP) to a “short list” of bidders, 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 review committee, comprised of representatives of the contracting unit, the contracting unit’s project manager, and the contracting unit’s authorized design professional, to provide technical review and evaluation services, including evaluating and ranking the qualifications of bidders during the RFQ process and evaluating and scoring technical proposals submitted to the contracting unit 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 contracting unit 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 project.

1.2 – DEFINITIONS

“Acceptance” means the adoption of a law, ordinance, or resolution by the State of New Jersey, any of its political subdivisions, any authority created by the Legislature of the State of New Jersey and any instrumentality or agency of the State of New Jersey or of any of its political subdivisions, authorizing the execution of a design-build contract.

“Best value selection” means any selection process in which proposals contain both price and qualitative components and award is based upon a combination of price and qualitative considerations.

“Contracting unit” means a government entity that enters into contract pursuant to the “Local Public Contracts Law,” P.L.1971, c.198 (C.40A:11-1 *et seq.*), or the Township of Pennsauken.

“Delivery system” means the procedure used to develop and construct a project.

“Design-bid-build” means the delivery system used in public projects in which a licensed and prequalified design professional or designated employee develops the project design in its entirety; the contracting unit then solicits bids and awards the contract to the lowest responsible bidder that demonstrates the ability to complete the project specified in the design.

“Design-build contract” means a contract between a contracting unit and a design-builder to provide labor, materials, and other construction services for a public project. A design-build contract may be conditional upon subsequent refinements in scope and price, and may permit the contracting unit to make changes in the scope of the project without invalidating the design-build contract.

“Design-builder” means the entity, whether natural person, partnership, joint stock company, corporation, trust, professional corporation, business association, or other legal business entity or successor, that proposes to design and construct any public project, who is registered pursuant to the provisions of P.L.1999, c.238 (C.34:11-56.48 *et seq.*), and classified by the New Jersey Division of Property Management and Construction or the New Jersey Department of Transportation, where applicable, to perform work on a design-build project.

“Design professional” means the entity, whether natural person, partnership, joint stock company, corporation, trust, professional corporation, business association, or other legal business entity or successor that provides licensed and prequalified architectural, engineering, or surveying services in accordance with R.S.45:3-1 *et seq.*, and P.L.1938, c.342 (C.45:8-27 *et seq.*), and that shall be responsible for planning, designing and observing the construction of the project or projects.

“Evaluation factors” means the requirements for the first phase of the selection process, and shall include, but not be limited to: specialized experience, training certification of professional and field workforce, technical competence, capacity to perform, safety modification rating, past performance and other appropriate factors. Price shall only be considered in the second phase of the selection process.

“Governing body” means the governing body of the municipality, when the purchase is to be made or the contract or agreement is to be entered into by, or on behalf of, a municipality.

“Proposal” means an offer to enter into a design-build contract.

“Protest” means a challenge to a decision, statement, action, or alleged inaction of the contracting unit.

“Ranking” means the process of listing responsive bidders in order of highest to lowest total scores, based upon selection criteria set forth in the RFQ and/or RFP.

“Request for proposals” or “RFP” means the document issued by the contracting unit 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 contracting unit in the first phase of the two-phase selection process that describes the project in enough detail to allow potential bidders to determine if they wish to compete for a design-build contract and that requests information from bidders regarding the qualifications, experience, and organizational structure of the bidder's proposed design-build team, which information can be used by the contracting unit to select a short list of bidders to compete for a design-build contract.

"Selection coordinator" means the administrator of the operations and procedures of the selection process, whose activities shall include, but are not limited to, scheduling of meetings, preparing agendas, recording scores, verifying submittal information, preparing minutes of selection committee meetings, and other similar administrative duties.

“Short listing” or “short-listed” means the narrowing of the field of bidders through the selection of bidders who are evaluated on qualification factors other than price, as indicated in the RFQ, and whose proposals are judged most advantageous to the contracting unit in terms of qualifications other than price.

“Specification” means a written description included as part of the construction documents, which sets 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 project, or a requirement of the work to be performed. A specification may include a statement of any of the contracting unit '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” means the document(s) submitted by bidders in response to an RFQ that describes the qualifications and capabilities of the bidder and its key team members to perform the scope of services to be included in a design-build contract.

“Stipend” means the fee paid to a design-builder by the contracting unit to encourage competition.

“Technical evaluation committee” means a selection committee comprised of a representative of the contracting unit, the contracting unit’s project manager, and the contracting unit’s authorized design professional (i.e. design criteria architect) who are responsible for reviewing and evaluating responses by bidders to an 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 an 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 awarded to a bidder.

