

1894th REGULAR MEETING, APRIL 19, 2023
BOROUGH OF WOOD-RIDGE

RESOLUTION NO.: 057-2023

RESOLUTION AUTHORIZING CERTAIN AMENDMENTS TO THE DESIGN-BUILD PROCEDURES PREVIOUSLY ADOPTED BY RESOLUTION NO. 049-2023 ON MARCH 8, 2023 PURSUANT TO N.J.S.A. 40A:11-53 FOR THE SOLICITATION AND AWARD OF A DESIGN-BUILD CONTRACT FOR THE CONSTRUCTION OF THE HIGHLAND AVENUE LEARNING ANNEX AND RECREATION CENTER

WHEREAS, the Borough of Wood-Ridge, County of Bergen (the “**Borough**”) is a public body corporate and politic of the State of New Jersey; and

WHEREAS, the Borough desires to construct a new Highland Avenue Learning Annex and Recreation Center (the “**Project**”); and

WHEREAS, the Borough desires to utilize the design-build process set forth in the Design-Build Construction Services Procurement Act, N.J.S.A. 40A:11-53 et seq. (P.L. 2021, c.71) (the “**Act**”) and its implementing regulations, N.J.A.C. 5:34-10.1 et seq. (the “**Regulations**”) for the Project; and

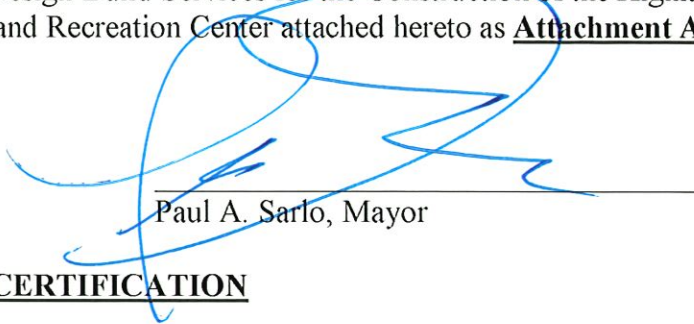
WHEREAS, the Project costs are estimated to exceed the five-million-dollar threshold in the Act and the Regulations to use such process and a determination has been made that when compared to the design-bid-build process, design-build project delivery will facilitate a shorter overall design and construction process including, but not limited to, reducing the likelihood of work stoppages and change orders that would increase the Project time; and

WHEREAS, in order to utilize the design-build process under the Act and the Regulations, on March 8, 2023 the Borough adopted Resolution No. 049-2023 which (i) authorized the commencement of such process; (ii) established and adopted procedures consistent with the Regulations for the solicitation and award of the design-build contract for the Project (the “**Design-Build Procedures**”); and (iii) designated a Technical Review Committee to, among other tasks, review and evaluate statements of qualifications and proposals; and

WHEREAS, the Borough desires to make certain minor modifications to the previously adopted Design-Build Procedures as set forth in Attachment A, attached hereto.

NOW, THEREFORE BE IT RESOLVED, by the Mayor and Council of the Borough of Wood-Ridge, County of Bergen, State of New Jersey, that the Borough hereby approves the Amended Design-Build Procedures for the Solicitation and Award of a Contract for Design-Build Services for the Construction of the Highland Avenue Learning Annex and Recreation Center attached hereto as **Attachment A.**

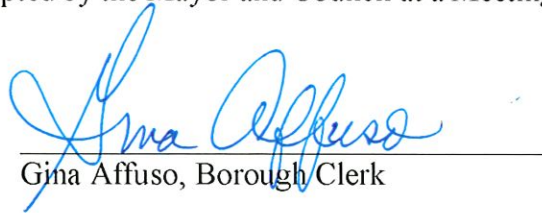
Dated: April 19, 2023



Paul A. Sarlo, Mayor

CERTIFICATION

I, Gina Affuso, Borough Clerk for the Borough of Wood-Ridge, Bergen County, New Jersey do hereby certify that the foregoing resolution was adopted by the Mayor and Council at a Meeting held on April 19, 2023.



