

OTHER AGENCIES

NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

Disposition of Surplus Real and Personal Property of the New Jersey Schools Development Authority

Proposed New Rules: N.J.A.C. 19:35

Authorized By: New Jersey Schools Development Authority, Manuel M. Da Silva, Chief Executive Officer.

Authority: P.L. 2007, c. 137, § 4k (N.J.S.A. 52:18A-238k) (rulemaking authority); P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.); P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.) (enabling statutes).

Calendar Reference: See Summary below for explanation of exception to calendar requirement.

Proposal Number: PRN 2021-068.

Submit written comments by October 15, 2021, to:

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The agency proposal follows:

Summary

The New Jersey Schools Development Authority (“SDA” or “Authority”), an independent State authority charged with the construction and funding of school facilities projects pursuant to

a school construction program authorized by the Educational Facilities Construction and Financing Act (EFCFA), P.L. 2000, c. 72 (N.J.S.A. 18A:7G-1 et seq.), as amended by P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), proposes to adopt new rules governing the process for determining when real property or personal property owned by the Authority is deemed surplus, and providing standards and procedures for disposition of such surplus property. The new rules are intended to replace former surplus property disposition rules that expired in 2014. The new rules are proposed at N.J.A.C. 19:35.

As the Authority has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement pursuant to N.J.A.C. 1:30-3.3(a)5.

SUBCHAPTER 1. GENERAL PROVISIONS

N.J.A.C. 19:35-1.1 Applicability

Proposed new N.J.A.C. 19:35-1.1 sets forth the applicability of the rules to any real or personal property owned by the SDA that may be considered surplus property, and further provides that a proposed disposition of surplus property will not be authorized or enforceable if the disposition would result in the loss of the tax exempt status of the interest paid on bonds sold to finance the SDA's original acquisition of such property.

N.J.A.C. 19:35-1.2 Purpose and Scope

Proposed new N.J.A.C. 19:35-1.2 sets forth the purpose of the chapter, which is to establish and prescribe uniform rules and procedures for the disposition of surplus real and personal property, and indicates that proceeds from the disposition of surplus real and personal property shall be used to fund school facilities projects generally, with the exception that the proceeds from

the disposition of surplus real property acquired under circumstances described at N.J.S.A. 18A:7G-45 will be used to fund school facilities in the same school district where the surplus real property is located.

N.J.A.C. 19:35-1.3 Definitions

This section sets forth the meaning of certain words and phrases used throughout the chapter.

SUBCHAPTER 2. IDENTIFICATION OF SURPLUS PROPERTY

N.J.A.C. 19:35-2.1 Determination of Property as Surplus Property

This section establishes that whenever property of the SDA is determined to be surplus, any temporary use, sale, or other disposition of such property must be performed consistent with this chapter. This section also provides that SDA can permit a temporary use of surplus property without SDA Board approval.

N.J.A.C. 19:35-2.2 Personal Property as Surplus Property

This section provides standards for determining whether personal property is surplus.

N.J.A.C. 19:35-2.3 Real Property as Surplus Property

This section provides standards for determining whether real property is surplus.

N.J.A.C. 19:35-2.4 Requirements for Designating Property as Surplus Property

This section provides standards and procedures for making, memorializing, and securing Chief Executive Officer or Board approval of determinations that real or personal property is surplus property.

SUBCHAPTER 3. DISPOSITION OF SURPLUS PROPERTY; DISPOSITIONS EXEMPT FROM ADVERTISING REQUIREMENTS

N.J.A.C. 19:35-3.1 Manner and Requirements of Surplus Property Disposition

This section provides that surplus property may be disposed through a publicly advertised competitive sale through a solicitation of sealed bids, a solicitation of offers to purchase, or an internet auction, or may be disposed of through direct negotiated sale without public advertisement when the conditions set forth at N.J.A.C. 19:35-3.2 or 3.3 are met. This section specifies that all surplus property shall be sold in “as is, where is, with all faults” condition. Finally, this section provides that the method of disposal shall be selected by the SDA to maximize the return realized by the disposition, and if the determination of surplus is required to be approved by the Board, then the selection of the method to dispose of the surplus property is also subject to Board approval.

N.J.A.C. 19:35-3.2 Waiver of Public Advertisement for Sale of Surplus Personal Property

This section provides for the waiver of public advertisement and disposition of surplus personal property for its estimated market value under certain defined circumstances: the property in question has an estimated market value less than the State bid advertising threshold amount

referenced at N.J.S.A. 52:34-7.b; or the disposition constitutes an unusual transaction that would not benefit from public bidding, such as a disposition in response to an unsolicited offer to purchase, provided that the purchase price to be paid is not less than the estimated market value established by book value or other appropriate valuation and the SDA determines that it would not benefit from a subsequent advertisement of public bidding; or the advertising and bidding would impair or be detrimental to the disposition; or the disposition is to a governmental entity for a valid public purpose and is for the estimated market value of a sale price approved by the SDA Board taking into account such estimated market value; or the disposition is for a temporary classroom unit, and the SDA has determined, based on a feasibility analysis, that disposition is more advantageous than relocation and reuse of the temporary classroom unit.

N.J.A.C. 19:35-3.3 Waiver of Public Advertisement for Sale of Surplus Real Property

This section provides for the waiver of public advertisement and disposition of surplus personal property for its estimated market value under certain defined circumstances: the disposition is for real property or any interest therein having a value less than \$100,000; or the property is unique and the disposition requires an unusual contract or represents an unusual transaction that would not benefit from public advertising or public bidding; or the costs of environmental remediation activities or other activities required by governing authorities to render the property marketable are greater than, or equal to, the appraised value of the subject property; or the property is an undersized lot and is being offered to an adjacent owner for fair market value; provided the adjacent landowner has no connection to, or affiliation with, the SDA or any of its employees; or the disposition of the surplus property or interest therein is to a public party or non-public party

for fair market value, provided that such surplus property is used for an educational purpose; or the disposition of such surplus property is to a public party for a valid public purpose that does not result in the loss of the tax-exempt status of interest earned on the bonds referenced at N.J.A.C. 19:35-1.1, and is for fair market value or a sale price that is less than fair market value if approved by the SDA Board after taking into consideration additional analyses and valuations that affect fair market value; or the disposition is to a public or non-public party submitting an unsolicited offer to purchase, provided such offer is for not less than fair market value as evidenced by an independent appraisal prepared by a professional licensed appraiser and the SDA has determined that it would not benefit from subsequent advertising or public bidding.

SUBCHAPTER 4. DISPOSITION OF SURPLUS PERSONAL PROPERTY SUBJECT TO ADVERTISING REQUIREMENTS

N.J.A.C. 19:35-4.1 Methods of Disposition of Surplus Personal Property

This section provides that surplus personal property may be disposed of through a publicly advertised competitive sale through a solicitation of sealed bids, or an internet auction, and further provides that surplus personal property may also be disposed of pursuant to N.J.A.C. 19:35-4.16 through direct negotiated sale, without public advertisement, if certain required conditions are met. This section further provides that if no bids are submitted in response to a solicitation for sealed bids, or in response to an advertised internet auction, or in the event personal property cannot be disposed of through direct negotiation, then the surplus personal property may be disposed of through the Department of the Treasury, Surplus Property Unit, or in the most economically

feasible manner. Finally, this section provides that nothing in this chapter shall prohibit or prevent the SDA from using, or availing itself of, any disposition method as may be otherwise permitted by law or rule.

N.J.A.C. 19:35-4.2 Sealed Bid Process for Surplus Personal Property; Advertisement Requirements

This section provides the advertisement requirements for disposition of surplus personal property by sealed bid method.

N.J.A.C. 19:35-4.3 Sealed Bid Process for Surplus Personal Property; Outreach in Addition to Advertisement

This section provides that the SDA may, in addition to advertisement of a Notice of Solicitation of Sealed Bids, conduct other outreach efforts to identify and contact potential bidders to increase the number of sealed bids submitted.

N.J.A.C. 19:35-4.4 Sealed Bid Process for Surplus Personal Property; Amendments to a Notice of Solicitation of Sealed Bids

This section provides that notice of any changes to pertinent information in a Notice of Solicitation of Sealed Bids must be advertised on the SDA website at least seven days in advance of the opening

of bids, unless an alternate notice procedure is established in the Notice of Solicitation of Sealed Bids.

N.J.A.C. 19:35-4.5 Sealed Bid Process for Surplus Personal Property; Submission of Bids

This section provides the procedures for the submission of sealed bids for surplus personal property, including time limitations and prohibitions on submissions of bids by telephone, facsimile, or other electronic means.

N.J.A.C. 19:35-4.6 Sealed Bid Process for Surplus Personal Property; Withdrawal of Bids

This section provides procedures for the withdrawal of sealed bids before the time of bid opening.

N.J.A.C. 19:35-4.7 Sealed Bid Process for Surplus Personal Property; Opening and Validity of Sealed Bids

This section provides the procedure for the opening of sealed bids, and specifies that bid amounts shall remain valid for a period of 120 days, unless otherwise indicated in the Notice of Solicitation of Sealed Bids.

N.J.A.C. 19:35-4.8 Sealed Bid Process for Surplus Personal Property: Award to Highest Responsible Bidder

This section provides that absent cancellation of the solicitation, the award of a disposition of surplus personal property shall go to the highest bidder meeting all of the terms and conditions of the Notice of Solicitation of Sealed Bids.

N.J.A.C. 19:35-4.9 Sealed Bid Process for Surplus Personal Property: Cancellation

This section provides the justifications and procedures for cancellation of a solicitation for sealed bids, and the options for subsequent disposition of the property.

N.J.A.C. 19:35-4.10 Sealed Bid Process for Surplus Personal Property: Withdrawal of Items

This section provides the justifications and procedures for withdrawal of one or more items from a solicitation for sealed bids, the options for subsequent disposition of the withdrawn items, and the treatment of remaining items not withdrawn from the solicitation.

N.J.A.C. 19:35-4.11 Sealed Bid Process for Surplus Personal Property: Bid Deposit

This section provides for a bid deposit requirement and defines the various forms that may be specified for a bid deposit.

N.J.A.C. 19:35-4.12 Sealed Bid Process for Surplus Personal Property: Notice of Award

This section provides that a notice of award shall be issued to the successful bidder, and shall be in writing and given in the manner and within the time specified in the request for proposal (RFP). This section further specifies that the notice of award shall specify the time and manner for payment of the balance of the bid price and for taking possession of the surplus personal property and shall be deemed to result in a binding contract without any further action. Finally, this section provides that all unsuccessful bidders will receive a copy of the notice of award as addressed to the winning bidder.

N.J.A.C. 19:35-4.13 Sealed Bid Process for Surplus Personal Property: Payment of Balance of Bid Price

This section provides that the winning bidder must pay the balance of the bid price, and then must take possession of the surplus real property in the manner and time set forth in the notice of award. This section further specifies various methods of payment that are acceptable if the manner of payment is not specified.

N.J.A.C. 19:35-4.14 Sealed Bid Process for Surplus Personal Property: Failure to Pay Balance of Bid Price

This section provides that a failure by the successful bidder to pay the balance of the bid price within the time set forth in the notice of award shall result in a forfeiture of the bid deposit to the

SDA. This section also provides that surplus personal property shall be considered abandoned if paid for, but not picked up or taken possession of in the manner and within the time specified in the notice of award. This section further provides that in the event that property is abandoned, the SDA shall retain all payments made, and ownership of the property shall default to the SDA. The SDA may then accept the bid of the next highest qualified bidder or may again offer the surplus personal property for disposition.