“Work” means all design and construction services performed by the design-builder and its team, 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.

1.3 – DISCLOSURE AND PUBLICITY

- (a) Any and all submissions made in response to any RFQ and any RFP are subject to the provisions of the Open Public Records Act, P.L. 2001, c. 404, 47:1A-1 *et seq.*, and the exceptions from disclosure provided therein.
- (b) The design-builder shall notify the contracting unit prior to the issuance of press releases and other public dissemination of information concerning a project, and such shall acknowledge contracting unit financing and assistance in the undertaking of the project.

1.4 – Access and record retention

- (a) The design-builder shall make available records and accounts pertaining to 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 projects. The design-builder shall also cooperate, upon request, in sharing information with other State or Federal entities.
- (b) The design-builder, shall be responsible to keep and maintain all of those records and accounts, including records and accounts of subcontractors and sub-consultants, for project activities as necessary in order to evidence compliance with the Act and all applicable regulations and contractual requirements. Such records shall be retained by the design-builder for 10 years following substantial completion of a project, and any additional period required for the resolution of litigation, claims, or audit findings. Thereafter, those records shall be transferred to the contracting unit, unless the contracting unit, in its sole discretion, requests an earlier transfer of such records from the design-builder to the contracting unit or another designated entity. At any time, upon request of the contracting unit, the design-builder shall make records relating to the design-build project available to the contracting unit, within four business days of the request for documents, at no cost to the contracting unit.
- (c) In the event that any litigation, claim, audit, or request pursuant to the Open Public Records Act, 47:1A-1 *et seq.*, relating to the procurement or the performance of work under the design-build contract is commenced prior to expiration or termination of the design-build contract, all records relating to the procurement and the contract shall be retained until all litigation, claims, audit findings, document requests, and related appeals, if any, have been resolved with finality.

1.5 – FRAUDULENT STATEMENTS

Any firm or individual who makes, or causes to be made, a false, deceptive, or fraudulent statement in its submittal in response to the RFQ or RFP or in the course of any hearing, litigation, mediation, or other proceeding may be disqualified from bidding, suspended, and/or debarred, and may be subject to prosecution pursuant to applicable law.

SECTION 2 - TECHNICAL REVIEW COMMITTEE

- **2.1 – APPLICABILITY**
- **2.2 – COMPOSITION AND RESPONSIBILITIES OF TECHNICAL REVIEW COMMITTEE**

2.1 – APPLICABILITY

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

2.2 – COMPOSITION AND RESPONSIBILITIES OF TECHNICAL REVIEW COMMITTEE

- (a) When the design and construction of a project will be undertaken pursuant to this chapter, the contracting unit will designate a technical review committee to review and evaluate responses by bidders to an RFQ and RFP. The members of the technical review committee shall consist of a representative of the contracting unit, the contracting unit's project manager, and the contracting unit's authorized design professional (i.e. a licensed and prequalified design professional, or an employee of the contracting unit licensed to provide architectural, engineering, or surveying service). A member of the contracting unit shall be appointed as selection coordinator and shall administer the selection process and serve as selection coordinator for the technical review committee. The contracting unit's attorney may advise the technical review committee.
- (b) Each member of the technical review committee shall be responsible for:
 - 1. Independently evaluating and scoring the statements of qualifications submitted by bidders in response to an RFQ; and
 - 2. Evaluating and scoring, in consultation with the other members of the technical review committee, the technical proposals submitted by bidders in accordance with the weighted criteria process set forth in an RFP.
- (c) The technical review committee may use such advisors as it deems necessary to give opinions on evaluating proposals. The names of such advisors shall be included in the report submitted to the governing body.
- (d) Once the responses are received and the identity of the bidders is ascertained, the members of the technical review committee will be given a list of all firms that submitted a bid. Each member of the technical review committee, prior to the evaluation of any submission, shall execute a certification that he or she has no personal interest, financial or familial, in any of the bidders to be evaluated, any of the named subcontractors or subconsultants to the bidders, or any of the principals, subsidiaries, or parent

companies of such bidders. A committee member or advisor shall be deemed to have a conflict of interest if their review and evaluation of statements of qualifications and statements of proposal would violate the Local Government Ethics Law, N.J.S.A. 40A:9- 22.1 et seq., or the School Ethics Act, N.J.S.A. 18A:12-21 et seq. as applicable. Furthermore, should any of the technical review committee members indicate that a conflict or personal interest exists once the identity of the bidders is revealed, that member shall not serve on the technical review committee. In the event that an evaluation committee member is discovered to have a conflict, such evaluation committee member will be removed from the selection committee by the contracting unit. The conflicted committee member shall be replaced with an appropriate person with sufficient knowledge and expertise to review and evaluate statements of qualifications and statements of proposal, if replacement with a new member is feasible at the time of removal of the conflicted committee member, and such replacement will not have an adverse impact on either the evaluation process or the procurement schedule or process generally.