Gina Affuso, Borough Clerk

Motion: Councilperson Marino, seconded by Azzolini moved to the adoption of Resolution #057-2023

Roll Call: Azzolini, Altamura, Marino, Romero, Mabel, Donato

**Attachment A to Resolution No. 057-2023
Wood-Ridge Mayor and Council Meeting**

**BOROUGH OF WOOD-RIDGE
PROCEDURES FOR THE SOLICITATION AND AWARD OF A CONTRACT
FOR DESIGN-BUILD SERVICES
FOR CONSTRUCTION OF THE HIGHLAND AVENUE LEARNING ANNEX AND
RECREATION CENTER**

*(in accordance with the Design-Build Construction Services Procurement Act,
N.J.S.A. 40A:11- 53 et seq. regulations, N.J.A.C. 5:34-10 et seq.)*

Initially Adopted: March 8, 2023

Amended: April 19, 2023

Overview

These procedures set forth the process to be followed by the Borough of Wood-Ridge (the "Borough") as required by the Design-Build Construction Services Procurement Act, *N.J.S.A. 40A:11-53 et seq.* (the "Act") and its implementing regulations, *N.J.A.C. 5:34-10 et seq.* (the "Regulations"), to select a design-builder for the Construction of the **Highland Avenue Learning Annex And Recreation Center** (the "Project") based on the proposal that is most advantageous to the Borough and based upon a "best value selection" process. This is a process in which consideration is given to 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, such that the successful bidder is the one whose price bid and technical proposals together are the most advantageous to the Borough, unit price and other factors considered. This Project is estimated to have a cost exceeding \$5,000,000 and a determination has been made that when compared to the design-bid-build process, design-build project delivery will facilitate a shorter overall design and construction process including, but not limited to, reducing the likelihood of work stoppages and change orders that would increase the Project time. Consequently, the Project qualifies under the Act for this type of procurement.

These procedures 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 delineating the qualifications of bidders; and
- 2) The issuance of a request for proposal ("RFP") to prequalified 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 a proposal consisting of a technical proposal and a price proposal.

All RFQ and RFP responses will be evaluated by a Technical Review Committee ("TRC") established by the Borough in accordance with the Act.

The TRC will consist of:

- (i) **Christopher W. Eilert, C.M.F.O., Q.P.A., C.P.W.M., R.M.C., C.T.A.
Borough Administrator & Qualified Purchasing Agent
Design Build Selection Coordinator**
- (ii) **Nicholas Fargo, C.M.F.O., Q.P.A.
Borough Chief Financial Officer & Deputy Qualified Purchasing Agent**
- (iii) **Michael Neglia, P.E., P.P.
Borough Engineer; President, Neglia Engineering Group
Design Build Design Professional**
- (iv) **Allen Barnett, A.I.A.
Borough Architect; Principal, DiCara Rubino Architects
Design Build Design Professional**

The Borough's **Administrator/QPA, Christopher W. Eilert**, will administer the two-phase selection process and serve as Selection Coordinator for the TRC. The Selection Coordinator is tasked with, among other things, scheduling of meetings, preparing agendas, recording scores, verifying submittal information, preparing minutes of selection committee meetings, and other similar administrative duties. The TRC shall use such advisors, including the Borough's Special Counsel, as it deems necessary to give evaluation opinions. The Borough reserves the right in its discretion, to add additional members to the TRC.

The TRC shall evaluate the bids based on rating and scoring proposals and shall evaluate the design-builders based on their qualifications.

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Procedures for Solicitation and Award of the Design-Build Contract

1. Adoption of Resolution

The Borough shall adopt a resolution authorizing the commencement of a design-build process for the Project. The resolution shall also include the following:

- a) A determination that when compared to the design-bid-build process, design-build project delivery will facilitate a shorter overall design and construction process including, but not limited to, reducing the likelihood of work stoppages and change orders that would increase the Project time;
- b) The established procedures for the solicitation and award of a design-build contract that are consistent with the Regulations; and
- c) Designation of the members of the TRC.