N.J.A.C. 19:35-4.15 Internet Auction Process for Surplus Personal Property

This section provides that the disposition of surplus personal property may be conducted through an internet auction, which shall be preceded by a published advertisement containing: a clear statement that the disposition will take place over the internet; the internet address of the website where the auction can be found; the date and time for the internet auction; a description of the surplus personal property to be sold; and a clear statement of all terms and conditions material to the disposition. This section provides that the website identified in the advertisement shall set forth all requirements for bidding, the terms and conditions of the disposition, and the procedures for the transfer of the surplus personal property to be sold. This section further provides that surplus personal property that is the subject of an internet auction shall be awarded to the highest bidder meeting the terms and conditions material to the disposition.

This section also provides optional procedures in the event that SDA determines there is insufficient participation in an internet auction of surplus personal property, including a right to remove the property from the internet auction and terminate the disposition with respect thereto, and the right to determine whether any items of property withdrawn from an internet auction shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this

subchapter. Further, this section provides that the withdrawal of any item or items from the disposition by internet auction shall not affect the disposition of the remaining items to be sold.

19:35-4.16 Negotiated Sale of Surplus Personal Property

This section provides that surplus personal property that, after being the subject of a Solicitation for Sealed Bids in accordance with N.J.A.C. 19:35-4.2 through 4.14, or an internet auction in accordance with N.J.A.C. 19:35-4.15, does not result in a consummated disposition, may be disposed of through a direct negotiated sale to a public or a non-public party, for the highest possible price, upon terms and conditions acceptable to the SDA.

19:35-4.17 Transfer of Ownership of Surplus Personal Property

This section provides that transfer of ownership and title of surplus personal property offered for disposition is effective upon payment of the full purchase price, and delivery of the item(s) to the purchaser.

SUBCHAPTER 5. DISPOSITION OF REAL PROPERTY SUBJECT TO ADVERTISING REQUIREMENTS

N.J.A.C. 19:35-5.1 Methods of Disposition of Surplus Real Property

This section provides that surplus real property may be disposed of through a publicly advertised competitive sale through a solicitation of offers to purchase, a solicitation of sealed bids, or an internet auction, and further provides that surplus real property may also be disposed of through

direct negotiated sale without public advertisement, if certain required conditions are met pursuant to N.J.A.C. 19:35-5.33. This section further provides that nothing in this chapter shall prohibit or prevent the SDA from using or availing itself of any disposition method as may be otherwise permitted by law or rule.

N.J.A.C. 19:35-5.2 Offers to Purchase Process for Surplus Real Property; Advertisement Requirements

This section provides the advertisement requirements for disposition of surplus real property by the offer to purchase method.

N.J.A.C. 19:35-5.3 Offers to Purchase Process for Surplus Real Property: Outreach in Addition to Advertisement

This section provides that the SDA may, in addition to advertisement of a Notice of Solicitation of Offers to Purchase, conduct other outreach efforts to identify and contact potential bidders to increase the number of offers to purchase submitted.

N.J.A.C. 19:35-5.4 Offers to Purchase Process for Surplus Real Property: Amendment of Solicitation of Offers to Purchase

This section provides that notice of any changes to pertinent information in a Notice of Solicitation of Offers to Purchase must be advertised on the SDA website at least seven days in advance of the

scheduled date for receipt of offers to purchase, unless an alternate notice procedure is established in the Notice of Solicitation of Offers to Purchase.

N.J.A.C. 19:35-5.5 Offers to Purchase Process for Surplus Real Property: Submission of Offers to Purchase; Untimely Submissions

This section provides the procedures for the submission of offers to purchase for surplus real property, including time limitations and prohibitions on submissions of offers by telephone, facsimile, or other electronic means. The section also provides for the rejection of offers to purchase received after the deadline for submission of offers to purchase.

N.J.A.C. 19:35-5.6 Offers to Purchase Process for Surplus Real Property: Required Deposit

This section provides that offers to purchase must be accompanied by a deposit in an amount specified by the SDA, and in the form set forth in the Notice of Solicitation of Offers to Purchase, or by certified check, bank or cashier's check, or executed money order made payable to the SDA.

N.J.A.C. 19:35-5.7 Offers to Purchase Process for Surplus Real Property: Withdrawal of Offers to Purchase

This section permits the withdrawal of offers to purchase prior to the expiration of the period for submission of offers to purchase.

N.J.A.C. 19:35-5.8 Offers to Purchase Process for Surplus Real Property: Review and Verification of Offers to Purchase

This section provides for the review and verification of offers to purchase in accordance with the best interests of the school construction program, price, and other factors considered. This section also permits the SDA to seek additional information to supplement an offer of purchase in order to verify the accuracy, validity, and responsiveness of the offer. The section states that such additional information may only be used to clarify, not modify, the offer to purchase.

N.J.A.C. 19:35-5.9 Offers to Purchase Process for Surplus Real Property: Evaluation of Offers to Purchase

This section provides that the SDA shall evaluate each offer to purchase and shall identify the offer, or offers, determined to be responsive to all material elements set forth in the Notice of Solicitation of Offers to Purchase, and shall select from the responsive offers a winning offer based on an evaluation of price and “other factors.” This section further provides an illustrative list of potential “other factors” to be considered in addition to price, including, but not limited to: the amount and kind of proposed consideration; the purchase terms, including any due diligence period and payment for such due diligence period; the terms subject to negotiation; the proofs of the offeror’s financial capacity to meet the terms of purchase; and/or any other factors identified in the Notice of Solicitation of Offers to Purchase. Finally, this section provides that if more than one parcel of surplus real property is included in the Notice of Solicitation of Offers to Purchase, the

SDA may require separate offers for each tract or parcel advertised, may evaluate each offer separately, and may accept a separate offer to purchase for each tract or parcel advertised.

N.J.A.C. 19:35-5.10 Offers to Purchase Process for Surplus Real Property: Negotiation with Offeror(s)

This section provides that SDA staff may negotiate the terms of the disposition of surplus property with one or more offerors that have submitted advantageous offers that are in the best interest of the school construction program, price, and other factors considered. This section further provides that the SDA may negotiate with one or more offerors, and that negotiation with one offeror will not preclude the SDA from negotiating with other offerors, unless the SDA has entered into an exclusive negotiation period with an offeror in accordance with N.J.A.C. 19:35-5.11.

N.J.A.C. 19:35-5.11 Offers to Purchase Process for Surplus Real Property: Exclusive Negotiating Period Within the Offer to Purchase Process

This section provides that the SDA may, in its sole discretion, enter into an “Exclusive Negotiation Agreement,” upon the request of an offeror, pursuant to which the SDA and the chosen offeror each agree to negotiate the terms of the disposition of surplus real property exclusively with the other, and refrain from negotiating with any other parties for the duration of the exclusive negotiation period. The SDA’s ability to enter into such an agreement is subject to certain enumerated conditions, including requiring the offeror to make an additional deposit for such period and imposing a 30-day limit on the exclusive negotiation period. The SDA may extend the

exclusive negotiation period for one additional period of up to 30 days, if determined to be in the best interests of the school construction program. At the conclusion of exclusive negotiations, SDA staff shall submit a recommendation to the Board as to whether to accept any resulting negotiated offer to purchase, which shall detail the basis for the recommendation and shall identify the material terms of other offers received that would be rejected by virtue of the acceptance of the exclusively negotiated offer.

N.J.A.C. 19:35-5.12 Offers to Purchase Process for Surplus Real Property: Review, Recommendation, and Acceptance by the SDA of an Offer to Purchase

This section provides that in the absence of acceptance of an exclusively negotiated offer, the SDA shall evaluate the offers received in accordance with the best interests of the school construction program, price and other factors considered, in accordance with N.J.A.C. 19:35-5.9.

N.J.A.C. 19:35-5.13 Offers to Purchase Process for Surplus Real Property: Withdrawal of Tracts or Parcels

This section provides that one or more tracts or parcels of land may be withdrawn from the solicitation of offers to purchase, if deemed by the SDA to be in the best interests of the school construction program. The section further provides that upon withdrawal of one or more tracts or parcels, the SDA shall determine whether to re-offer or otherwise dispose of such parcels in a manner consistent with this chapter.

N.J.A.C. 19:35-5.14 Offers to Purchase Process for Surplus Real Property: Cancellation of Solicitation and Disposition; Withdrawal of Tracts or Parcels

This section provides the justifications and procedures for cancellation of a solicitation for offers to purchase, and the options for subsequent disposition of the property.

N.J.A.C. 19:35-5.15 Offers to Purchase Process for Surplus Real Property: Notice of Award and Purchase Agreement

This section provides the process for issuance of a notice of award accepting the offer of the successful offeror, and the delivery of a purchase agreement for execution by the successful offeror, memorializing the negotiated agreement for purchase of the surplus real property. The section further provides that the notice of award shall be simultaneously provided to all unsuccessful offerors.

N.J.A.C. 19:35-5.16 Offers to Purchase Process for Surplus Real Property: Application of Deposits

This section provides that deposits furnished by the successful offer shall be applied to the purchase price of the surplus property at issue, while deposits submitted by unsuccessful offerors shall be returned promptly.

N.J.A.C. 19:35-5.17 Offers to Purchase Process for Surplus Real Property: Transfer of Title and Balance of Purchase Price

This section provides procedures for the transfer of title and payment of the balance of the purchase price. The section further provides the SDA with the ability to cancel the transaction and retain any monies on deposit in the event the successful offeror fails to pay the balance of the purchase price or fails to abide by any other material term of the purchase agreement.

N.J.A.C. 19:35-5.18 Offers to Purchase Process for Surplus Real Property: Cancellation of Purchase Agreement

This section provides that, in the event of cancellation of the purchase agreement, the SDA may, with the approval of the SDA Chief Executive Officer, or his or her designee, accept the offer of the next highest qualified offeror, or readvertise the surplus real property for disposition in accordance with any of the methods set forth at N.J.A.C. 19:35-5.1.

N.J.A.C. 19:35-5.19 Sealed Bid Process for Surplus Real Property: Advertisement

This section provides that disposition of surplus property through a sealed bid process shall be initiated by the issuance of a Notice of Sealed Bids and this section further provides the advertising requirements for disposition of property through the sealed bid method.

N.J.A.C. 19:35-5.20 Sealed Bid Process for Surplus Real Property: Outreach in Addition to Advertisement

This section provides that in addition to advertising activities, the SDA may conduct outreach efforts to identify and directly contact potential bidders for purposes of increasing the number of sealed bids received in response to an advertised “Notice of Solicitation of Sealed Bids.”

N.J.A.C. 19:35-5.21 Sealed Bid Process for Surplus Real Property: Amendments to a Notice of Solicitation of Sealed Bids

This section provides the procedures for amendment to a Notice of Solicitation of Sealed Bids, including the requirement that any material modification be advertised on the SDA website at least seven days prior to the time for the opening of bids, unless an alternative procedure is established in the Solicitation of Sealed Bids.

**N.J.A.C. 19:35-5.22 Sealed Bid Process for Surplus Real Property: Submission of Bids;
Close of Bidding and Untimely Bids**

This section provides the procedures for the submission of sealed bids for surplus real property, including time limitations and prohibitions on submissions of bids by telephone, facsimile, or other electronic means. The section also provides for the rejection of bids received after the deadline for submission of bids.

N.J.A.C. 19:35-5.23 Sealed Bid Process for Surplus Real Property: Withdrawal of Bids

This section provides procedures for the withdrawal of sealed bids before the time of bid opening.

N.J.A.C. 19:35-5.24 Sealed Bid Process for Surplus Real Property: Opening of Sealed Bids

This section provides the procedure for the opening of sealed bids.

N.J.A.C. 19:35-5.25 Sealed Bid Process for Surplus Real Property: Validity of Sealed Bids

This section specifies that bid amounts shall remain valid for a period of 120 days, unless otherwise indicated in the Notice of Solicitation of Sealed Bids.