- (e) The names of the members of the technical review committee shall be made public once the contract is awarded, pursuant to 52:34-10.3(c).

SECTION 3 – PROFESSIONAL CONSULTANT SERVICES

- **3.1 – APPLICABILITY**
- **3.2 – ENGAGEMENT OF DESIGN PROFESSIONAL CONSULTANTS**
- **3.3 -- DESIGN-BUILD INFORMATION PACKAGE**
- **3.4 -- CONFLICTS OF INTEREST**

3.1 – APPLICABILITY

This subchapter provides for the retention by the contracting unit of design professional consultants to act in the contracting unit's interests during the solicitation and award of design-build contracts for projects; namely, a licensed and prequalified design professional (i.e. design criteria architect), or an employee of the contracting unit licensed to provide architectural, engineering, or surveying service, to develop performance criteria and a scope of work statement that defines the project and provides prospective design-builders with sufficient information regarding the contracting unit's requirements.

3.2 – ENGAGEMENT OF DESIGN CRITERIA ARCHITECT

The contracting unit shall either appoint a licensed and prequalified design professional, or designate an employee of the contracting unit licensed to provide architectural, engineering, or surveying services, to provide technical advice, construction review services, and professional expertise on behalf of the contracting unit.

3.3 – DESIGN BUILD INFORMATION PACKAGE

- (a) A design-build information package shall be prepared by the contracting unit, with the assistance of a design professional either on staff of the contracting unit and/or the design criteria architect, develop performance criteria and a scope of work statement that defines the project and provides prospective design-builders with sufficient information regarding the contracting unit's requirements, which include: evaluation factor criteria and preliminary design documents, general budget parameters, and general schedule or delivery requirements to enable the design-builders to submit proposals which meet the contracting unit's needs.
- (b) Solicitations for each design-build contract shall include, but not be limited to, the following:
 1. The identity of the contracting unit which shall award the design-build contract;

2. The procedures to be followed for submitting proposals, the criteria for evaluation of proposals and their relative weight, and the procedures for making awards, including a reference to the requirements of sections 2 through 9 of P.L.2021, c.71 (C.52:35B-2 through C.52:35B-9) and the regulations of the contracting unit;
 3. The proposed terms and conditions for the design-build contract;
 4. A description of the drawings, specifications, or other submittals to be submitted with the proposal, with guidance as to the form and level of completeness of the drawings, specifications, or submittals that shall be acceptable;
 5. A schedule for planned commencement and completion of the design-build contract;
 6. Budget limits for the design-build contract, if any;
 7. Affirmative action, disadvantaged business or set-aside goals or requirements for the design-build contract, in accordance with the requirements of all rules, regulations, standards, or policies adopted by the contracting unit;
 8. The required qualifications of the design-builder;
 9. Requirements for contractors and the design professional to have performance bonds, payment bonds, and insurance, and to meet all the qualifications of the Division of Property Management and Construction in the Department of the Treasury or the New Jersey Department of Transportation, where applicable; and
 10. A statement that the prospective design-builder is in compliance with all applicable laws, including the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 *et seq.*), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 *et seq.*), and the "Construction Industry Independent Contractor Act," P.L.2007, c.114 (C.34:20-1 *et seq.*).
- (c) The solicitation may include any other information which the contracting unit in its discretion chooses to supply, including without limitation, surveys, soils reports, drawings or models of existing structures, environmental studies, photographs or references to public records.
- (d) The terms and conditions for the payment of a stipend, if a stipend is offered.
- (e) Notice of solicitations shall be advertised for a minimum of 30 calendar days in the same manner in which proposals generally are solicited for public projects.
- (f) The solicitation must be crafted in such a way as to encourage free, fair and open competition without unfairly or illegally discriminating against otherwise capable design-builders. No solicitation may:
1. Require any standard, restriction, condition, or limitation not directly related to the project's purpose, function or activity;
 2. Discriminate on the basis of race, religion, sex, national origin, creed, color, ancestry, age, marital status, affectional or sexual orientation, familial status, liability for service in the Armed Forces of the United States, or nationality;
 3. Require in the scope of work statement the furnishing of any "brand name" without allowing an equivalent, except that proprietary goods or services are permitted only if the need for same is directly related to the performance, completion, or undertaking of the project;
 4. Require a financial statement to be provided with the statement of qualifications; or

5. Require that the bidder, or any key team member identified by the bidder, be a resident of, or have their place of business located in, the county or municipality in which the contract will be awarded or performed.

