



<Addendum #3>

NJSDA
1 West State Street
Trenton, NJ 08625
Phone: 609-341-5980
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Date: December 6, 2012

PROJECT #: NT-0019-B01

DESCRIPTION: New Henry Street Elementary School

This addendum shall be considered part of the Bid Documents issued in connection with the referenced project. Should information conflict with the Bid Documents, this Addendum shall supercede the relevant information in the Bid Documents.

A. REVISIONS IN THE REQUEST FOR PROPOSAL DOCUMENT

3.1 Revisions in the Request for Proposal (RFP) document are made as follows:

1. Section 4.1.8 revised (with deleted language ~~crossed through~~ and inserted language in ***bold italics***) to read:

4.1.8 Proposed Equals

If the Design-Builder proposes to use articles, devices, materials, equipment, forms of construction, fixtures or other items other than those standards named in the Design-Build Contract Documents, the Design-Builder shall certify that the item is equal in quality and in all aspects of performance and appearance to the standards specified.

In addition, the Design-Builder shall submit information regarding the proposed equals to the Authority ~~no later than fifteen (15) business days prior to the Price Proposal submission date~~, ***after NTP in accordance with General Conditions Section 01600*** which information shall include:

- The name and a complete description of the proposed equal, including drawings, performance and test data, and other information necessary for a complete evaluation;
- A statement of any advantages, in particular cost savings or time savings, to be achieved by the Authority if the proposed equal is employed; and
- A statement setting forth any changes, which the proposed equal will require in the projects.

~~If the Authority approves the proposed equal, the Authority shall issue an Addendum describing and authorizing use of the new standard.~~

The decision to approve or disapprove a proposed equal shall be solely within the discretion of the Authority, and shall be final when made. The Authority shall have the discretion to reject a proposed equal, for any reason whatsoever, including the fact that the Design-Builder failed to provide sufficient information to enable the Authority to completely evaluate the proposed equal. ~~without delay in the scheduled Price Proposal submission date.~~ *The possible impacts caused by the SDA's acceptance or rejection of the Proposed Equal shall not be grounds for additional compensation to the Design Builder, but should be budgeted for and included within the lump-sum bid.*

~~No Design Builder shall rely on a proposed equal in the preparation of its bid unless that proposed equal has been expressly approved as a standard in the form of an Addendum issued prior to the Price Proposal submission date.~~

B. REVISIONS IN THE DESIGN BUILD AGREEMENT DOCUMENT

3.2 Revisions in the Design Build Agreement document are made as follows:

1. Section 01010 revised (with deleted language ~~crossed-out~~ and inserted language in ***bold italics***) to read:

1.4 ALLOWANCES

- A. The Contract contains the following Allowance categories and amounts:

	<u>AMOUNT</u>
1. GMP Reserve	\$250,000
2. <i>Impacted Materials Allowance</i>	<i>\$300,000</i>

B. GMP Reserve Allowance

1. The GMP Reserve Allowance shall be utilized to cover unanticipated or unforeseen costs which are necessary to complete the Services and Work, or to achieve Authority-directed upgrades in the Services and Work, authorized at the discretion of the Authority.

C. Impacted Materials Allowance

1. ***The Impacted Materials Allowance shall be utilized only after written authorization from the Authority, in accordance with Section 01020, for activities including the removal from the Site of 1750 cubic yards of Impacted Materials (defined as material demonstrating compound concentrations in excess of the New Jersey Department of Environmental Protection's Residential Direct Contact Soil Remediation Standards) and replacement of such Impacted Materials with certified clean fill or imported structural fill that is certified clean, as appropriate (such activities constituting the "Impacted Materials Allowance Work"). The final scope of these actions (if any) will be determined by the Authority's Licensed Site Remediation Professional. The quantities***

indicated herein are approximate and actual site conditions and/or additional sampling may result in an increase or reduction in actual quantities.