2. Preparation of the RFQ

- The Borough shall develop, with the assistance of the Borough's Design Professionals, **Michael J. Neglia/Neglia Engineering and Allen Barnett/DiCara Rubino Architects**, (the "Design Professionals"), performance criteria and a scope of work statement that defines the Project and provides prospective design-builders with sufficient information regarding the Borough's requirements.
- The RFQ must include:
 - Project size, type, and scope;
 - evaluation factor criteria and preliminary design documents;
 - general budget parameters (if any); and
 - general schedule or delivery requirements to enable the design-builders to submit proposals which meet the Borough's needs.
- The RFQ shall state the factors used to evaluate proposals of qualification and shall include, but not be limited to:
 - specialized experience and technical competence;
 - training of and certifications held by the professional and field workforce;
 - principal location of the design-builder and key team members, to the extent that it would materially impact Project delivery;
 - capability to perform;
 - safety modification rating;
 - certifications, classifications, and ratings possessed by the design-builder, key team members, and other subcontractors as relevant to the Project;
 - past performance of the individual members of the design-builder's team in their respective capacities, including the architect-engineer and construction members of

the team, and other appropriate technical and qualification factors as determined by the Department of Community Affairs, where applicable.

- the process for evaluating a firm's prior performance which shall consist of:
 1. A mathematical tabulation and averaging of the scores of all prior performance evaluations within a specified time period;
 2. Consideration of particularly favorable or unfavorable evaluations individually and with reference to other evaluations;
 3. Consideration of multiple evaluations over the course of a given Project, to show consistency of performance, deterioration of performance or efforts at improvement and recovery; or
 4. A combination of the above methodologies.
 - measures taken by the bidder and members of the proposed design-build team to promote workforce diversity with respect to women and minorities; and
 - other technical factors as may be relevant to the Project.
- The RFQ shall establish the relative importance assigned to the evaluation factors and sub-factors to be considered.
 - The RFQ shall establish required minimum classifications and aggregate rating limits to which the design-builder and, as applicable, key team members and other subcontractors must be assigned by the New Jersey Department of Treasury, Division of Property Management and Construction.
 - The RFQ shall include a statement that the bidder and, to the extent necessary for the Project, key team members and other subcontractors have a current design- build classification from the New Jersey Division of Property Management and Construction (DPMC) in the Department of Treasury.
 - The RFQ shall include a statement if the design-build contract is subject to any set-aside goals established by the Borough pursuant to *N.J.S.A. 40A:11-41 et seq.*
 - The RFQ shall require the bidder's statement of qualification to contain, at minimum, the following:
 - An organizational chart of the bidder, and the key team members of the proposed design-build team. Bidders shall be advised that 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 Borough. Unauthorized changes to a bidder's key team members who were specifically identified at any time during the selection process may result in the elimination of the bidder from further consideration.
 - A list of current construction projects, and construction projects completed within the last five (5) years, on which the bidder and key team members of the proposed design-

build team have worked that are of similar size, scope, and complexity to the Borough's project, regardless of method of project delivery.

- A listing of all the public works projects on which the design-builder and proposed design-build team have performed work within the past five years.
 - A listing of all public works projects for which a Borough 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*.
 - Training certification of the bidder's professional and field workforce, along with that of the members of the proposed design-build team.
 - Safety experience modification rating (EMR) of the bidder and construction members of its proposed design-build team.
 - Measures taken by the bidder and members of the proposed design-build team to promote workforce diversity with respect to women and minorities.
 - If the design-build contract is subject to any set-aside goals established by the Borough pursuant to P.L. 1985, c. 482 (*N.J.S.A. 40A:11-41 et seq.*), a statement as to whether the design-builder and/or any key team members are a qualified minority business enterprise, a qualified women's business enterprise, a qualified small business enterprise, or a qualified veteran business enterprise as defined pursuant to the applicable law. Documentation supporting such a designation shall accompany the statement.
 - If the design-build contract will be subject to a project labor agreement pursuant to P.L. 2002, c. 44 (*N.J.S.A. 52:38-1 et seq.*), a statement to that effect.
 - A copy of the bidder's Public Works Contractor Registration certificate along with a copy of the certificates of the proposed members of the bidder's design-build team required to be registered under the law.
 - A certification that the bidder, along with the bidder's proposed design-build team, including individually named key team members, is in compliance with, and is not currently debarred from awards of State or local contracts for one or more violations of, the New Jersey Prevailing Wage Act, Public Works Contractor Registration Act, and the Construction Industry Independent Contractor Act.
 - 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.
 - A certification that the bidder, along with the bidder's proposed design-build team (including individual team members), is not debarred from awards of federal contracts for public work as defined in *N.J.S.A. 52:32-44.1*.
- The RFQ shall state that the maximum number of design-builders that will be selected to submit proposals shall be **six (6)**.