3.4 – CONFLICTS

Design professional consultants who assist the contracting unit in the preparation of an RFQ or an RFP will not be permitted to participate as a bidder or sub-consultant to a bidder submitting a statement of qualifications in response to the RFQ or a proposal in response to the RFP.

SECTION 4 – TWO PHASE SELECTION PROCESS FOR DESIGN-BUILDERS

- **4.1 – APPLICABILITY**
- **4.2 – NECESSITY FOR PREQUALIFICATION**
- **4.3 – REQUEST FOR QUALIFICATIONS**
- **4.4 – SHORT LISTING OF BIDDERS**
- **4.5 – REQUEST FOR PROPOSALS**
- **4.6 – SELECTION PROCESS**
- **4.7 – REJECTION OF PROPOSALS**

4.1 – APPLICABILITY

This subchapter establishes the contracting unit's criteria and procedures for the use of a two-phase design-build selection process. In the first phase, the contracting unit initially ranks bidders based on statements of qualifications and then selects a short list of bidders to receive the RFP based on the ranking. In the second phase, the contracting unit receives the submission of price and technical proposals in response to the RFP and awards the design-build contract to the bidder whose proposal receives the highest overall score.

4.2 – NECESSITY FOR PREQUALIFICATION

- (a) The contracting unit 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.

4.3 – REQUEST FOR QUALIFICATION

- (a) The contracting unit shall publicly advertise an RFQ. The RFQ shall contain the following information:
 - a. A general description of the project;
 - b. The scope of work;
 - c. The minimum qualification requirements for bidders;
 - d. A request for the submission of a statement of qualifications which will describe the qualifications of prospective bidders;
 - e. The phase one evaluation factors to be used in the determination of a short list of bidders;
 - f. The technical evaluation factors to be utilized in the second phase of the selection process;
 - g. A statement of the number of bidders to be selected for the short list; and
 - h. Any other requirements, as determined in the sole discretion of the contracting unit.
- (b) Bidders desiring to submit technical and price proposals shall submit a statement of qualifications and an organizational chart of the bidder and its key team members and the other information required by the RFQ.

4.4 – SHORT LISTING OF BIDDERS

- (a) The technical review committee shall review and evaluate the responsive submissions of bidders and determine the relative ability of each such bidder to perform the work under the design-build contract. Each solicitation for proposals of qualification shall establish the relative importance assigned to the evaluation factors and sub-factors to be considered. The evaluation of the qualifications of each bidder may include, but need not be limited to, consideration of the following factors:
1. Specialized experience and technical competence;
 2. Experience of the prospective bidder and proposed design-build team on projects of similar size, scope, and complexity;
 3. Experience of the prospective bidder and proposed design-build team on design-build projects of similar size, scope, and complexity from project completed within the last five (5) years;
 4. Training certification of professional and field workforce;
 5. Experience of key team members on projects of similar size, scope and complexity;
 6. Experience of the key team members on design-build projects of similar size, scope and complexity;
 7. Principal location of the company;
 8. Capability to perform;
 9. Safety modification rating;
 10. Past performance of the individual members of the design-builder's team in their respective capacities;
 11. An organizational chart of the bidder, and the key team members of the proposed design-build team;
 12. A certification that the bidder, along with the bidder's proposed design-build team, including individual key team members, is not debarred from awards of federal contracts for public work as defined in N.J.S.A. 52:32-44.1;
 13. Documentation that the bidder, and to the extent necessary for the project, key team members and other subcontractors have a current DPMC design build classification and such other DPMC classifications and ratings issued pursuant to N.J.A.C. 17:19-1 et seq. as may be necessary for the project;
 14. A listing of all public works projects for which a contracting unit has made a determination of prior negative experience with respect to the design-builder or members of its proposed design-build team within the past five years pursuant to N.J.S.A. 40A:11-4 or N.J.S.A. 18A:18A-4;
 15. Measures taken by the bidder and members of the proposed design-build team to promote workforce diversity with respect to women and minorities;
 16. Any other pertinent information necessary to establish the qualifications of the prospective bidder and proposed design-build team to undertake the design-build contract;
 17. Other appropriate technical and qualification factors as determined by the Department of Community Affairs, where applicable.

