

Negotiating

STANDARD
OPERATING
PROCEDURES

Construction

Contracts

NJSDA

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY
TRENTON, NEW JERSEY

INTRODUCTION

Assembly Bill No. 4336, as amended and approved in August 2007, revises the school construction program established under the “Educational Facilities Construction and Financing Act,” (EFCFA) P.L.2000, c.72, as enacted in July of 2000.

Assembly Bill No. 4336 maintains the current requirements and standards in regard to the award of contracts under the former school construction program (the SCC). The new Schools Development Authority (SDA), created under this Bill, is authorized to award a contract that will exceed \$25,000 to the bidder whose bid will be the most advantageous to the development authority, price and other factors considered. Unlike the original provisions of EFCFA, however, Assembly Bill No. 4336 establishes a process for the adjustment of the \$25,000 amount every five years in direct proportion to the rise or fall of the “index rate.” In addition, Assembly Bill No. 4336 (Section 9, i and j) provides that

Any purchase, contract, or agreement may be made, negotiated, or awarded by the Development Authority without public bid or advertising when the public exigency so requires.

Any purchase, contract, or agreement may be made, negotiated, or awarded by the development authority without public bid or advertising when the authority has advertised for bids on two occasions and has received no bids on both occasions in response to its advertisements.

Any purchase, contract, or agreement may be negotiated by the development authority after public bid or advertising when the authority receives only a single responsive bid, provided however that negotiation with that single responsive bidder shall be limited to price.

Under this legislation, therefore, SDA may have occasion and opportunity to seek, secure, negotiate and expedite a contract outside the mechanism of competitive bid solicitation, per existing procurement regulations (N.J.S.A. 34:IB-5.7). This Negotiating Construction Contracts SOP provides procedures to be followed by SDA procurement function to secure and negotiate contracts under no-compete, no-solicitation conditions, as provided per Assembly Bill No. 4336.

PURPOSE

This Negotiating Construction Contracts SOP provides procedural guidance in securing and negotiating contracts with contractors under conditions when there is no public bid (public exigency), when no bids have been received after having been twice solicited (or when bids received are deemed non-responsive) or when only one responsive bid is secured.

SCOPE

This Negotiating Construction Contracts SOP applies to all SDA construction contracts advanced by Project Charter and approved by the Authority Board for which bids have been twice solicited resulting in a no-bid response; solicited bid secures a lone, responsive bid; or procurement seeks to secure contract under condition of public exigency.

DEFINITIONS

Public Exigency: State contract procured when the life, safety or health of the public must be sustained through the immediate performance of services or delivery of products.

Project Charter: A Project Charter is a document that institutionalizes project team members (school district personnel, designers, contractors and SDA project team members), project scope and an all-inclusive estimate of a project's scope and cost. Project Charters are required for every proposed SDA project and must be presented to and approved by the Authority Board. Changes and amendments to Project Charters as they are advanced toward finalization, under certain, established thresholds, are also subject to Authority Board review and approval (see "Recommendation and Approval of Authority Annual Budgets, Plans, Project Charters" for complete itemization of these thresholds).

RESPONSIBLE UNITS/DIVISION

The Division of Procurement & Contract Services, under the Office of the Chief Operating Officer, is responsible for Contract Negotiation for construction contracts.

PROCEDURES

Project Charter

Project Charter Core Team issues an initial Project Charter, which includes an amount for design contingency, typically 10% of the Construction Cost Estimate, to account for modifications to the Design or other characteristics during the design phase.

A Project Charter's Order of Magnitude Project Estimate is revised at least once before a Final Charter (and thus, final budget) has been identified for the project. Upon completion of the Design Consultant's educational specifications and schematics for the project, submitted to and approved by DOE as the Project's Preliminary Project Report, complete with a Preliminary Eligible Costs Determination, a revised Order of Magnitude Project Estimate is created. Further revisions during the Design Phase and at the conclusion of 100% Construction Documents may be necessary to properly invest the Project Charter with all currently known information.

Upon submission, review and approval of a Project Charter by the Authority Board, Project Management issues to the Division of Procurement a Form 193 (construction) [Form 192 for Design/Architecture] to secure contract for work to be performed.

After receipt of construction bids and determination of responsive/responsible low bidder, the Project Charter is revised to reflect the actual construction contract amount, with an appropriate amount allocated for construction change orders and the final budgeted amounts for all other project costs, inclusive of all soft costs (ie, Design Fees, CM Fees, FF&E and IT Costs, etc.) and all real estate and environmental costs. These amounts constitute SDA's submission of a Final Eligible Cost Recommendation to the Department of Education and, ultimately, its Final Project Report, including the Final Eligible Cost Determination.