N.J.A.C. 19:35-5.26 Sealed Bid Process for Surplus Real Property: Award to Highest Responsible Bidder

This section provides that absent cancellation of the solicitation, the award of a disposition of surplus real property shall go to the highest bidder meeting all of the terms and conditions of the Notice of Solicitation.

N.J.A.C. 19:35-5.27 Sealed Bid Process for Surplus Real Property: Cancellation of Solicitation and Disposition; Rejection of Bids

This section provides the justifications and procedures for cancellation of a solicitation for sealed bids and the options for subsequent disposition of the property.

N.J.A.C. 19:35-5.28 Sealed Bid Process for Surplus Real Property: Withdrawal of Items from Solicitation and Disposition

This section provides the justifications and procedures for withdrawal of one or more items from a solicitation for sealed bids, the options for subsequent disposition of the withdrawn items, and the treatment of remaining items not withdrawn from the solicitation.

N.J.A.C. 19:35-5.29 Sealed Bid Process for Surplus Real Property: Bid Deposit

This section provides for a bid deposit requirement and defines the various forms that may be specified for a bid deposit.

N.J.A.C. 19:35-5.30 Sealed Bid Process for Surplus Real Property: Notice of Award

This section provides that a notice of award shall be issued to the successful bidder and shall be in writing and given in the manner, and within the time specified, in the request for proposals (RFP). This section further specifies that the notice of award shall specify the time and manner for payment of the balance of the bid price and for taking possession of the surplus personal property and shall be deemed to result in a binding contract without any further action. Finally, this section provides that all unsuccessful bidders will receive a copy of the notice of award, as addressed to the winning bidder.

N.J.A.C. 19:35-5.31 Sealed Bid Process for Surplus Real Property: Payment of Balance of Bid Price

This section provides that the winning bidder must pay the balance of the bid price at closing of title. This section further specifies various methods of payment that are acceptable if the manner of payment is not specified. Finally, this section provides for forfeiture of the bid deposit and provides options for alternate disposal of the property if the bidder fails to pay the balance of the bid price, or to return an executed purchase agreement; or to close title, or any other failure to comply with the requirements in the notice of award.

N.J.A.C. 19:35-5.32 Disposition of Surplus Real Property by Internet Auction

This section provides the procedures for disposition of surplus real property by the internet auction method. The section includes advertisement requirements, provides an option to accept separate bids for each tract or parcel when multiple tracts or parcels are included in an internet auction, provides that property subject to an internet auction shall be awarded to the highest bidder meeting the terms and conditions of the disposition, and provides that in the event of insufficient interest in a particular tract or parcel of property up for internet auction, the SDA may determine to withdraw the tract or parcel from auction, and may thereafter determine whether to readvertise the property for disposition or otherwise dispose of the property in accordance with this subchapter.

N.J.A.C. 19:35-5.33 Disposition of Surplus Real Property through Direct Negotiated Sale

This section provides that surplus real property that is not exempt from an advertised disposition may be disposed of for its fair market value through a direct negotiated sale or a brokered sale if the advertisement of the property for offer, bid, or auction did not elicit any viable offers or bids after being the subject of a solicitation of offers to purchase, a solicitation of sealed bids, or a disposition through internet auction.

N.J.A.C. 19:35-5.34 Disposition for Less than Fair Market Value

This section provides that if real property has been advertised as the subject of solicitation of offers to purchase, a solicitation of sealed bids, an internet auction, or a negotiated direct sale for fair market value, and despite such advertised disposition process, the SDA is unable to consummate

or reach agreement with respect to the disposition of such property, then the SDA may dispose of the surplus property in any lawful manner for less than the originally estimated fair market value, provided that any proposed consideration below the originally estimated fair market value must be approved by the SDA Board based on the written analysis and recommendation of appropriate SDA staff.

N.J.A.C. 19:35-5.35 Effective Date of Disposition

This section provides that, unless expressly otherwise provided, the transfer of title to surplus real property is effective following the payment of the full amount of the proposed consideration to the SDA and the delivery of a deed from the SDA to the purchaser.

SUBCHAPTER 6. TEMPORARY USE AND/OR OCCUPANCY OF SDA-OWNED REAL PROPERTY

N.J.A.C. 19:35-6.1 Temporary Use and/or Occupancy of SDA-Owned Real Property

This section provides procedures and conditions for the SDA to authorize the temporary use or occupancy of SDA property that is not currently needed for a school facility project or otherwise needed in the business operations of the SDA. Subsection (a) provides authority for entering into temporary use and occupancy arrangements. Subsection (b) provides that such arrangements must be memorialized in a written agreement, such as a lease or occupancy agreement, and specifies certain provisions that must be included in such an agreement, including a limitation on the duration of the agreement to not more than three years, if approved by the SDA Chief Executive Officer, with longer durations requiring SDA Board approval, a right of termination by the SDA

upon notice, a prohibition against damage to the property or environmental harm, a prohibition on improvements to the property without written approval of the SDA, and a right to demand holdover charges in the event a user or occupant does not surrender the property on the date specified for termination of the lease or use agreement.

Subsection (c) provides that if the proposed user is a private party or non-public entity, the use agreement shall: require that the proposed use or occupancy of SDA-owned property must be cleared and approved by SDA's bond counsel, except for a post-closing lease or use and occupancy agreement to a seller or a seller's tenants in connection with an acquisition of real property by the SDA; provide for compensation equivalent to the fair market rental value of the property; prohibit the user from subletting the property or assigning its use rights to another without express written consent from the SDA; require the user to pay all costs associated with use of the property, provide indemnification to the SDA for all injury, losses, and damages relating to the use of the property; insure the property during the use period; and provide a security deposit in an amount determined by the SDA.

Subsection (d) provides that if the user is a public entity or non-public non-profit party, and the proposed use will serve a valid charitable purpose or public purpose, then fair market rental consideration is not a requirement, but the use agreement shall document and provide official approval of the proposed charitable purpose or public purpose or governmental function or program that is supported by the proposed use, provide for consideration that recognizes the value of the public benefit of the proposed use as a component of consideration, pay all costs associated with the use of the property, prohibit assignment or subletting of use rights, insure the property, and provide indemnification to the SDA from all injury, losses, and damages relating to the use of the property.

Subsection (e) provides for the SDA Board to receive semiannual reports regarding all current temporary use and occupancy authorizations, allowing for the Board's oversight of the SDA's temporary use of properties, whether or not such uses are subject to Board authorization.

Social Impact

The proposed new rules provide procedures for the SDA to declare its personal property and real property as surplus and provide methodologies for the SDA to dispose of its surplus property in a manner that best serves the needs of the school construction program. The proposed new rules will have a positive social impact by establishing a procedure for the SDA to dispose of its surplus property, so that proceeds from the disposition of the property can be reinvested in the schools construction program, ultimately benefiting the school children and families of New Jersey.

Economic Impact

The proposed new rules will permit the SDA to liquidate property that is no longer necessary for school facility construction or the operational needs of the SDA, with the proceeds of the disposition of surplus property to be returned to the school construction program for use in other school facility projects. Accordingly, the proposed new rules will ultimately provide a social and economic benefit to the children, families, and school personnel in SDA districts by increasing available funding for SDA projects. Further, the disposition of the SDA's surplus property in SDA districts, which are generally located in municipalities with New Jersey Opportunity Zones, will make such property available for use and development, providing an opportunity for long-term capital investment in these low-income communities and an economic benefit to the residents of these areas.

Federal Standards Statement

A Federal standards analysis is not required because the proposed new rules provide the procedures for the SDA to dispose of surplus property, and there are no Federal standards or requirements applicable to the SDA's disposition of surplus property.

Jobs Impact

The proposed new rules will facilitate the transfer of SDA-owned property that will not be utilized for school construction from the SDA to parties that will likely develop the properties for commercial, residential, or other purposes. Accordingly, the transfers of property facilitated by the proposed new rules are very likely to create opportunities for new construction in SDA districts, which are generally located in municipalities with New Jersey Opportunity Zones. These development opportunities will potentially lead to an increase in jobs in the construction trades and construction-related fields in those municipalities. The number of jobs that would be created as the result of implementation of the proposed new rules is currently unknown.

Agriculture Industry Impact

The proposed new rules will have no impact on the agriculture industry as the processes for disposition of surplus real and personal property of the SDA will not require the acquisition of real property.

Regulatory Flexibility Analysis

The proposed new rules do not impose reporting or recordkeeping requirements on small businesses, as the term is defined by the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. To the extent that a small business seeks to acquire the SDA's surplus property, pursuant to a sealed bid, internet auction, offer to purchase process, or other disposition methodology, small businesses will be subject to the same requirements and obligations as other bidders or potential offerors, in order to ensure fairness in the disposition process, which are discussed in the Summary above.

Housing Affordability Impact Analysis

The proposed new rules permit the SDA to declare real or personal property as surplus to the SDA's needs for school facilities projects or other operational activities, and further provide various methodologies for disposition of such surplus property. Thus, the proposed new rules will not evoke a change in the average costs of housing in the State of New Jersey and have nothing to do with the affordability of housing.

Smart Growth Development Impact Analysis

The proposed new rules provide procedures for the SDA to dispose of surplus real property that the SDA had previously acquired, but which is no longer needed for school facilities projects. The proposed new rules do not address residential housing, and do not govern the availability of affordable housing. The proposed new rules will facilitate the transfer of property from the SDA to parties that will likely develop the properties for commercial, residential, or other purposes. Accordingly, because SDA's surplus property would be located in SDA Districts, which generally are located in municipalities within New Jersey Opportunity Zones, Planning Areas 1 or 2, or

designated centers under the State Development and Redevelopment Plan, the transfers of property facilitated by the proposed new rules are very likely to create opportunities for new construction in those areas.

Racial and Ethnic Community Criminal and Public Safety Impact

As the proposed new rules govern the process by which the SDA can dispose of surplus real and personal property, the proposed new rules will not have an impact on pretrial detention, sentencing, probation, or parole policies concerning adults and juveniles in the State. Accordingly, no further analysis is required.

Full text of the proposed new rules follows:

CHAPTER 35

DISPOSITION OF SURPLUS REAL AND PERSONAL PROPERTY OF THE NEW JERSEY SCHOOLS DEVELOPMENT AUTHORITY

SUBCHAPTER 1. GENERAL PROVISIONS

19:35-1.1 Applicability

This chapter applies to any real or personal property owned by the New Jersey Schools Development Authority (SDA) that may be considered for determination as surplus property. Upon determination that such property is surplus, this chapter governs the SDA's sale, lease, grant of easement, license, or other use or disposition of such surplus property. A proposed disposition of

surplus property in accordance with this chapter will not be authorized or enforceable if the disposition would result in the loss of the tax-exempt status, pursuant to the United States Internal Revenue Code of 1986, 26 U.S.C. §§ 1 et seq., and all Federal Department of the Treasury regulations, revenue procedures, and revenue rulings issued pursuant thereto, of the bonds issued by the New Jersey Economic Development Authority pursuant to section 25 of P.L. 2007, c. 137 (N.J.S.A. 18A:7G-14), the proceeds of which financed SDA's original acquisition of said property.

19:35-1.2 Purpose and scope

The purpose of this chapter is to establish and prescribe uniform rules and procedures for the disposition of surplus real or personal property. Proceeds from the disposition of surplus real or personal property shall be used to fund school facilities projects, except that proceeds from the disposition of surplus real property acquired under circumstances described at N.J.S.A. 18A:7G-45 will be used to fund school facilities projects in the school district in which the disposed surplus real property is located. No surplus real or personal property disposition shall be made by the SDA, except in accordance with this chapter.