- (b) At the conclusion of the first phase of the selection process, the technical review committee shall develop a short list of the bidders whose qualifications are deemed most advantageous to the contracting unit in terms of qualification factors other than price, as indicated in the RFQ. A solicitation for proposals of qualification shall state the maximum number of design-builders that are to be selected to submit second proposals. The maximum number specified in the solicitation shall be at least two and shall not exceed six. The bidders selected for the short list shall be invited to participate in the second phase of the process. The short list will be published on the contracting unit's website at www.twp.pennsauken.nj.us and all bidders that supplied submissions will be notified in writing of the bidders selected for the short list.

4.5 – REQUEST FOR PROPOSALS

- (a) Only bidders that have been short listed during the RFQ process will be permitted to submit a proposal in response to an RFP.
- (b) The date fixed for receiving the proposals shall be no fewer than 14 days later than the request for proposals issued by the contracting unit. The date fixed for receipt of the proposals shall not fall on a Monday or any day directly following a State or Federal holiday.
- (c) The RFP includes, without limitation:
 - 1. The design-build information package;
 - 2. Technical and price proposal forms;
 - 3. The design-build contract;
 - 4. Instructions to bidders;
 - 5. The criteria for evaluation of proposals prepared by a design professional or designated employee as defined in section 10 of P.L.2021, c.71 (C.18A:64-76.5) and their relative weight, including a minimum of 50 percent consideration based on the cost of the bid;
 - 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 bid bonds, performance bonds, payment bonds, and insurance;
 - 9. Schedule requirements, as set forth in the RFQ;
 - 10. Amount of the stipend, if any; and
 - 11. The documents required to be submitted upon the notice of award.

4.6 – SELECTION PROCESS

- (a) The technical review committee shall issue an RFP for the project to the bidders who were short listed in the phase one RFQ process.
- (b) Proposals shall be submitted to the design professional or designated employee retained by the contracting unit. No proposal shall be considered until certification is issued by the design professional or designated employee retained by the contracting unit that the proposal is consistent with the evaluation factors.
- (c) The technical review committee may provide for a pre-proposal conference at a designated date, time, and location at which bidders 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.

- (d) The RFP shall require the submission of a proposal in two (2) separate parts: a technical proposal and a 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, key personnel, quality assurance and control, proposed technical solutions, and the other factors, as applicable.
- (e) The technical proposal shall include design concepts or proposed solutions to requirements addressed within the scope of work, preliminary design drawings, outline specifications, technical reports, calculations, permit requirements, a management plan, schedule and other information and/or data requested in the RFP.
- (f) Proposals shall identify each person to whom the design-builder proposes to delegate obligations under the design-build contract. Persons so identified shall not be replaced without the approval of the contracting unit. Each design-build team shall include a licensed or prequalified design professional independent from the contracting unit's licensed architect or engineer. The licensed or prequalified design professional shall be named in any proposal submitted to the contracting unit.
- (g) The price proposal shall be submitted in a separate sealed envelope and shall provide a price for all design services and construction work required to complete construction of the project. Proposals shall establish the cost of the design-build contract which shall not be exceeded if the proposal is accepted without change. Afterward, the maximum cost in the proposal may be converted to fixed prices by negotiated agreement between the contracting unit and the design-builder. The envelope containing the price proposal shall indicate clearly that it is the price proposal and shall identify the bidder's name, project number, and any other information required by the RFP. The price proposals shall remain sealed until expiration of the time established for making proposals as set forth in the solicitation.
 - 1. Each price proposal shall be accompanied by a bid bond as specified in the RFP.
 - 2. The technical review committee shall examine all documents required to be submitted with the technical proposal for completeness and conformity with the requirements of the RFP. If the technical review committee determines that a technical proposal received must be rejected as non-responsive, it shall notify the bidder 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 bidder has completely reviewed the RFP and the design-build contract and fully understands and agrees to all of the requirements, terms, conditions, revisions, and/or addenda set forth therein.
 - 4. A statement that the bidder is in compliance with all laws applicable to the project, including the "New Jersey Prevailing Wage Act," P.L.1963, c.150 (C.34:11-56.25 et seq.), "The Public Works Contractor Registration Act," P.L.1999, c.238 (C.34:11-56.48 et seq.), and the "Construction Industry Independent Contractor Act," P.L.2007, c.114 (C.34:20-1 et seq.).
 - 5. The technical review committee, meeting together, may conduct interviews with each bidder prior to ranking the bidders. The technical review committee shall score the technical proposals using the criteria and methodology set forth in the request for proposals, with consideration of price at least equal to the consideration given to all other factors, and make an award recommendation to the governing body of the contracting unit.
 - 6. The contracting unit shall separately evaluate the submitted technical and price proposals against the published factors and weighting to arrive at a composite score. A minimum of 50 percent consideration shall be based on the cost of the price proposal. After the proposals have been evaluated, a report shall be prepared concerning the technical review committee's proposal evaluations and award recommendation. The report shall list the names of all bidders submitting a proposal and shall summarize each statement of proposal submitted. The report shall rank the bidders in order of evaluation, clearly state the reasons for the committee's award recommendation, and detail the terms, conditions, scope of services, fees and other matters to be incorporated into the contract. The bidder with the highest overall score shall be recommended to