- i. The activities associated with this Allowance Work include the excavation of 1750 cubic yards of Petroleum Impacted Materials from the Project Site, including the testing, excavation and loading of such Petroleum Impacted Materials, as well as the on-Site reuse, stockpiling, relocation, spreading and grading of such Impacted Materials (if approved for reuse on the Site), or the transportation and off-Site disposal of such Petroleum Impacted Materials, and all associated costs of labor, material, equipment, taxes, supervision, overhead and profit.*
- ii. The replacement of any materials removed from the Project Site with appropriate certified clean fill or structural fill that is certified clean fill, including the testing, transportation and unloading of such replacement material, and the spreading and compaction or grading of such replacement material on Site, and all associated costs of labor, material, equipment, taxes, supervision, overhead and profit shall be included in the Design-Builders base proposal and shall not be compensated as part of this allowance .*

2. The ~~Contractor~~ **Design Builder** shall proceed with Allowance Work in accordance with Section 01020 – Allowances.

C. BIDDERS QUESTIONS AND NJSDA ANSWERS

- 3.3 Question:** Please identify who will be the construction management firm.

Answer: The CM services for this project will be self-managed by NJSDA.

- 3.4 Question:** Please advise whether the foundations of the existing structures were removed under the previous contract?

Answer: All previously identified structures, inclusive of foundations, were removed; all DCA demolition permits are closed.

- 3.5 Question:** Were there any constructability issues that developed under the previous contract?

Answer: The previous construction contract for this project did not include a Constructability Phase as has been incorporated in recent Authority projects, and thus there was no formalized process for early identification of constructability issues in that contract. However, the Requests For Information received from the contractor under that original construction contract will be made available to the successful bidder after the Initial NTP is issued to the selected Design-Builder under this procurement.

- 3.6 Question:** Finish Hardware Specification Section 08710, page 7, paragraph 2.4a, Keying indicates that cylinders shall be keyed to an existing master key system. Please confirm the existing master key system is BEST.

Answer: The existing key system is BEST.

3.7 Question: The RFP page 2.A use of existing design documents indicate that it is the authority's intention to complete the project with the drawings and specifications dated 6/30/2009; please be advised that many of the specified products and systems are no longer applicable; please confirm that since the project is being bid as a design build package that the design builder have the ability to modify the specified products and or systems to meet the design intent?

Answer: Products and systems specified in the DCA-Released Documents may be modified by the Design-Builder if such substitutions meet the design intent, and conform to any applicable Materials and Systems Standards, though such proposed substitutions are subject to Authority review and approval after award, and bidders are advised not to factor such proposed substitutions into their price proposals, as the Authority will not compensate a Design-Builder for costs incurred in reliance on an unapproved substitution, except in the event that the originally specified component, product or system is no longer available for purchase, as described below. All proposed substitutions must be submitted and reviewed per the RFP section 4.1.8 (as revised per this Addendum in Item 3.1) and Specification Section 01600 (as revised per this Addendum and attached hereto).

To the extent that a responding Design Builder believes that a component, product or system specified in the DCA-Released Documents is no longer available for purchase and thus may not be priced for inclusion in the technical and price proposal, the responding firm should identify a comparable replacement component, product or system and include the price thereof in the lump-sum price proposal. Furthermore, for all such unavailable products or systems, the responding firm must identify the components, products or systems that are asserted to be unavailable, and must identify such items and submit the information, along with the proposed substitutions to replace the unavailable items, in a separate sealed envelope to be submitted with the sealed price proposal, not to be opened until after award. The Design Builder shall bear the burden of proving that the original specified item is not available, and that the proposed substitution for an obsolete item is comparable or superior in quality and fitness to the originally specified unavailable item.

3.8 Question: We have contacted the DCA and received a verbal communication confirming that we could use the already issued plans for permit filing and the foundations could start via partial release and any modifications to the documents dated 6/30/2009 would be sent to DCA under updates prior (to) inspections of the changed products and or systems, please contact them to confirm and issue in writing.

Answer: As defined in the Request for Proposal dated September 28, 2012 this project has a valid building permit in place. Any modifications to the DCA released documents are at the discretion of the Design-Builder, subject to Authority approval, and the Design-Builder is responsible for the effect of such modifications on the validity of the existing valid building permit.

3.9 Question: Please confirm that the CAD files for the documents dated 6/30/2009 are made available to the design builder at no cost.