19:35-1.3 Definitions

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

"Act" means the Educational Facilities Construction and Financing Act, P.L. 2000, c. 72, N.J.S.A. 18A:7G-1 et seq., as amended by P.L. 2007, c. 137, N.J.S.A. 52:18A-235 et seq., which mandates a program for establishing efficiency standards for educational facilities at the elementary, middle,

and secondary school levels and which further mandates that the State fund the cost to repair and renovate existing school facilities and to construct new school facilities determined to be necessary in order to meet the established school facilities efficiency standards in school districts determined to be SDA Districts under the program.

“Bidder” means a party submitting a bid for the purchase of surplus real or personal property in response to an advertised Notice of Solicitation for Sealed Bids.

“Bidding period” means the time set forth in the advertisement of a Notice of Solicitation for Sealed Bids for the disposition of surplus personal or real property during which a prospective bidder may submit a bid.

“Board” or “SDA Board” means the governing body of the SDA, consisting of the appointed members of the SDA, as set forth at N.J.S.A. 52:18A-237.

“Charitable purpose” means an effort designed to benefit, ameliorate, or uplift mankind mentally, morally, or physically, and includes the relief of the poor, the distressed, or the underprivileged, the advancement of education or science, the promotion of health, lessening neighborhood tensions, combating community deterioration, or any other purpose the achievement of which is beneficial to the community.

“Chief Executive Officer” or “CEO” means the executive director employed by the SDA Board as set forth at N.J.S.A. 52:18A-237.

“Compensation” means consideration that may take the form of money, exchanged property, contractual commitments, acts of forbearance, and/or such other conditions as are deemed by the SDA to be of value to the school construction program.

“Contract” means the entire and integrated agreement between a public or non-public party and the SDA, in such form as is required by the transaction for the disposition of the surplus real or personal property.

“Department” means the New Jersey Department of Education.

“Direct negotiated sale” means an arms-length transaction between the SDA and a person or entity with no connection to or affiliation with the SDA or any of its employees, for the sale and transfer of real property for fair market value, or personal property for estimated market value, without competitive bidding or advertisement, except that a direct negotiated sale may include the sale and transfer of real property that is advertised or marketed through a broker engaged by the SDA.

“Disposition” means the sale, lease, grant of easement, license, or other transfer of the SDA’s legal rights in and/or to any real or personal property.

“Estimated market value” means the value of personal property established by its book value or other valuation methodology appropriate to the type of personal property being valued.

“Fair market value” means that amount of compensation a disposition of SDA real property would command in a competitive market between a willing seller and buyer under the same terms and conditions of the transaction, as determined by one or more independent appraisals prepared by a professional licensed appraiser(s), and any additional SDA analyses or valuations that take into account relevant factors, such as existing environmental conditions or concerns.

“Firm” means any association, company, contractor, corporation, joint stock company, limited liability company, partnership, sole proprietorship, or other business entity, including its successors, assignees, lessees, receivers, or trustees.

“Lease” means a contract granting the right to use or occupy SDA-owned real property during a specified period in exchange for a specified consideration.

“Non-public party” means a private individual, corporation, or other legal entity that is not a public entity, and that is eligible to enter into an agreement or otherwise contract with the SDA in connection with its disposition of real or personal property.

“Notice of Solicitation of Offers to Purchase” means the document comprising the notice to the public of a potential disposition of surplus property through an offer to purchase process.

“Offer to purchase” means a written document that memorializes the terms and conditions that a party agrees to, notably the amount of compensation that such party is willing to pay, in order to acquire specific property. An offer to purchase may be submitted in response to a Notice of

Solicitation of Offers to Purchase or may be submitted by a willing offeror independent of any solicitation.

“Offer to purchase process” means a method of property disposition that advertises particular property as available for sale through the solicitation of competitive offers and any potential subsequent negotiation with one or more responding offerors during a negotiating period that remains open until a date specified in the advertisement.

“Offeror” means a party submitting either an offer to purchase in response to a Notice of Solicitation of Offers to Purchase or an unsolicited offer to purchase.

“Operating authority” means the SDA’s policy, approved by the Board, and found on the SDA’s website at www.njsda.gov, which designates individuals holding designated titles within the SDA as being authorized, either generally or in specific transactions, to approve contracts and/or to execute documents legally binding on the SDA, and/or to sign checks and disbursements on behalf of the SDA, at varying levels of authority based upon the value of such transactions.

“Personal property” means furnishings, equipment, computers, automobiles, movable machines and equipment, and any other tangible or intangible property owned by the SDA, with the exception of real property.

“Property” means real property and personal property, either individually, or in combination, as the context indicates.

“Public party” means the State, or any political subdivision of the State, or any agency or subsidiary thereof, or any entity charged with the exercise of governmental functions.

“Public purpose” means an endeavor that is related to a function of government and is consistent with the constraints of the bonds referenced at N.J.A.C. 19:35-1.1.

“Purchase agreement” means the entire and integrated agreement between a purchasing party and the SDA, in such form as is required by the transaction for the disposition of surplus real property.

“Real property” means any land in which title is held by the SDA, or in which the SDA has a legal interest, whether improved or unimproved, and includes structures, fixtures, appurtenances and other permanent improvements, excluding moveable machinery and equipment.

“School construction program” means the program for the construction of school facilities projects and related activities mandated by the Act and undertaken by the SDA.

“School facilities project” means the planning, acquisition, demolition, construction, improvement, alteration, modernization, renovation, reconstruction, or capital maintenance of all, or any, part of a school facility or of any other personal property necessary for, or ancillary to, any school facility, and shall include fixtures, furnishings and equipment, and if applicable, temporary facilities procured or constructed to facilitate construction of a permanent school facility. A school

facilities project shall also include, but is not limited to, site acquisition, site development, the services of design professionals, such as engineers and architects, construction management, legal services, financing costs, and administrative costs and expenses incurred in connection with the project.

“SDA” means the New Jersey Schools Development Authority, an entity formed pursuant to P.L. 2007, c. 137 (N.J.S.A. 52:18A-235 et seq.), as successor to the New Jersey Schools Construction Corporation. The SDA is statutorily charged with undertaking and funding school facilities projects for the school construction program, pursuant to the Act.

“Sealed bid process” means a method of property disposition that advertises particular property as available for sale pursuant to the solicitation of competitive sealed bids received by a specified bid due date and opened on a specified opening date.

“Surplus personal property” means personal property that, pursuant to N.J.A.C. 19:35-2.2, has been determined not to be necessary, on a temporary or permanent basis, for the undertaking or management of a school facilities project and not used or useful in the business operations of the SDA.

“Surplus real property” means real property that, pursuant to N.J.A.C. 19:35-2.3, has been determined not to be necessary, on a temporary or permanent basis, for the undertaking or

management of a school facilities project and not used or useful in the administrative operations of the SDA.

“Use and/or occupancy agreement” means an agreement between the SDA and a public or non-public party that provides for the short-term use and/or occupancy of all or any part of surplus real property, but that does not serve to transfer ownership from the SDA to such party.

SUBCHAPTER 2. IDENTIFICATION OF SURPLUS PROPERTY

19:35-2.1 Determination of property as surplus property

Whenever, in accordance with N.J.A.C. 19:35-2.2 or 2.3, the SDA determines that any SDA-owned real or personal property is surplus property in accordance with this subchapter, any temporary use, sale, or other disposition of such real or personal property shall be performed consistent with this chapter and implemented in accordance with processes and procedures established by the SDA from time to time. The SDA can, without Board approval, permit temporary use of SDA property without a determination that the property is surplus.

19:35-2.2 Personal property as surplus property

(a) In the case of personal property, a determination that an item, or items, of personal property is surplus shall be based upon whether such person property is:

1. Necessary for the undertaking or management of a school facilities project; and/or
2. Used or useful in the administrative operations of the SDA.

19:35-2.3 Real property as surplus property

(a) In the case of real property, the determination that a tract or parcel of SDA-owned real property is surplus shall be based upon whether such real property:

1. Has been determined not to be necessary for the undertaking or management of a school facilities project; and

2. Is used or useful in the administrative operations of the SDA.

19:35-2.4 Requirements for declaring property as surplus property

(a) All declarations that real or personal property is surplus property shall be based upon a written recommendation prepared by appropriate SDA staff, which shall set forth the factual information that supports a determination pursuant to N.J.A.C. 19:35-2.2 or 2.3, as applicable.

(b) All recommendations that real property be declared surplus shall be submitted to the Board for approval of the declaration.

(c) Recommendations that personal property be declared surplus shall be submitted to the Chief Executive Officer, or his or her designee, for approval of the declaration, when the estimated value of the personal property does not exceed \$500,000.

(d) Recommendations that personal property be declared surplus shall be submitted to the Board for approval of the declaration, when the estimated value of the personal property exceeds \$500,000.

SUBCHAPTER 3. DISPOSITION OF SURPLUS PROPERTY; DISPOSITIONS EXEMPT FROM ADVERTISING REQUIREMENTS

19:35-3.1 Manner and requirements of surplus property disposition

(a) Whenever, consistent with this chapter, it is determined that disposition of surplus personal or real property would be advantageous to the school construction program, the SDA may dispose of

such surplus real and/or personal property through a competitive sale to the public through public advertisement upon the terms and conditions established in this chapter, in any one of the following manners:

1. Through the solicitation of sealed bids;
2. Through the solicitation of offers for purchase; or
3. Through internet auction.

(b) The SDA may dispose of surplus real and/or personal property by direct negotiated sale without public advertisement, under the conditions permitting waiver of public advertisement as set forth at N.J.A.C. 19:35-3.2 and 3.3.

(c) All surplus real and/or personal property shall be disposed of in “as is, where is, with all faults” condition.

(d) The method used to dispose of surplus real and/or personal property shall be selected by the SDA to maximize the return realized by the disposition, in accordance with the best interests of the school construction program.

(e) If the declaration of the property as surplus was subject to Board approval, the method selected to dispose of the surplus property must also be approved by the Board.

19:35-3.2 Waiver of public advertisement for sale of surplus personal property

(a) In disposing of surplus personal property, the SDA, in its sole discretion, may waive the advertising requirements at N.J.A.C. 19:35-3.1 and, more particularly, set forth at N.J.A.C. 19:35-4.1 and may dispose of surplus personal property for its estimated market value through a direct negotiated sale if a determination is made that any of the following circumstances exist:

1. The surplus personal property to be sold has an estimated market value less than the State bid advertising threshold then in effect pursuant to N.J.S.A. 52:34-7.b;

2. The proposed disposition of surplus personal property constitutes an unusual transaction that would not benefit from public advertising or public bidding, such as a disposition in response to an unsolicited offer to purchase, provided that the purchase price to be paid is not less than the estimated market value thereof as established by its book value or other appropriate valuation methodology and the SDA, in its determination, would not benefit from a subsequent advertising or public bidding;

3. The disposition of such surplus personal property is to a governmental entity for a valid public purpose and is for the estimated market value or the sale price approved by the SDA Board taking into consideration such estimated market value; or

4. The disposition is of a temporary classroom unit or units acquired by the SDA to provide temporary facilities pending the completion of a school facilities project, and the SDA has determined, based on a feasibility analysis, that disposition of the unit(s) is more advantageous to the SDA than the relocation and reuse thereof.