3. Submission of the RFQ to the Office of the State Comptroller for Review

The RFQ shall be submitted to the Office of the State Comptroller ("OSC") for review and approval prior to advertisement, since the estimated value of the Project exceeds \$12.5 million.

4. **Publish Notice of RFQ and Issue RFQ (After approval of the OSC)**

- Public Notice of the RFQ in the Borough's official newspaper, a newspaper with Statewide circulation, and on the Borough's official website no less than thirty (30) days prior to the due date for the RFQ.
- Notice shall contain, at minimum:
 - (i) a general description of the Project;
 - (ii) information on how requests for qualification may be obtained;
 - (iii) the manner of submitting, and the method of receiving, the statements of qualification; and
 - (iv) the time and place at which the statements of qualification will be received

5. **Receipt and Review of RFQ Submissions by the TRC and Determination of Shortlist of Qualified Bidders**

- Prior to commencement of the review and evaluation of the RFQ submissions, each member of the TRC shall and each advisor thereof shall certify that they have no conflict of interest with respect to any of the bidders to be evaluated, any of the key team members, 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.*

If a conflict of interest is found to exist, the Borough shall follow the procedures set forth in the Regulations regarding the replacement of a member or advisor with a conflict.

- The TRC shall review and evaluate each bidder's statement of qualifications and determine the relative ability of each such bidder to perform the work under the design-build contract. Before evaluating a bidder's statement of qualification, the TRC shall:
 1. verify with the State Department of Labor and Workforce Development that the bidder and any listed members of the bidder's proposed design-build team, including individually named key team members, that are required to have Public Works Contractor Registration certificates are current with their respective registrations.
 2. review the State Department of Labor and Workforce Development's Prevailing Wage Debarment List to confirm that the bidder and any listed members of the bidder's proposed design-build team, including individually named key team members, are not currently debarred.
 3. review the federal government's debarment database to confirm that the bidder and any listed members of the bidder's proposed design-build team, including individually named key team members, and affiliates thereof are not debarred under *N.J.S.A. 52:32-44.1*.

- The TRC's evaluation of the qualifications of each bidder shall include, but need not be limited to, consideration of the following factors:
 1. The level of experience of the bidder and the key team members of its proposed design-build team on design-build projects and/or design-bid-build projects of similar size, scope, and complexity.
 2. Training certification of the bidder's professional and field workforce, along with that of the members of the proposed design-build team.
 3. Safety experience modification rating (EMR) of the bidder and construction members of its proposed design-build team.
 4. Measures taken by the bidder and key team members to promote workforce diversity with respect to women and minorities.
 5. Any other pertinent information necessary to establish the qualifications of the bidder and proposed design-build team to undertake the design-build contract.
- The TRC shall qualify **six (6)** of the qualified bidders to submit statements of proposal.
- The Borough shall provide written notification to all bidders submitting statements of qualification of the bidders prequalified by the TRC. A list of the prequalified bidders must also be published on the Borough's website.

6. Preparation of the RFP

- Each RFP must contain evaluation factors prepared by the Design Professional.
 - The Borough, in consultation with the Design Professional, shall determine the scope and level of detail required for the evaluation factors. The evaluation factors should be detailed enough to permit qualified persons to submit proposals in accordance with the solicitation, given the nature of the Project and the level of design to be provided in the proposal.
- The RFP should include at least the following:
 - The technical proposal and price proposal forms;
 - Proposed terms and conditions of the design-build contract;
 - Instructions to bidders, including the manner of submitting and the method of receiving the statement of proposal;
 - Evaluation factor criteria for proposals, including the relative importance assigned to the factors and sub-factors to be considered with respect to the technical proposal and the price proposal. The evaluation factors for technical proposals may include, but need not be limited to, experience, design concepts, management approach, diversity, proposed technical solutions, plans for quality assurance and control, and the design-builder's understanding of the means and methods needed to complete the Project on time and within budget.
 - A description of the drawings, specifications, or other submittals to be provided with the technical proposal, with guidance as to the form and level of completeness of the drawings, specifications or submittals that will be acceptable