Contract Negotiation – Public Exigency

Under condition of Public Exigency, the Project Charter Core Team verifies the emergent need and evaluates the scope of work, proposed timelines and all related costs. An SDA Project Manager (or an assigned consultant) is then assigned the project and drafts technical specifications. SDA Project Manager delivers and provides project specifications (Form 193) to the Division of Procurement, which then begins the construction contract securement process, employing the following sequence of actions:

1. Procurement submits completed Request for Contract Negotiation Form (indicating request and approval for procurement under new law and regulations) to COO/Chief Counsel for signed approval.
2. Procurement, employing due diligence, chooses a minimum of 3 potential vendors culled from an extant pool of registered, pre-qualified vendors. The following criteria are applied in identifying compatible/capable vendors:
 - SDA pre-qualification
 - NJ Division of Property Management and Construction (DPMC) classification and aggregate limit
 - SDA per project rating limit
 - Physical location of vendor (municipality, county, state)
 - SBE registration (if applicable)
 - History of vendor (work/contract performance with SDA)

Having identified potential vendors in this prescribed manner, procurement then:

3. Negotiates with Vendor 1.
4. If procurement and Vendor 1 agree to terms, procurement proceeds to Step 9, below.
5. If SDA and Vendor 1 do not agree to terms, procurement negotiates with Vendor 2.
6. If SDA and Vendor 2 agree to terms, procurement proceeds to Step 9, below.
7. If SDA and Vendor 2 do not agree to terms, procurement negotiates with Vendor 3.
8. If SDA and Vendor 3 agree to terms, procurement proceeds to Step 9, below.
9. If procurement does not agree to terms with Vendor 3, procurement reiterates negotiating procedure beginning with Step 1 (employing a new pool) until agreement is reached with vendor.
10. Prepares recommendation of award (ROA).
11. Submits recommendation to SDA Project Team for Authority Board approval/ratification.
12. Submits ROA, per guidelines of SDA Operating Authority.
13. Submits award (indicating procurement under new law and regulations).

Contract Negotiation – No Bid Submissions

In the event Division of Procurement does not receive a bid submission response (or deems such submissions unresponsive) by the designated deadline after having advertised for bids on two separate occasions, procurement staff:

1. Procurement submits completed Request for Contract Negotiation Form (indicating request and approval for procurement under new law and regulations) to COO/Chief Counsel for

signed approval.

2. Employing due diligence, chooses a minimum of 3 potential vendors culled from an extant pool of registered, pre-qualified vendors. The following criteria is applied in identifying compatible/capable vendors:

- SDA pre-qualification
- NJ Division of Property Management and Construction (DPMC) classification and aggregate limit
- SDA per project rating limit
- Physical location of vendor (municipality, county, state)
- SBE registration (if applicable)
- History of vendor (work/contract performance with SDA)

Having identified potential vendors in this prescribed manner, procurement then:

1. Negotiates with Vendor 1.
2. If procurement and Vendor 1 agree to terms, procurement proceeds to Step 9, below.
3. If SDA and Vendor 1 do not agree to terms, procurement negotiates with Vendor 2.
4. If SDA and Vendor 2 agree to terms, procurement proceeds to Step 9, below.
5. If SDA and Vendor 2 do not agree to terms, procurement negotiates with Vendor 3.
6. If SDA and Vendor 3 agree to terms, procurement proceeds to Step 9, below.
7. If procurement does not agree to terms with Vendor 3, procurement reiterates negotiating procedure beginning with Step 1 until agreement is reached with vendor.
8. Prepares recommendation of award (ROA).
9. Submits recommendation to SDA Project Team for Authority Board approval/ratification.
10. Submits ROA, per guidelines of SDA Operating Authority.
11. Submits award (indicating procurement under new law and regulations).

Contract Negotiation – One Bid Submission

In the event Division of Procurement receives one bid submission response for a construction contract by the designated deadline:

1. Procurement submits completed Request for Contract Negotiation Form (indicating request and approval for procurement under new law and regulations) to COO/Chief Counsel for signed approval.
2. Management (Project Management and Project Controls) determines if the contract should be placed out to bid a second time or, if necessary, negotiated under provisions identified in “Contract Negotiation – No Bid Submissions” above.
3. If a decision has been made to negotiate on one bid submission, procurement negotiates on price only.
4. Negotiates a final price.
5. Submits FYI memo to Board of award (indicating procurement under new law and regulations).

RECORDS

Prior to the Negotiation Process

- ✓ Bid Advertisement (Original and Re-Bid)
- ✓ Pre-Bid Meeting Attendees
- ✓ Original Bid Submission (if applicable)
- ✓ All original documents

Resulting From the Negotiation Process

- ✓ Negotiation Process Details
- ✓ Meeting Attendees
- ✓ Revised Documents
- ✓ Meeting minutes

FORMS

- ✓ Revised Price Proposal
- ✓ Schedules of Values
- ✓ Project Schedule
- ✓ Price Proposal Breakdown Comparison
- ✓ FYI memo to Board
- ✓ Request for Contract Negotiation Form