19:35-3.3 Waiver of public advertisement for sale of surplus real property

(a) In connection with the disposition of surplus real property, the SDA, in its sole discretion, may waive the advertising requirement set forth at N.J.A.C. 19:35-3.1 and more particularly described at N.J.A.C. 19:35-4.1, and may dispose of surplus real property for fair market value through a direct negotiated sale as defined at N.J.A.C. 19:35-1.2, if a determination is made that any of the following circumstances exist:

1. The disposition is of surplus real property, or any interest therein, having a fair market value not in excess of \$100,000;
2. The subject surplus real property is unique and the disposition thereof requires an unusual contract or represents an unusual transaction that would not benefit from public advertising or public bidding;
3. The costs of environmental remediation activities or other activities required by governing authorities to effectively remediate the surplus real property, or activities required to render the surplus real property marketable are greater than or equal to the appraised value of the surplus real property;
4. The surplus real property to be sold is an undersized lot and is being offered to an adjacent owner for fair market value, provided that the adjacent landowner has no connection to, or affiliation with, the SDA or any of its employees;
5. The disposition of the surplus real property, or any interest therein, is to a public party or non-public party, for fair market value, provided that such surplus real property is used for an educational purpose;
6. The disposition of such surplus real property is to a public party for a valid public purpose that does not result in the loss of the tax exempt status of the bonds set forth at N.J.A.C. 19:35-1.1, and is for fair market value, or is for a sale price that is less than fair market value if approved by the SDA Board after taking into consideration additional analyses and valuations that affect fair market value; or
7. The disposition of such surplus real property is to a public or non-public party having no connection to, or affiliation with, the SDA or its employees, that has submitted an unsolicited offer to purchase, provided such offer is for not less than fair market value as evidenced by an

independent appraisal prepared by a professional licensed appraiser and the SDA has determined that it would not benefit from a subsequent advertising or public bidding.

SUBCHAPTER 4. DISPOSITION OF SURPLUS PERSONAL PROPERTY SUBJECT TO ADVERTISING REQUIREMENTS

19:35-4.1 Methods of disposition of surplus personal property

(a) Whenever, consistent with this chapter, it is determined that the disposition of items of personal property that have been determined to be surplus personal property in accordance with N.J.A.C. 19:35-2.2 is in the best interests of the school construction program and such surplus personal property does not qualify as exempt from the advertising requirements pursuant to N.J.A.C. 19:35-3.2, the SDA may sell such surplus personal property through a competitive sale to the public after public advertisement through one of the following methods:

1. The solicitation of sealed bids process described at N.J.A.C. 19:35-4.2 through 4.14; or
2. The internet auction process set forth at N.J.A.C. 19:35-4.15.

(b) Surplus personal property may also be disposed of under the direct negotiated sale process set forth at N.J.A.C. 19:35-4.16, if the conditions for such direct negotiated sale have been met.

(c) The disposition of surplus personal property shall be in accordance with the terms and conditions established in this chapter.

(d) If no bids are submitted in response to a Solicitation for Sealed Bids, pursuant to N.J.A.C. 19:35-4.2 through 4.14, or in response to an advertised internet auction pursuant to N.J.A.C. 19:35-4.15, or in the event the surplus personal property cannot be disposed of through direct negotiation

pursuant to N.J.A.C. 19:35-4.16, then the surplus personal property may be disposed of through the Department of the Treasury, Surplus Property Unit, or in the most economically feasible manner.

(e) Nothing in this chapter shall prohibit or prevent the SDA from using, or availing itself of, any disposition method as may be otherwise permitted by law or rule.

19:35-4.2 Sealed bid process for surplus personal property: advertisement requirements

(a) The disposition of surplus personal property may be conducted through a sealed bid process initiated by issuance of a Notice of Solicitation of Sealed Bids.

1. Disposition by sealed bid process shall require publication of an advertisement of the issuance of a Notice of Solicitation of Sealed Bids in each of the following outlets:

i. On the SDA website;

ii. On the New Jersey State business portal;

iii. In the “Public/Legal Notice” section of a daily newspaper with Statewide circulation; and

iv. In the “Public/Legal Notice” section of a daily newspaper published or circulated in the county in which such personal property is located.

2. Advertisements on the SDA website and on the New Jersey State business portal shall be maintained through the date for submission of sealed bids. The required newspaper advertisements shall be published at least twice, one week apart.

(b) The advertisement for the Notice of Solicitation of Sealed Bids shall contain, at a minimum, the following information:

1. A description of the surplus personal property, including sufficient information to identify the property adequately. If more than one item of surplus personal property is included in a Notice of Solicitation of Sealed Bids, each item shall be separately identified;
2. The place(s) where the item(s) of surplus personal property is located;
3. A time frame during which the surplus personal property may be inspected, if applicable;
4. Notice of the physical and/or online address where bidders may obtain relevant forms and applicable terms and conditions of transfer;
5. Notice of the material terms of the sale. Notice shall be sufficient if set forth directly or contained in related sample documents, made available for review, or set forth on the SDA website;
6. A statement, if applicable, advising prospective bidders as to SDA's reservation of a right to seek best and final sealed bids from one or more bidders that timely submitted a responsive bid for the surplus personal property that is the subject of the solicitation;
7. A statement that the SDA may cancel the solicitation and/or reject any or all bids at any time before, or after, the opening of the bids;
8. A statement of the place and final date and time for submitting sealed bids, which shall not be less than 10 days after publication of the second advertisement;
9. A statement of the date, time, and place of the opening of the bids; and
10. A statement that the surplus personal property shall be sold in an "as is, where is, with all faults" condition.

19:35-4.3 Sealed bid process for surplus personal property: outreach in addition to advertisement

At any time prior to the end of the bidding period, the SDA may conduct other outreach efforts to identify potential bidders and may contact potential bidders directly for purposes of increasing the number of sealed bids received in response to an advertised Notice of Solicitation of Sealed Bids.

19:35-4.4 Sealed bid process for surplus personal property: amendments to a Notice of Solicitation of Sealed Bids

In the event that the amendment of any pertinent information supplied to prospective bidders in connection with a Notice of Solicitation of Sealed Bids becomes necessary, including a postponement of the time for receipt or the opening of bids, notice of the change(s) shall be advertised on the SDA website, at least seven days prior to the scheduled opening of the bids, unless an alternate procedure is established in the Notice of Solicitation of Sealed Bids.

19:35-4.5 Sealed bid process for surplus personal property: submission of bids

(a) Bids in response to a Notice of Solicitation of Sealed Bids shall be submitted during the time and at the place specified in the Notice of Solicitation of Sealed Bids, as the same may be amended.

(b) If more than one item of surplus personal property is included in the Notice of Solicitation of Sealed Bids, the requirements for submitting a bid for one, some, or all items shall be set forth in the Notice of Solicitation of Sealed Bids.

(c) The bidding period shall close at the time and date specified in the advertisement for the Notice of Solicitation of Sealed Bids. Any bids received after the bidding period has ended shall be rejected.

(d) Unless otherwise specified in the advertisement or the Notice of Solicitation of Sealed Bids, bids shall not be submitted by telephone, facsimile, or other electronic means.

19:35-4.6 Sealed bid process for surplus personal property: withdrawal of bids

(a) Bidders may withdraw bids, or withdraw and resubmit bids, at any time prior to the closing of the bidding period.

(b) Bids may be withdrawn only on written request received prior to the time and date for submission of bids and signed by the bidder or a duly authorized representative of the bidder upon presentation of appropriate identification.

19:35-4.7 Sealed bid process for surplus personal property: opening and validity of sealed bids

(a) An SDA representative shall publicly open and publicly read the bids on the date specified in the Notice of Solicitation of Sealed Bids.

(b) Unless the Notice of Solicitation of Sealed Bids states otherwise, amounts included in a sealed bid shall remain valid and binding for a period of 120 days.

19:35-4.8 Sealed bid process for surplus personal property: award to highest responsible bidder

Absent cancellation of the solicitation of sealed bids in accordance with N.J.A.C. 19:35-4.9, the award of a disposition of surplus personal property publicly bid shall go to the highest bidder meeting all of the terms and conditions set forth in the advertised Notice of Solicitation of Sealed Bids.

19:35-4.9 Sealed bid process for surplus personal property: cancellation

(a) In the event that no bids are received, or only one bid is received on item(s) of surplus personal property offered for disposition, or if the SDA determines that insufficient competition results from the advertised Notice of Solicitation of Sealed Bids and any outreach efforts, or for any other reason in the best interests of the school construction program, the SDA reserves the right to determine, on a case-by-case basis, whether:

1. The disposition should, nevertheless, be consummated; or
2. The disposition should be cancelled, with rejection of all bids.

(b) If the disposition is cancelled, the SDA reserves the right to determine, on a case-by-case basis, whether:

1. The surplus personal property should be re-offered for disposition; or
2. Otherwise disposed of in a manner that is consistent with this chapter.

19:35-4.10 Sealed bid process for surplus personal property: withdrawal of items

(a) With respect to a solicitation of sealed bids pertaining to more than one item of surplus personal property, when the SDA deems it to be in the best interests of the school construction program, at any time prior to the disposition thereof, one or more items of surplus personal property may be withdrawn from the solicitation of sealed bids.

(b) When one or more items of surplus personal property are withdrawn from a solicitation of sealed bids, the SDA shall determine whether such items of surplus personal property shall be re-offered for disposition or otherwise disposed of in a manner that is consistent with this subchapter.

(c) The withdrawal of any item or items of surplus personal property from a Notice of Solicitation of Sealed Bids pursuant to (a) above shall not affect the disposition of the remaining items of surplus personal property included within the Notice of Solicitation of Sealed Bids.

19:35-4.11 Sealed bid process for surplus personal property: bid deposit

(a) Sealed bids submitted in response to a Notice of Solicitation of Sealed Bids shall be accompanied by a bid deposit, if required under the terms of the Notice of Solicitation of Sealed Bids.

(b) When a bid deposit is required, it shall be submitted in the form set forth in the Notice of Solicitation of Sealed Bids, or, if not specified therein, by certified check, bank or cashier's check, or executed money order payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure to comply with a bid deposit requirement shall result in rejection of the bid.

19:35-4.12 Sealed bid process for surplus personal property: Notice of Award

(a) The successful bidder shall be given a "Notice of Award" advising of the SDA's acceptance of its bid with respect to the purchase of the surplus personal property.

(b) The Notice of Award shall be given in the manner and within the time for acceptance of the bid as may be specified in the terms and conditions detailed in the Notice of Solicitation of Sealed Bids.

(c) The Notice of Award shall be in writing and shall specify the time and manner for payment of the balance of the bid price and for taking possession of the surplus personal property.

(d) A written Notice of Award shall be deemed to result in a binding contract without any further action by either party.

(e) A copy of the Notice of Award addressed to the winning bidder shall be provided to all unsuccessful bidders.

19:35-4.13 Sealed bid process for surplus personal property: payment of balance of bid price

(a) Following the issuance of a Notice of Award, the successful bidder shall:

1. Pay the balance of the bid price in the manner, and within the time, as set forth in the Notice of Award; and
2. Take possession of the surplus personal property within the time, and in the manner, as set forth in the Notice of Award.

(b) If the manner of payment is not specified, payment shall be by certified check, bank check, cashier's check, or money order made payable to the "New Jersey Schools Development Authority" or any successor entity.

19:35-4.14 Sealed bid process for surplus personal property: failure to pay balance of bid price

(a) Failure by the successful bidder to pay the balance of the bid price within the time set forth in the Notice of Award shall result in a forfeiture of the bid deposit to the SDA. Surplus personal property paid for, but not picked up or taken possession of in the manner and within the time specified in the Notice of Award, shall be considered abandoned, in which event:

1. The SDA shall retain all payments made;
2. The ownership of the property shall remain with the SDA; and

3. The SDA may then accept the bid of the next highest qualified bidder or again offer the surplus personal property for disposition.

19:35-4.15 Internet auction process for surplus personal property

(a) The disposition of surplus personal property may be conducted through an internet auction.

(b) Disposition by internet auction shall require the publication of an advertisement in the “Public/Legal Notice” section of a daily newspaper with Statewide circulation, which advertisement must contain:

1. A clear statement that the disposition will take place over the internet;
2. The internet address of the website where the auction can be found;
3. The date and time for the internet auction;
4. A description of the surplus personal property to be sold; and
5. A clear statement of all terms and conditions material to the disposition.