the contracting unit's governing body for an award of the design-build contract. The report shall be made available to the public at least 48 hours prior to the governing body's award of the contract or when made available to the governing body, whichever is sooner, except that the details of each bidders' respective technical proposals shall not be disclosed.

7. Before awarding a design-build contract, the governing body shall determine that there was adequate competition for the contract. The technical review committee shall have considered at least two complete and responsive proposals before the governing body can proceed with awarding the contract.
8. The governing body of the contracting unit shall award the contract in accordance with section 32 of P.L.2021, c.71 (C.40A:11-59).
9. Acceptance of a proposal shall be made by written notice to the design-builder which submitted the accepted proposal.
10. The contracting unit shall make public the design-builder to be awarded the contract for the project.

4.7 – REJECTION OF PROPOSALS

- (a) At the same time notice of acceptance is delivered, the contracting unit shall also inform, in writing, the other design-builders that their proposals were not accepted.
- (b) Proposals received after the submission date and time prescribed in the advertisement and RFP shall be rejected.
- (c) The governing body shall have the right to reject any and all proposals for excessive cost, insufficient competition, or any other reason, in accordance with law, except for the purpose of evading the provisions and policies of sections 26 through 33 of P.L.2021, c.71 (C.40A:11-53 through C.40A:11-60). The contracting unit shall solicit new proposals using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the needs of the contracting unit, including but not limited to an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.
- (d) The governing body may cancel a notice of award at any time before the execution of the design-build contract, if the contracting unit deems it advisable to do so in the interest of the State or the public interest.
- (e) A governing body may not award a design-build contract unless the technical review committee evaluated at least two complete and responsive proposals from design-builders.
- (f) Proposals may be withdrawn for any reason at any time prior to acceptance.
- (g) When a design-builder receives notification from the governing body that the proposal, which it has submitted, has not been accepted, the design-builder may, within 30 days, request to review the design-build proposals submitted, the technical review committee evaluation scores from the selection process, and the final recommendation of award document. The design-builder shall submit this request in writing.

SECTION 5 – PAYMENT OF STIPENDS

▪ 5.1 – CRITERIA FOR PAYMENT OF STIPEND

5.1 – CRITERIA FOR PAYMENT OF STIPEND

- (a) At the discretion of the contracting unit, a stipend may be paid, based upon the project size and type, which shall not exceed three percent of the project's estimated cost, to eligible bidders who submit responsive but unsuccessful proposals in response to the RFP. The decision to do so shall be based on the contracting

unit's analysis of the estimated proposal development costs, the complexity of the project, and the anticipated degree of competition during the procurement process. The purpose of the stipend is to encourage the submission of proposals, and to increase competition by offering to compensate responsive, but unsuccessful bidders, for a portion of the estimated proposal development costs.

- (b) The terms and conditions for the payment of a stipend shall be included in the RFP.
- (c) Whether or not a stipend is provided to an unsuccessful bidder, submission of a technical proposal by a bidder shall indicate the bidder's agreement and consent that the work produced within that bidder's technical proposal shall be provided to the contracting unit 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 bidder.
- (d) Bidders submitting a response to the RFP which is determined by the contracting unit in its sole discretion to be non-responsive or irregular, will not be entitled to a stipend.