- Site development requirements, including but not limited to parking, lighting, equipment, and landscaping;
- Description of physical relationships between site elements;
- Specific architectural style or concept;
- Performance specifications and prescriptive specifications regarding materials, systems, performance criteria, energy efficiency, life cycle costs and known environmental issues;
- Engineering, architectural and/or environmental reports (for example, geotechnical evaluations, building evaluations and/or environmental preliminary assessment);
- Any documentation relative to the known soil conditions at the site including, but not limited to, any test results specifying the level of contamination, if any, of the soil that has been found at the site of the Project;
- A line-item allowance or minimum unit price line item for soil testing and contaminated soil disposal, which shall be a good faith effort on the part of the Borough to reasonably estimate the total cost of testing and disposing of the soil;
- Assignment of responsibility for obtaining required approvals and permits;
- Budget limits for the work (if any);
- Insurance requirements, and bonding or guarantees as may be required for public works projects under the Local Public Contracts Law;
- A schedule for planned commencement and completion of the design-build contract;
- Amount of the stipend, if any;
- A means of acknowledging of receipt of revisions or addenda to the RFP;
- Any documents required to be submitted by the successful bidder upon notice of award;
- 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 Borough; and
- A form listing all documentary and informational forms, certifications, and other documents that the Borough requires each bidder to submit with their statement of proposal, along with a means by which the bidder can indicate their inclusion of said items with the statement of proposal.

7. **Submit the RFP to the OSC for Review and Approval**

8. **Issue the RFP to the Shortlist of Qualified Bidders**

- The Borough shall issue the RFP to each qualified bidder **no fewer than** fourteen (14) days prior to the date established for submission of statements of proposal.
- Before the deadline for submitting statements of proposals, the Borough may provide for a pre-proposal conference at a designated date, time, and location to discuss the RFP. The Borough may also provide a period of time for the submission of Requests for Information for prequalified bidders to 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.

9. Receipt of Proposal Submissions

- Bidders shall submit a sealed statement of proposal in two separate parts: a sealed technical proposal and a sealed price proposal. The technical and price proposals shall be evaluated separately, in accordance with the evaluation factors and process set forth in the RFP.
- In addition to the submittals the Borough requires to be submitted with the technical proposal, or that the bidder is otherwise required by law to submit with their statement of proposal, a bidder's technical proposal shall include:
 - a list of each person to whom the bidder as design-builder proposes to delegate obligations under the design-build contract, including key team members;
 - a surety company bond or guarantee as specified in the RFP;
 - acknowledgment of receipt of revisions or addenda to the RFP;
 - a statement that the prospective design-builder is in compliance with all applicable laws, including the "New Jersey Prevailing Wage Act," *N.J.S.A. 34:11-56.25 et seq.*, "The Public Works Contractor Registration Act," *N.J.S.A. 34:11-56.48 et seq.*, and the "Construction Industry Independent Contractor Act," *N.J.S.A. 34:20-1 et seq.*
 - if required by the Borough, a certificate pursuant to *N.J.S.A. 40A:11-20*, showing that the design-builder and construction members of the proposed design-build team own, lease, or otherwise control all the necessary equipment required by the plans and specifications of the Project.
- The price proposal, which shall be a separate sealed document clearly identifying the bidder's name and Project number, shall provide a price for all design services and construction work required to complete construction of the Project. The bidder shall show all amounts in words and figures. In the event of a discrepancy between the words and figures, the amount shown in words shall govern. The named price shall not be exceeded if the proposal is accepted by the Borough without change. All price proposals shall be made public once the governing body awards the contract.
- Sealed technical proposals shall not be opened until expiration of the time established for submission as set forth in the RFP. The Borough shall make reasonable efforts to maintain the secrecy and confidentiality of all technical proposals, and all information contained in the technical proposals, and shall not disclose the proposals or the information contained therein to the design-builders' competitors or the public except as otherwise permitted under *N.J.A.C. 5:34-10.9* and *5:34-10.12*.
- A bidder may withdraw a statement of proposal at any time prior to the Borough's governing body awarding the contract.