(c) The website identified in the advertisement shall set forth all requirements for bidding, the terms and conditions of the disposition, and the procedures for the transfer of the surplus personal property to be sold.

(d) Surplus personal property that is the subject of an internet auction shall be awarded to the highest bidder meeting the terms and conditions material to the disposition.

(e) In the event SDA determines, on a case-by-case basis, that there is insufficient participation in the internet auction with respect to any item or items of surplus personal property being offered for disposition, at any time prior to the disposition of such item or items, the SDA reserves the right to remove the same from the internet auction and terminate the disposition with respect thereto.

(f) The SDA shall determine whether any item or items of surplus personal property withdrawn from an internet auction pursuant to (e) above shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this subchapter.

(g) Where more than one item of surplus personal property is the subject of an internet auction, the withdrawal of any item or items from the disposition by internet auction shall not affect the disposition of the remaining items to be sold.

19:35-4.16 Direct negotiated sale of surplus personal property

Surplus personal property that does not otherwise qualify as exempt from the advertising requirements at N.J.A.C. 19:35-3.2, and which does not result in a consummated disposition after being the subject of a Solicitation for Sealed Bids in accordance with N.J.A.C. 19:35-4.2 through 19:35-4.14, or an internet auction in accordance with N.J.A.C. 19:35-4.15, may be disposed of through a direct negotiated sale to a public or a non-public party, for the highest possible price, upon terms and conditions acceptable to the SDA.

19:35-4.17 Transfer of ownership of surplus personal property

Transfer of ownership/title to SDA surplus personal property is effective upon delivery of the item(s) of surplus personal property to the purchaser and payment by the purchaser of the full amount of the purchase price to SDA.

SUBCHAPTER 5. DISPOSITION OF SURPLUS REAL PROPERTY SUBJECT TO ADVERTISING REQUIREMENTS

19:35-5.1 Methods of Disposition of Surplus Real Property

(a) Whenever, consistent with this chapter, it is determined that the disposition of tract(s) or parcel(s) of real property that has been determined to be surplus real property pursuant to N.J.A.C. 19:35-2.3, and that does not qualify as exempt from the advertising requirements pursuant to N.J.A.C. 19:35-3.3, would be advantageous to the school construction program, the Board shall set an approved minimum disposition price for such surplus property. The determination of an approved minimum disposition price may occur at the time of declaration of such real property as surplus pursuant to N.J.A.C. 19:35-2.3, or thereafter at the time the SDA initiates the disposition. The SDA may sell such surplus real property after public advertisement through one of the following methods:

1. Through the process of solicitation of offers to purchase as described at N.J.A.C. 19:35-5.2 through 5.18;
2. Through the process of solicitation of sealed bids as described at N.J.A.C. 19:35-5.19 through 5.31; or
3. Through the internet auction process as described at N.J.A.C. 19:35-5.32.

(b) Surplus real property may also be disposed of through the disposition by the direct negotiated sale process described at N.J.A.C. 19:35-5.33, if the conditions for such direct negotiated sale have been met.

(c) The disposition of surplus real property shall be in accordance with the terms and conditions established in this subchapter.

(d) Nothing in this chapter shall prohibit or prevent the SDA from using or availing itself of any method to dispose of surplus real property as may be otherwise permitted by law or rule.

19:35-5.2 Offer to purchase process for surplus real property: advertisement requirements

(a) The disposition of surplus real property through the solicitation of offers to purchase shall be conducted by placing an advertisement of a Notice of Solicitation of Offers to Purchase for the sale of surplus real property in or on the following:

1. The SDA website;
2. The New Jersey State business portal;
3. The Public/Legal Notice section of a daily newspaper with Statewide circulation; and
4. The Public/Legal Notice section of a daily newspaper published or circulated in the county in which the surplus real property is located.

(b) Advertisements on the SDA website and on the State business portal shall be maintained until the period for submission of offers to purchase has ended. Required newspaper advertisements shall be published at least twice, one week apart.

(c) The advertisement for a Notice of Solicitation of Offers to Purchase shall, at a minimum, contain the following information:

1. A description of the surplus real property, including the county and municipality in which the same is located, the street address, the municipal tax block and lot numbers assigned, a metes and bounds description (if available), and a general description of any improvements constructed thereon;
2. Where more than one tract or parcel of surplus real property is included in a Notice of Solicitation of Offers to Purchase, each tract or parcel shall be separately identified and, for

purposes of this chapter, such Notice of Solicitation of Offers to Purchase shall apply separately for each tract or parcel;

3. A date or time frame in which the surplus real property may be inspected;

4. Notice of the physical and/or online address where an offeror may obtain relevant forms and applicable terms and conditions of the sale;

5. Notice of the material terms of the sale. Such notice shall identify those material terms of the sale that are to be proposed by offerors and shall also identify the material terms of sale that are not subject to offer or negotiation. Notice shall be sufficient, if set forth directly or contained in related sample documents, made available for review or set forth on the SDA website;

6. A statement that the SDA may cancel the solicitation and/or reject any or all offers to purchase;

7. A statement of the place and final date for submitting offers to purchase, which shall not be less than 30 days after publication of the second advertisement;

8. A statement that the surplus real property shall be conveyed in “as is/where is, with all faults” condition and that a prospective offeror shall be responsible for conducting its own due diligence in connection with the submission of an offer to purchase;

9. A statement, if applicable, advising prospective offerors as to the SDA’s reservation of a right to seek “best and final” offers from one or more offerors who timely submitted a responsive offer for the surplus real property that is the subject of the solicitation; and

10. A notice that the SDA reserves the right to negotiate with one, all, or fewer than all, of the offerors that have submitted offers to purchase advantageous to the SDA.

19:35-5.3 Offer to purchase process for surplus real property: outreach in addition to advertisement

At any time prior to the end of the period for submission of an offer to purchase, the SDA may conduct other outreach efforts to identify potential offerors and may contact potential offerors directly for purposes of increasing the number of offers received in response to an advertised Notice of Solicitation of Offers to Purchase.

19:35-5.4 Offer to purchase process for surplus real property: amendment of solicitation of offers to purchase

In the event that an amendment becomes necessary, with respect to any pertinent information supplied to prospective offerors in connection with a solicitation of offers to purchase, including a postponement of the time for submitting an offer to purchase, notice of the change(s) shall be advertised on the SDA website, at least seven days prior to the scheduled date for receipt of offers, unless an alternate procedure is established in the Notice of Solicitation of Offers to Purchase.

19:35-5.5 Offer to purchase process for surplus real property: submission of offers to purchase; untimely submissions

(a) Any offers to purchase in response to a Notice of Solicitation of Offers to Purchase shall be submitted during the time, and at the place, specified in the Notice of Solicitation of Offers to Purchase, as the same may be amended.

(b) If more than one tract or parcel of surplus real property is included in the Notice of Solicitation of Offers to Purchase, the requirements for submitting an offer to purchase for one, some, or all parcels shall be set forth in the Notice of Solicitation.

(c) Unless otherwise specified in the advertisement or the Notice of Solicitation of Offers to Purchase, an offer to purchase shall not be submitted by telephone, facsimile, or other electronic means.

(d) An offer to purchase received after the close of the period for submitting an offer as specified in the Notice of Solicitation of Offers to Purchase shall be rejected, except in extraordinary circumstances, such as weather emergencies that prevent travel and/or result in the closure of State offices.

19:35-5.6 Offer to purchase process for surplus real property: required deposit

(a) Offers to purchase shall be accompanied by a deposit in the amount determined by the SDA in its sole discretion and set forth in the Notice of Solicitation of Offers to Purchase.

(b) The deposit shall be submitted in the form set forth in the Notice of Solicitation of Offers to Purchase, or, if not specified therein, by certified check, bank or cashier's check, or executed money order made payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure to comply with the deposit requirement shall result in the rejection of the offer as unresponsive.

19:35-5.7 Offer to purchase process for surplus real property: withdrawal of offers to purchase

(a) An offeror may withdraw a submitted offer to purchase, or withdraw and resubmit an offer to purchase, at any time during the period that an offer to purchase may be submitted.

(b) Offers may be withdrawn only upon a written request, received prior to the expiration of the period within which offers are accepted; provided such request is signed by the offeror, or a duly authorized representative of the offeror upon presentation of appropriate identification.

19:35-5.8 Offer to purchase process for surplus real property: review and verification of offers to purchase

(a) Following the close of the offer period, the SDA shall review each submitted offer to purchase received in response to a solicitation of offers to purchase in accordance with the best interests of the school construction program, price, and other factors, as described at N.J.A.C. 19:35-5.9(b).

(b) The SDA, in its sole discretion, may seek additional information to supplement an offer to purchase, for purposes of verifying the accuracy and responsiveness of the offer to purchase, and to determine whether the offeror and/or the proposed offer is bona fide.

1. The SDA may request such additional information directly from the offeror, obtain the same from the public records, or obtain the same from others familiar with the offeror.

2. Such additional information may clarify, but not modify, an offer to purchase.

3. Such additional investigation may include, but shall not be limited to, contacting the offeror's surety companies, financial institutions, and review of business or personal financial records, reports, or statements.

19:35-5.9 Offer to purchase process for surplus real property: evaluation of offers to purchase

(a) The SDA shall evaluate each offer to purchase received in accordance with this subchapter and shall identify the offer(s) determined to be responsive to all material elements set forth in the advertised Notice of Solicitation of Offers to Purchase. The SDA shall select the winning offer based on an evaluation of price and other factors.

(b) Other factors that may be considered in connection with an evaluation pursuant to this section may include, but are not limited to:

1. The proposed consideration, inclusive of both monetary and non-monetary components, if applicable, for identified surplus real property. If the proposed consideration varies from the fair market value of the surplus real property established by an independent, professional licensed appraiser, the SDA may, but shall not be obligated to, evaluate the proposed consideration taking into account supported adjustments made for any valuation considerations identified by the SDA, including environmental concerns, that are not captured in the appraisal valuation;

2. The purchase terms, including any required due diligence period and payment for such period;

3. The material terms of the purchase proposed by the offeror with respect to terms and conditions that are subject to negotiation;

4. The proofs made available that demonstrate the offeror's financial capacity to meet the proposed terms of purchase; and

5. Any other factors identified by the SDA in a specific Notice of Solicitation of Offers to Purchase.

(c) If more than one tract or parcel of surplus real property is included in the Notice of Solicitation of Offers to Purchase, the SDA may require separate offers for each individual tract or parcel, may

evaluate the offers received for each tract or parcel separately, and may accept a separate offer to purchase for each tract or parcel separately.

19:35-5.10 Offer to purchase process for surplus real property: negotiation with offeror(s)

(a) The SDA staff may negotiate terms of the disposition of surplus real property with one or more offerors that have submitted advantageous offers that are in the best interest of the school construction program, price and other factors considered, in accordance with the evaluation criteria set forth at N.J.A.C. 19:35-5.9(b).

(b) The SDA staff shall have the right to engage in exclusive negotiations with one offeror, or to negotiate with all offerors, or to negotiate with some, but not all, offerors responding to the solicitation for offers to purchase. The SDA's selection of one or more firms to engage in negotiations shall be based on an evaluation of the offers submitted, price and other factors considered.

(c) Negotiating with one offeror will not preclude the SDA from negotiating with other offerors, unless the SDA has entered into an exclusive negotiating period with an offeror in accordance with N.J.A.C. 19:35-5.11.

19:35-5.11 Offer to purchase process for surplus real property: exclusive negotiating period within the offer to purchase process

(a) Upon the request of an offeror, the SDA staff may, in its sole discretion, agree not to negotiate with any other offeror with respect to the surplus real property that is the subject of the solicitation of offers to purchase, and enter into an exclusive negotiation agreement.

(b) Under an exclusive negotiation agreement, the SDA and such offeror each agree to negotiate the terms of the disposition of the surplus real property exclusively with the other.