SECTION 6 – CONTRACTS

▪ 6.1 – CONTRACT APPROVAL AND EXECUTION

6.1 – CONTRACT APPROVAL AND EXECUTION

- (a) Except as may otherwise be specifically provided in this Section, the engagement of a design-builder shall be subject to approval by the contracting unit and may only be executed in accordance with the contracting unit's procedures.
- (b) Prior to the execution of a design-build contract, the bidder 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 contracting unit 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 notice of award 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 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 contracting unit, the contracting unit may take whatever action is appropriate and authorized by law including, but not limited to, withdrawing or canceling the notice of award to the delinquent bidder and awarding the contract to the next-highest ranked bidder; cancelling the procurement; or proceeding to recover under the bid bond submitted with the price proposal.
- (f) All contracts executed pursuant to this chapter shall provide for, among other things, termination for the convenience of the contracting unit and for cause.
- (g) No agreement is valid or binding on the contracting unit unless and until it is executed by an appropriately authorized representative of the contracting unit. Any work performed prior to the execution of the contract by the contracting unit is voluntary, and represents a gift to the contracting unit. In the event the notice of

award is cancelled or withdrawn, the bidder is not entitled to any remuneration for any work performed prior to the execution of the contract.

- (h) Upon the successful bidder's submission of all required documentation or materials as specified in the Notice of Award, and the contracting unit's acceptance of such documentation, the contracting unit will execute the design-build contract and provide the successful bidder with the fully-executed design-build contract.
- (i) Pursuant to N.J.S.A. 52:15C-10, for such contracts valued over \$2.5M but less than \$12.5M, contracting units must provide post-award notification for any contract within 20 days of the award.

SECTION 7 – PROTESTS

- **7.1 – SCOPE AND PURPOSE**
- **7.2 – SUBJECT MATTER, TIME LIMITATIONS, AND STANDING**
- **7.3 – HEARING PROCEDURES**

7.1 – SCOPE AND PURPOSE

- (a) This subchapter sets forth the procedures that govern protests and administrative hearings regarding design-build procurements, including protests challenging the form of the RFQ or the RFP, the ranking of bidders during the RFQ phase, and the scoring of technical proposals of bidders.
- (b) For purposes of this subchapter, protests of the type described are not contested cases subject to the requirements of the Administrative Procedure Act, 52:14B-1 *et seq.*

7.2 – SUBJECT MATTER, TIME LIMITATIONS, AND STANDING

- (a) Administrative hearings before the contracting unit may include the following subject matter and may be requested by the following entities:
 1. **RFQ process or documents:** A bidder that intends to submit or has submitted a statement of qualifications for the first phase of the design-build procurement, may request an informal hearing before the contracting unit to protest the RFQ process or documents by submitting a written protest to the contracting unit at least five (5) business days prior to the date and time scheduled for opening of the statements of qualifications, setting forth in detail the grounds for such protest. The protest must contain all legal and factual arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The contracting unit may deny any protest that is filed less than five (5) business days prior to the scheduled opening of statements of qualifications, or that fails to provide the specific reasons for and arguments supporting the protest.
 2. **RFP process or documents:** A bidder that intends to submit or has submitted proposals for the second phase of the design-build procurement, may request an informal hearing before the contracting unit to protest the RFP process or documents by submitting a written protest to the contracting unit at least five (5) business days prior to the date and time scheduled for opening of the technical proposals, setting forth in detail the grounds for such protest. The protest must contain all legal and factual arguments, materials or other documents that support the protestor's position, and must indicate whether the protestor requests an informal hearing. The contracting unit may deny any protest that is filed less than five (5) business days prior to the scheduled opening of technical proposals, or that fails to provide the specific reasons for and arguments supporting the protest.
 3. **Technical and price proposal scoring:** A bidder protesting the scoring of its technical and/or price proposals, or those of another bidder, may request an informal hearing before the contracting

unit to protest the scoring of technical and/or price proposals, by submitting a written protest to the contracting unit setting forth the specific grounds for challenging such scorings. The protest must contain all factual and legal arguments, materials or other documents that 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 (5) business days of the public announcement of the bidders' scores. The contracting unit may deny any such protest that is filed more than five (5) business days after the public announcement of the bidder's scores, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

4. **Award of contract:** A bidder that has submitted a proposal in response to an RFQ or RFP may request an informal hearing before the contracting unit to protest the award of a contract to another bidder by submitting to the contracting unit a written protest, setting forth the specific grounds for challenging such award, within five (5) business days of the public announcement of the award. The protest must contain all factual and legal arguments, materials or other documents that support the protestor's position and a statement as to whether the protestor requests an informal hearing. The contracting unit may deny any protest that is filed more than five (5) business days after the public announcement of the award, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

7.3 – HEARING PROCEDURES

(a) Hearing procedures shall be as follows:

1. The contracting unit, in its sole discretion, shall determine whether to grant an informal hearing regarding any protest. Informal hearings are for fact-finding purposes for the benefit of the contracting unit and the contracting unit shall have the sole discretion as to whether to hold an informal hearing. Alternatively, the contracting unit may determine that sufficient information already exists in the record so that a decision may be made without a hearing, and the contracting unit may waive the hearing and issue a final agency decision accordingly. In the event that the contracting unit determines that a hearing is not necessary, a written decision will be issued by the contracting unit within five (5) business days of receipt of all documents related to the protest.
2. Informal hearings will be held, where feasible, within 14 business days of the receipt of the request. The hearing officer(s) shall issue a final written decision within 30 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 bidders by addendum.
3. For matters of dispute that may occur relative to the activities of the contracting unit, if formal hearings are warranted, such hearings will be held by an Administrative Law Judge pursuant to the Administrative Procedure Act, 52:14B-1 *et seq.* and 52:14F-1 *et seq.*, as applicable.

SECTION 8 – ROLES AND GENERAL REQUIREMENTS FOR DESIGN-BUILDERS

- **8.1 – DESIGN AND CONSTRUCTION**
- **8.2 – COSTS IN EXCESS OF GUARANTEED MAXIMUM PRICE**
- **8.3 – DELETION OR SUBSTITUTION OF KEY TEAM MEMBERS**

8.1 – DESIGN AND CONSTRUCTION

- (a) The design-builder shall contract for architectural or engineering services as defined by and in accordance with R.S.45:3-1 *et seq.*, P.L.1938, c.342 (C.45:8-27 *et seq.*), and all other applicable licensing statutes.

- (b) The design-build team shall include a licensed or prequalified design professional independent from the contracting unit's licensed architect or engineer, 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. Persons so identified shall not be replaced without the approval of the contracting unit.
- (c) 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 project.
- (d) The contracting unit's review and acceptance of interim or completed 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. The contracting unit's review and acceptance of interim or completed design submissions or construction documents shall not be deemed to transfer design liability from the design-builder to the contracting unit.

8.2 – COSTS IN EXCESS OF GUARANTEED MAXIMUM PRICE

Proposals shall establish the cost of the design-build contract which shall not be exceeded if the proposal is accepted without change. Afterward, the maximum cost in the proposal may be converted to fixed prices by negotiated agreement between the contracting unit and the design-builder. If a design-build contract is procured as a GMP contract, 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 accrue to the contracting unit, unless the terms are specified otherwise.

8.3 – DELETION OR SUBSTITUTION OF KEY TEAM MEMBERS

- (a) No substitutions or deletions of key team members may be made during the selection process or after award of the contract, without prior written approval from the contracting unit.
- (b) Unauthorized changes to a bidder's key team members who were specifically identified in the response to the RFP at any time during the selection process may result in the elimination of the bidder from further consideration.

SECTION 9 – POST-AWARD EVALUATION OF DESIGN-BUILDERS

• 9.1 – EVALUATION OF DESIGN-BUILDERS

9.1 – EVALUATION OF DESIGN-BUILDERS

- (a) Every design-builder awarded a design build contract procured pursuant to these regulations will be subject to evaluation in accordance with this section. The performance evaluation will consider the design-builder's performance as a contractor in the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out.
- (b) The design-builder's performance will be evaluated periodically during the progress of the project. The evaluation will be performed by a reviewer with direct involvement in the management or supervision for the project.
- (c) The design-builder's performance evaluations will be used by the contracting unit in evaluating and scoring bidders as to their prior experience on contracting unit projects, in accordance with the provisions of these regulations.
- (d) Design-builders shall be evaluated on their construction performance with respect to the various evaluation categories using the following evaluation ratings:

1. Outstanding (O) or 100 percent--far exceeds the contract requirements by consistently exhibiting excellent performance. Always meets, and almost always exceeds the contract requirements;
 2. Very Good (VG) or 90 percent--often exceeds the contract requirements and frequently provides a high level of performance. Typically meets and often exceeds the contract requirements;
 3. Satisfactory (S) or 80 percent--provides an acceptable level of performance consistently meeting the contract requirements;
 4. Marginal (M) or 70 percent--performs slightly below the requirements of the contract, meeting the contract requirements on an intermittent basis; and
 5. Unsatisfactory (U) or 60 percent--fails to meet important contract requirements, resulting in a negative impact on the entire project.
- (e) The numerical scores established in subsection (d) may be subject to special adjustment factors for certain categories deemed by the contracting unit to be particularly critical to contractor performance, with such special adjustment factors specified in the RFP. The numerical ratings for each category shall be tabulated to arrive at an overall numerical evaluation score for each performance evaluation.