10. Certification of Proposals by the Design Professional

- Once received, proposals should be submitted to the Design Professional, who shall examine all documents required to be submitted with the statement of proposal and shall certify that

the documents are complete and responsive to each of the proposal evaluation factors established in the RFP.

- No proposal shall be considered by the TRC until certification is issued by the Design Professional that such proposal is consistent with the evaluation factors.
- Any statements of proposal deemed incomplete and non-responsive shall be submitted by the Design Professional to the TRC along with the reasons for the determination.

11. Review of Proposals by TRC

- The TRC shall score the technical proposals using the criteria and methodology set forth in the RFP and make an award recommendation to the Borough.
- The TRC, meeting together, may conduct interviews with each bidder prior to ranking the bidders' respective technical proposals. The technical evaluation committee shall evaluate each technical proposal in accordance with the proposal evaluation criteria and the weight assigned to each, specified in the RFP. Once evaluated, the committee shall total and submit the scores for each technical proposal to the selection coordinator.
- If a bidder's technical proposal, price proposal, or both must be rejected as non-responsive, the TRC shall notify the bidder in writing of the rejection of its proposal and the reasons for the rejection within ten (10) business days of receiving the statement of proposal, unless there are circumstances that require additional time for notification.
- After the technical proposals have been reviewed and scores are submitted, the selection coordinator shall assign the maximum price points to the lowest total dollar price proposal. All other responsive proposals shall be scored based upon the percentage that each price proposal exceeds the lowest price proposal.
- The selection coordinator shall determine the combined scores for each bidder based on their technical and price proposals. A minimum of 50 percent consideration shall be based on the cost of the price proposal. The bidder with the highest overall score shall be recommended to the Borough's governing body for an award of the design-build contract.
- After the proposals have been evaluated, the selection coordinator shall prepare a report concerning the TRC'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 Borough'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.

12. Award of Contract to Design-Builder

- The TRC shall have considered at least two (2) complete and responsive statements of proposal before the governing body can proceed with awarding the contract. If the recommendation is approved and the governing body awards the contract, the Borough shall notify the successful design-builder in writing, and the ownership of the drawings, specifications, and information therein, shall be determined in accordance with the terms of the design-build contract as permitted by law.
- The Borough must send the successful design-builder a notice of award letter in accordance with *N.J.A.C. 5:34-10.9(n)*. 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 should specify the time within which the executed contract and required documents must be returned.
 - If the design-builder fails to return the executed contract and other required documents within the time specified by the Borough, the Borough 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 in accordance with *N.J.A.C. 5:34-10.15(c)*.
- Upon award of a design-build contract, the Borough must also inform, in writing, the other design-builders that their proposals were not accepted within five (5) days.
 - Any design-builder whose proposal is rejected has thirty (30) days from such notification of rejection to request, in writing, to review the design-build proposals submitted, the TRC evaluation scores from the selection process, and the final recommendation of award document. Technical proposals shall be redacted to the extent necessary to prevent revealing the trade secrets and proprietary commercial or financial information incorporated into another bidder's technical proposal.
- The Borough must make public the design-builder to be awarded the contract for the Project. The Borough must also make public the sealed price bid for each proposal submitted to the Borough by a design-builder.
- The Borough has the right to reject any and all proposals, except for the purpose of evading the provisions and policies of the Act in accordance with *N.J.A.C. 5:34-10.10*.
 - Should the Borough reject all proposals, it must solicit new proposals using the same evaluation factors, budget constraints, or qualifications, unless there has been a material change in circumstances affecting the Borough's needs, including but not limited to an environmental issue, natural disaster, state of emergency, or unforeseen fiscal constraint.