(c) The right of the SDA to enter into an exclusive negotiation agreement is subject to the following conditions:

1. The time for submitting offers to purchase has expired;
2. Notice of such election to enter into an exclusive negotiation period with an offeror must be given to all parties submitting an offer;
3. The SDA has made a determination that there is a reasonable likelihood that the exclusive negotiating period will lead to an offer to purchase that will be acceptable to the SDA and in the best interests of the school construction program;
4. Subject to extensions as indicated at (d) below, a duration is set for the exclusive negotiating period that shall not exceed 30 days;
5. The offeror shall make an additional deposit of 10 percent of the purchase price; and
6. The offeror agrees in writing to negotiate exclusively with the SDA during the exclusive negotiating period and to terminate negotiations and discussions with other parties that seek to sell or lease competing property.

(d) The SDA may extend an exclusive negotiating period for one additional period of up to 30 days upon such terms and conditions as it determines to be in the best interest of the school construction program, price, and other factors considered.

(e) Upon the conclusion of negotiations under an exclusive negotiation agreement, SDA staff shall submit a recommendation to the Board, as to whether or not to accept the resultant negotiated offer to purchase. Such recommendation shall detail the basis upon which the recommendation was determined to be in the best interest of the SDA and the school construction program and shall

identify the material terms of the competing offers that will be rejected by the issuance of a Notice of Award.

19:35-5.12 Offer to purchase process for surplus real property: review, recommendation, and acceptance by the SDA of an offer to purchase

Absent an acceptance of an offer under an exclusive negotiation agreement pursuant to N.J.A.C. 19:35-5.2(j), the SDA shall evaluate the offers received in response to a solicitation of offers to purchase in accordance with the best interests of the school construction program, price, and other factors (in accordance with N.J.A.C. 19:35-5.9) considered.

19:35-5.13 Offer to purchase process for surplus real property: withdrawal of tracts or parcels

(a) If the SDA deems it to be in the best interests of the school construction program, one or more tracts or parcels of surplus real property may be withdrawn from the solicitation of offers to purchase.

(b) When one or more tracts or parcels of surplus real property are withdrawn from a solicitation of offers to purchase, the SDA shall determine whether to re-offer or otherwise dispose of the property in a manner that is consistent with this chapter.

19:35-5.14 Offer to purchase process for surplus real property: cancellation of solicitation and disposition; withdrawal of tracts or parcels

(a) The SDA may, on a case-by-case basis, cancel a solicitation and reject all offers received upon the occurrence of any of the following grounds for cancellation:

1. No offers to purchase are received or only one offer to purchase is received in response to a Notice of Solicitation of Offers to Purchase;

2. The offer prices submitted are unfavorable in the current market;

3. The SDA determines that insufficient competition results from the advertisement and any outreach efforts; or

4. For any other reason in the best interests of the school construction program.

(b) In the event of the occurrence of such grounds for cancellation, the SDA reserves the right to determine, on a case-by-case basis, whether the disposition:

1. Shall nevertheless be consummated; or

2. Should be terminated, with rejection of all offers submitted.

(c) If the disposition is terminated, the SDA reserves the right to determine, on a case-by-case basis, whether:

1. The surplus real property should be re-offered for disposition; or

2. Otherwise disposed of in a manner that is consistent with this chapter.

19:35-5.15 Offer to purchase process for surplus real property: Notice of Award and purchase agreement

(a) The successful offeror shall be given a Notice of Award advising of the SDA's acceptance of its offer and award of a purchase agreement with respect to the purchase of the surplus real property.

(b) A Notice of Award shall be given in the manner, and within any time for acceptance of the offer, as may be specified in and in accordance with the terms and conditions detailed in the solicitation of offers to purchase.

(c) The Notice of Award shall be delivered together with the purchase agreement form, setting forth the negotiated agreement between the parties, for execution by the offeror.

(d) In the event that a signed purchase agreement was delivered together with the submitted offer, and the SDA does not object to any of the terms of the signed purchase agreement, the Notice of Award shall be delivered together with a fully executed counterpart of the purchase agreement.

(e) A copy of the Notice of Award shall be simultaneously provided to all unsuccessful offerors.

19:35-5.16 Offer to purchase process for surplus real property: application of deposits

(a) Any deposits furnished by the successful offeror shall be retained and applied toward the purchase price at closing of title.

(b) All deposits of unsuccessful offerors shall be returned promptly.

19:35-5.17 Offer to purchase process for surplus real property: transfer of title and balance of purchase price

(a) Title to the surplus real property shall be transferred at the time and place, and in the manner, set forth in the executed purchase agreement for closing of title.

(b) At the closing of title, the successful offeror shall pay the balance of the purchase price. Such payment shall be made in the manner specified in the purchase agreement or, if not specified therein, by certified check, bank or cashier's check, executed money order made payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure of the successful offeror to pay the balance of the proposed consideration or to take title to the surplus real property, or the failure to abide by any other material term or condition of the

purchase agreement shall entitle the SDA to cancel the sale and retain all money on deposit in addition to the right to exercise any other remedy available to the SDA under the purchase agreement.

19:35-5.18 Offer to purchase process for surplus real property: cancellation of purchase agreement

Upon any cancellation of the purchase agreement, with the approval of the SDA Chief Executive Officer, or his or her designee, the SDA may, in its discretion, accept the offer of the next highest qualified offeror, or re-advertise the surplus real property for disposition in accordance with any of the methods set forth at N.J.A.C. 19:35-5.1.

19:35-5.19 Sealed bid process for surplus real property: advertisement

(a) The disposition of surplus real property may be conducted through a sealed bid process initiated by issuance of a Notice of Solicitation of Sealed Bids.

(b) The disposition of surplus real property through a solicitation of sealed bids shall be conducted by placing an advertisement of a Notice of Solicitation of Sealed Bids in the following outlets:

1. On the SDA website;
2. On the New Jersey State business portal;
3. In the Public/Legal Notice section of a daily newspaper with Statewide circulation; and
4. In the Public/Legal Notice section of a daily newspaper published or circulated in the county

in which the surplus real property is located.

(c) Advertisements on the SDA website and on the New Jersey State business portal shall be maintained through the date for submission of sealed bids.

(d) Required newspaper advertisements shall be published at least twice, one week apart.

(e) The advertisement for the solicitation of sealed bids shall contain the following information:

1. A description of the surplus real property, including its location (listing street address, if any, municipality and county, or any other descriptors sufficient to define the location of the surplus real property), a description of any improvements thereon, a metes and bounds description, if available, and the municipal tax block and lot designations of the parcels comprising the surplus real property being disposed of;

2. The time frame during which the surplus real property may be inspected;

3. Notice of the physical and/or online address where bidders may obtain relevant forms and applicable terms and conditions of transfer;

4. Notice of the material terms of the sale. Notice shall be sufficient if set forth directly in the advertisement, or on the SDA website, or contained in identified documents made available for review on the SDA website;

5. A statement, if applicable, advising prospective bidders as to the SDA's reservation of a right to seek best and final sealed bids from one or more bidders that timely submitted a responsive bid for the surplus real property that is the subject of the solicitation;

6. A statement that the SDA may cancel the solicitation and/or reject any or all bids at any time before or after the opening of the bids;

7. A statement of the place and final date and time for submitting sealed bids, which shall not be less than 10 days after publication of the second advertisement;

8. A statement of the date, time, and place of the opening of the bids; and

9. A statement that the surplus real property shall be conveyed in "as is/where is, with all faults" condition and that a prospective bidder shall be responsible for conducting its own due diligence in connection with the submission of a bid.

19:35-5.20 Sealed bid process for surplus real property: outreach in addition to advertisement

At any time prior to the end of the bidding period, the SDA may conduct other outreach efforts to identify potential bidders and may contact potential bidders directly for purposes of increasing the number of sealed bids received in response to an advertised Notice of Solicitation of Sealed Bids.

19:35-5.21 Sealed bids process for surplus real property: amendments to a Notice of Solicitation of Sealed Bids

In the event that the amendment of any pertinent information supplied to prospective bidders in connection with a solicitation of sealed bids becomes necessary, including a postponement of the time for receipt or the opening of bids, notice of the change(s) shall be advertised on the SDA website at least seven days prior to the scheduled opening of the bids, unless an alternative procedure is established in the solicitation of sealed bids.

19:35-5.22 Sealed bids process for surplus real property: submission of bids; close of bidding and untimely bids

(a) Bids in response to a Notice of Solicitation of Sealed Bids, as the same may be amended, shall be submitted during the time and at the place specified in the Notice of Solicitation of Sealed Bids.

(b) If more than item of surplus real property is included in the Notice of Solicitation of Sealed Bids, the requirements for submitting a bid for one, some, or all items shall be set forth in the Notice of Solicitation of Sealed Bids.

(c) The bidding period shall close at the time and date specified in the advertisement for the Notice of Solicitation of Sealed Bids, as the same may be amended. Any bids received after the bidding period has ended shall be rejected.

(d) Unless otherwise specified in the advertisement or the Notice of Solicitation of Sealed Bids, bids shall not be submitted by telephone, facsimile, or other electronic means.

19:35-5.23 Sealed bid process for surplus real property: withdrawal of bids

Bidders may withdraw bids, or withdraw and resubmit bids, at any time prior to the closing of the bidding period. Bids may be withdrawn only upon a written request, received prior to the time and date for submission of bids, provided such request is signed by the bidder, or a duly authorized representative of the bidder, upon presentation of appropriate identification.

19:35-5.24 Sealed bid process for surplus real property: opening of sealed bids

An SDA representative shall publicly open and publicly read the bids on the date specified in the Notice of Solicitation of Sealed Bids, as the same may be amended.

19:35-5.25 Sealed bid process for surplus real property: validity of sealed bids

Unless the Notice of Solicitation of Sealed Bids states otherwise, amounts included in a sealed bid shall remain valid and binding for a period of 120 days.

19:35-5.26 Sealed bid process for surplus real property: award to highest responsible bidder

Absent a cancellation of a solicitation of sealed bids, or a rejection of all bids in accordance with N.J.A.C. 19:35-5.27, the award of a disposition of surplus real property shall go to the highest

bidder meeting all of the terms and conditions set forth in the advertised Notice of Solicitation of Sealed Bids.

19:35-5.27 Sealed bid process for surplus real property: cancellation of solicitation and disposition; rejection of bids

(a) In the event that no bids or only one bid is received in response to a solicitation of sealed bids with respect to surplus real property offered for disposition, or if the SDA determines that insufficient competition results from the advertised Notice of Solicitation of Sealed Bids and any outreach efforts, or for any other reason in the best interests of the school construction program, the SDA reserves the right to determine, on a case-by-case basis, whether the disposition should:

1. Nevertheless be consummated; or
2. Be terminated, with rejection of all bids submitted.

(b) If the disposition of property under this chapter is terminated, the SDA reserves the right to determine, on a case-by-case basis, whether the surplus real property should be:

1. Re-offered for disposition; or
2. Otherwise disposed of in a manner that is consistent with this chapter.

19:35-5.28 Sealed bids process for surplus real property: withdrawal of items from solicitation and disposition

(a) With respect to a solicitation of sealed bids pertaining to more than one tract or parcel of surplus real property, when the SDA deems it to be in the best interests of the school construction program, at any time prior to the conveyance thereof, one or more tracts or parcels of surplus real property may be withdrawn from the solicitation of sealed bids.

(b) When one or more tracts or parcels of surplus real property are withdrawn from a solicitation of sealed bids, the SDA shall determine whether such parcels or tracts of surplus real property shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this subchapter.

(c) The withdrawal of a parcel or tract of surplus real property from a Notice of Solicitation of Sealed Bids pursuant to (a) above shall not affect the disposition of the remaining parcels or tracts of surplus real property included within the Notice of Solicitation of Sealed Bids.