- When soliciting new proposals, the Borough shall start the process by soliciting new statements of qualification.
- The notice of award shall be final if the governing body accepts a proposal without change, or preliminary if the governing body authorizes further negotiation with the successful bidder.
- If the governing body preliminarily awards a design-build contract, the maximum cost in the successful bidder's price proposal may be modified, by negotiated agreement between the Borough and the design-builder if the parties agree to further modification of the proposal prior to final award. The governing body shall authorize final award of the contract upon reaching a negotiated agreement with the design-builder. In the event the parties fail to reach a negotiated agreement, then the governing body may authorize a notice of award to be issued to the next highest-ranked bidder.
- Unless and until a statement proposal is accepted by the governing body, the drawings, specifications, and other information in the proposal shall remain the property of the bidder. Once a proposal is accepted by the governing body and a notice of award issued, the disclosure of the proposal and information therein, along with ownership of the drawings, specifications, and information therein, shall be determined in accordance with existing law and the terms of the final contract.
- The Borough Council may cancel a notice of award at any time before the execution of the design-build contract if the Borough deems it advisable to do so in the interest of the Borough or the public.

13. Post-Award Evaluation of the Design-Builder by the Borough

- The Borough shall periodically review the selected design-builder's performance throughout the construction of the Project based on the following categories: quality of work; scheduling; management; cost control and change orders; safety and industrial hygiene; small business goals; and close-out. The evaluation will be performed by a reviewer with direct involvement in the management or supervision for the Project.
- The design-builder 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.
- The numerical scores established above may be subject to special adjustment factors for certain categories deemed by the Borough 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.
 - The design-builder's performance evaluations will be used by the Borough in future procurements under the Act in evaluating and scoring the design-builder as to their prior experience on Borough projects.

14. Protests and Administrative Hearings

(a) A Bidder that intends to submit or has submitted a statement of qualifications for the first phase of the design-build process may request an informal hearing before the Borough to protest the RFQ process or documents by submitting a written protest to the Borough 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 Bidder's position, and must indicate whether the Bidder requests an informal hearing. The Borough 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.

(b) A Bidder that intends to submit or has submitted a statement of proposal for the second phase of the design-build process may request an informal hearing before the Borough to protest the RFP process or documents by submitting a written protest to the Borough 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 Bidder requests an informal hearing. The Borough 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.

(c) A Bidder protesting its failure to be prequalified, or the prequalification of another Bidder may request an informal hearing before the Borough to protest the prequalification by submitting a written protest to the Borough setting forth the specific grounds for challenging the prequalification. The protest must contain all factual and legal arguments, materials or other

documents that support the protestor's position, and must indicate whether the Respondent requests an informal hearing. The protesting Bidder must submit a written protest within five (5) business days of receiving written notification of their prequalification or failure to be prequalified. The Borough may deny any protest that is filed more than five (5) business days after the Bidder's receipt of written notification, or any protest that fails to provide the specific reasons for and arguments supporting the protest.

(d) A Bidder protesting the scoring of its technical and/or price proposals, or those of another Bidder, may request an informal hearing before the Borough to protest the scoring of technical and/or price proposals, by submitting a written protest to the Borough 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 Bidder's position and a statement as to whether the Bidder requests the opportunity for an informal hearing. The Bidder must submit a written protest within five (5) business days of the public announcement of the Bidder's scores. The Borough 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.

(e) A Bidder that has submitted a proposal may request an informal hearing before the contract to protest the award of a contract to another Bidder by submitting to the Borough 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 Bidder's position and a statement as to whether the Bidder requests an informal hearing. The Borough 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.

(f) Hearing procedures shall be as follows:

1. The Borough, 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 Borough and the Borough shall have the sole discretion as to whether to hold an informal hearing. Alternatively, the Borough may determine that sufficient information already exists in the record so that a decision may be made without a hearing, and the Borough may waive the hearing and issue a final determination accordingly. In the event that the Borough determines that a hearing is not necessary, a written decision will be issued by the Borough 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. Hearings will be heard, where practicable, by either the Borough Council or a hearing officer designated by the Borough Council. The Borough Council or the hearing officer 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. In an informal hearing, the Borough may, in instances where public exigency exists or where there is potential for substantial savings to the Borough, modify, or amend the time frames or any other requirements provided in these procedures. In these instances, the Borough shall document, for the record, the rationale for such amendment and give adequate notice to the parties.

(g) The provisions of *N.J.S.A.* 40A:11-50 shall govern a design-builder's challenge to a design-build performance evaluation by the Borough that is subject to the Local Public Contracts Law.