19:35-5.29 Sealed bid process for surplus real property: bid deposit

(a) Sealed bids submitted in response to a Notice of Solicitation of Sealed Bids shall be accompanied by a bid deposit if required under the terms of the Notice of Solicitation of Sealed Bids.

(b) When required, a bid deposit pursuant to this section shall be submitted in the form set forth in the Notice of Solicitation of Sealed Bids, or, if not specified therein, by certified check, bank or cashier's check, or executed money order payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure to comply with bid deposit requirements shall result in rejection of the bid.

19:35-5.30 Sealed bid process for surplus real property: Notice of Award

(a) No later than the time for acceptance of a sealed bid as may be specified in the Notice of Solicitation of Sealed Bids, the successful bidder shall be issued a Notice of Award.

(b) The Notice of Award shall be in writing and shall be delivered together with a purchase agreement to be signed and returned to the SDA in accordance with the terms of the Notice of

Award or, in the event a signed purchase agreement was submitted with the required bid submission documents, a fully executed purchase agreement will be delivered with the Notice of Award.

19:35-5.31 Sealed bid process for surplus real property: payment of balance of bid price

(a) Following the issuance of a Notice of Award and delivery of a fully executed purchase agreement, the successful bidder shall pay the balance of the bid price at closing of title in accordance with the terms and conditions set forth in the purchase agreement.

(b) If the manner of payment is not specified in the purchase agreement, payment shall be by certified check, bank check, cashier's check, or executed money order made payable to the "New Jersey Schools Development Authority" or any successor entity.

(c) Failure by the successful bidder to pay the balance of the bid price, return an executed purchase agreement, close title in accordance with the terms and conditions contained in the purchase agreement, or to otherwise fail to comply with requirements contained in the Notice of Award shall result in a forfeiture of the bid deposit to the SDA.

(d) In the event of a failure to close title, with the approval of the SDA Chief Executive Officer, or his or her designee, the SDA may, in its discretion, accept the bid of the next highest qualified bidder or again offer the surplus real property for disposition.

19:35-5.32 Disposition of surplus real property by internet auction

(a) The disposition of surplus real property may be conducted through an internet auction.

(b) Disposition by internet auction shall require the publication of an advertisement in the Public/Legal Notice section of a daily newspaper with Statewide circulation, and in a daily newspaper published or circulated in the county in which the property is located.

(c) Required newspaper advertisements shall be published at least twice, one week apart.

(d) The advertisement, at a minimum, must contain:

1. A clear statement that the disposition will take place over the internet;
2. The internet address of the website where the auction can be found;
3. The date and time for the internet auction;
4. A description of the surplus real property, including the county and municipality in which the same is located, the street address, the municipal tax block and lot numbers assigned, a metes and bounds description, if available, and a general description of any improvements constructed thereon; and
5. A clear statement of all terms and conditions material to the disposition.

(e) The website at the internet address provided in the advertisement shall set forth all requirements for bidding, the terms and conditions of the disposition, and the procedures for the transfer of the surplus real property to be sold.

(f) Where more than one tract or parcel of surplus real property is the subject of an internet auction, the SDA may require separate bids for each individual tract or parcel, may evaluate the bids received for each tract or parcel separately, and may accept a separate bid for each tract or parcel.

(g) Surplus real property that is the subject of an internet auction shall be awarded to the highest bidder meeting the terms and conditions material to the disposition.

(h) In the event that the SDA determines that there is insufficient participation with respect to all, or any, tract or parcel of surplus real property that is the subject of disposition by internet auction

pursuant to this subchapter, the SDA reserves the right to remove such tract or parcel from the auction and terminate the disposition with respect thereto.

1. The SDA shall determine whether any item or items of surplus real property so withdrawn from the internet auction shall be re-offered for disposition, or otherwise disposed of in a manner that is consistent with this subchapter.

2. Where more than one item of surplus real property is the subject of an internet auction, the withdrawal of any item or items from the disposition by internet auction shall not affect the disposition of the remaining tract(s) or parcel(s) to be sold.

19:35-5.33 Disposition of surplus real property through direct negotiated sale

(a) Surplus real property that does not otherwise qualify as exempt from the advertising requirements pursuant to N.J.A.C. 19:35-5.2 may be disposed of for its fair market value through a direct negotiated sale, if the advertisement of the property for offer, bid, or auction did not elicit any viable offers or bids after being the subject of any of the following:

1. A solicitation of offers to purchase pursuant to N.J.A.C. 19:35-5.2;
2. A solicitation of sealed bids pursuant to N.J.A.C. 19:35-5.19; or
3. A disposition through internet auction pursuant to N.J.A.C. 19:35-5.32.

19:35-5.34 Disposition for less than fair market value

(a) If the SDA shall fail to reach agreement with respect to the disposition of surplus real property, despite advertising a disposition through:

1. A solicitation of offers to purchase pursuant to N.J.A.C. 19:35-5.2;
2. A solicitation of sealed bids pursuant to N.J.A.C. 19:35-5.19;

3. A disposition through internet auction pursuant to N.J.A.C. 19:35-5.32; or
4. A direct negotiated sale for fair market value pursuant to N.J.A.C. 19:35-5.33, then SDA may dispose of the surplus property in any lawful manner for less than the originally estimated fair market value, provided that any proposed consideration below the originally estimated fair market value must be approved by the SDA Board based on the written analysis and recommendation of appropriate SDA staff.

19:35-5.35 Effective date of disposition

Unless expressly otherwise provided, in every instance, transfer of title to surplus real property is effective following the delivery of the full amount of the proposed consideration to the SDA and the delivery of a deed from the SDA to the purchaser.

SUBCHAPTER 6. TEMPORARY USE AND/OR OCCUPANCY OF SDA-OWNED REAL PROPERTY

19:35-6.1 Temporary use and/or occupancy of SDA-owned real property

(a) The SDA may, in its sole and absolute discretion, authorize the temporary use and/or occupancy of all or any part of SDA-owned real property, whether or not the same is deemed to be surplus real property, for the period of time during which such real property will not be needed for a school facilities project, or is not used, or otherwise useful, in the business operations of the SDA.

(b) Authorization pursuant to this section shall be memorialized in a written agreement including, but not limited to, a lease, license, and/or use and occupancy agreement, executed by the SDA's Chief Executive Officer, or his or her designee, that incorporates the terms and conditions of the

proposed use as determined by the SDA, and that, in every instance, shall contain the following general conditions:

1. The duration shall not extend beyond the point in time when the real property will become necessary for the implementation of a school facilities project(s) or otherwise necessary for the SDA's execution of its responsibilities under the Act;

2. The duration shall not exceed a total term of three years, inclusive of the initial term and any optional extension(s), unless approved by the SDA Board. Any extension or renewal of a temporary lease, license, or use and occupancy agreement originally authorized by the SDA's Chief Executive Officer must be approved by the SDA Board if the resulting renewal or extension will result in a total term exceeding three years;

3. Any agreement for a duration of more than 30 days, with the exception of a post-closing lease or use and occupancy agreement to a seller or a seller's tenants in connection with an acquisition of real property by the SDA, shall specify that the SDA has the unilateral and absolute right to terminate the agreement for any reason upon such notice, as the SDA deems appropriate.

4. The user(s) shall not alter the real property in any manner that, in the sole judgment of the SDA, might negatively impact the amount of proceeds realized by the SDA in any subsequent disposition of the real property and/or result in additional costs to the SDA (including, without limitation, additional demolition costs and/or trash disposal costs) with respect to the property's fitness or suitability for subsequent use of the real property for school facilities purposes;

5. The use or user shall not impact environmental conditions at the property;

6. The user must accept the real property in "as is, where is, with all faults" condition. No alterations or improvements of any kind are permitted, unless upon the prior written consent of the SDA in each instance; and

7. Holdover charges, in an amount to be determined by the SDA, shall be due and payable in the event the user fails to surrender the real property on the date that the right of such temporary use of the property expires.

(c) If the use agreement is with a non-public and/or private party, and is for a use that is not a public purpose or a charitable purpose, in addition to the general condition requirements of (a) above, the agreement shall, at a minimum:

1. Require that the proposed use or occupancy of an SDA-owned property must be cleared and approved by the SDA's bond counsel, engaged to provide legal advice to the SDA regarding the bonds authorized pursuant to Section 25 of P.L. 2007, c. 137 (N.J.S.A. 18A:7G-14) to fund the activities of the SDA, and the tax treatment of the interest on such bonds, to ensure that the proposed use or occupancy will not have an adverse effect upon the tax-exempt status of the bonds, as set forth at N.J.A.C. 19:35-1.1, with the exception of a post-closing lease or use and occupancy agreement to a seller or a seller's tenants in connection with an acquisition of real property by the SDA, which shall not require prior bond counsel approval if the lease or use and occupancy term is for less than six months;

2. Require payment of consideration in an amount that is not less than the fair market rental value of such use, as determined by the SDA pursuant to an independent appraisal or in-house valuation based upon relevant information, as appropriate;

3. Prohibit the user from assigning its rights to such use or subletting, or otherwise allowing another person or entity to use and/or occupy the subject real property without the express written consent of the SDA;

4. Require any such user to pay all costs associated with its use and/or occupancy of the real property, including, but not limited to, the costs of operating and maintaining the real property,

payment of any taxes (real estate and otherwise) relating to the real property, the cost of providing security services to such real property, and all amounts payable with respect to utilities and services furnished to such real property;

5. Require such user to provide insurance coverage during the term of its use of the real property of a minimum of one million dollars in liability insurance, with the required amount determined by the SDA based upon the intended use and/or occupancy of the property, unless the user is a non-profit or public entity that can demonstrate non-insurance resources sufficient to finance the indemnity obligations at (c)6 below; and property insurance for improved property in an amount equivalent to the replacement value of the improved property;

6. Require such user to indemnify, defend, and hold the SDA harmless against any bodily injury, losses, and/or damages that result, either directly or indirectly, from such use and/or occupancy; and

7. Require such user to maintain a security deposit with SDA in amounts determined based on the value of the property; the nature and duration of the intended use and risk of damage to the property as a result of such use; the cost of property maintenance for the property; or a combination of these factors.

(d) If the use agreement pursuant to this section is with a public party, or a non-public, non-profit party, and the proposed use will serve either a valid charitable purpose or public purpose and will not result in the generation of income or profit, the agreement is not required to include consideration at fair market value, but, in addition to the general condition requirements set forth at (b) above, the agreement shall, at a minimum:

1. Identify the proposed use and define the charitable purpose or public purpose or governmental function or program, that is supported by the proposed use;

2. Require documentary proof that the proposed use has been approved through official action (for example, corporate resolution, board action or minutes, memorandum of agreement, or other documented official action) of the public party or nonprofit entity;

3. Provide for consideration that recognizes the value of the public benefit of the proposed use as a component of the consideration;

4. Require the public party or non-public, non-profit party seeking to use the property for a charitable purpose or public purpose to pay all costs associated with its use and/or occupancy thereof, including, but not limited to, operation, security, taxes, utilities, and maintenance, which must include landscaping and snow removal;

5. Prohibit the user from assigning its rights to such use or subletting or otherwise allowing another person or entity to use and/or occupy the subject real property without the express written consent of the SDA;

6. Require the user to provide insurance coverages during the term of its use of the real property in amounts to be determined by the SDA; and

7. Require the user to indemnify, defend, and hold the SDA harmless against any personal injury, losses, and/or damages that result, either directly or indirectly, from such use and/or occupancy.

(e) The SDA shall prepare a semi-annual informational report, to be submitted to the SDA Board, listing all current temporary use and occupancy authorizations, whether memorialized in leases, licenses, or use and occupancy agreements, and indicating any extensions or renewals thereof.