Answer: There are no CAD files available for this project.

3.10 Question: Please include an allowance to dispose the onsite materials since no recent environmental testing have been performed and made available.

Answer: An Impacted Soils Allowance is added per the revised Design Build Agreement Section 01010, 1.4 Allowances as part of this addendum in item 3.2. Current environmental testing information is provided per the attached Remedial Action Work Plan dated November 30, 2012 and the revised Design Build Agreement Section 01010, 1.4 ALLOWANCES

3.11 Question: Please confirm that the SBE goals achievements and efforts are to be presented after the bid by the successful bidder?

Answer: The NJSDA requirements for SBE participation are stated in Section 3.7 of the Request for Proposals (RFP). Requirements with respect to consultant SBE participation must be addressed by the Design-Builder and its Design Consultant with the Technical Proposal, as stated in the RFP. Compliance requirements with respect to subcontractor SBE participation are to be addressed just prior to the issuance of the Notice to Proceed with Construction Work for the Project, also as stated in the RFP.

3.12 Question: Please confirm that comparable size projects that were bid as separate prime contracts and the general contractor was the main coordinator [may be submitted as case studies in satisfaction of requirements for experience with “comparable projects”].

Answer: Similar size square footage projects that were conducted with multiple prime contractors may be submitted in satisfaction of case study requirements. The Design Builder bears the burden of establishing how such projects are comparable to the Project that is the subject of this procurement.

3.13 Question: Specs call for extra heavy cast iron underground and service weight cast iron above slab for the storm piping. I need to know if service weight is acceptable for the underground and no-hub for the above slab. Please advise?

Answer: The Authority views this as a substitution request; please refer to the response to item 3.7.

3.14 Question: Specification Section 07481 – Exterior Noise Control Panel – The Elevation Material Legend shown on drawing A3.02 does not indicate the material or location. Please advise if this material is required and its intended location.

Answer: There are no exterior noise control panels included in this project.

3.15 Question: Plumbing Specification list extra heavy cast iron pipe for underground and service weight cast iron for use above slab for the storm piping. Please advise if service weight is acceptable for the underground and no-hub for the above slab.

Answer: See response to item 3.13.

3.16 Question: Please confirm if the NJSDA has electronic copies of all drawings in CADD format, not PDF form.

Answer: All drawings are available in PDF only.

- 3.17 Question:** Please confirm if the NJSDA will be providing electronic copies of all drawings in CADD format to the successful Design/Build Team.

Answer: See responses to items 3.9 and 3.16.

- 3.18 Question:** Section 01010- Summary of Work 1.3.B.6- Use of Existing Structural Steel Materials notes 900 Tons of structural steel has been fabricated representing 95% of the existing design. Please provide the existing approved structural steel shop drawings and define the 5% which remain unfabricated.

Answer: Shop drawings will be provided to successful D-B at no charge by Haberle Steel.

- 3.19 Question:** Please confirm the following specifications do not apply to the project since we believe this work was completed under the previous contract:

- 02070- Demolition and Debris Removal
- 02080- Asbestos Abatement
- 02100- UST Removal
- 02170- Contaminated Soil Management

Answer: All known structures have been removed, miscellaneous debris remains on site. All known asbestos has been abated. All known UST's have been removed from the site. Per the attached RAWP there remains on site Historic Fill and Petroleum Impacted Soils that will be removed as part of this contract in accordance with Specification Section 02170 and the attached RAWP.

- 3.20 Question:** In Addendum 2, the response to Question 2.4 states that "If the Design-Builder intends to proceed with implementation of the design embodied in the DCA-Released Documents, new signed and sealed documents are not required to be submitted to the ... DCA". Does this mean that we can proceed directly to construction with these documents in their present form?

Answer: The RFP for this procurement requires that each Design-Builder submitting technical and price proposals in response to this procurement acknowledge that the Design Builder (and the Design-Builder's Design Consultant) are assuming responsibility for the project design in conformance with the DCA-Released Documents, and making any necessary modifications to achieve construction of the Project. Specifically, the RFP states:

"By submitting its proposal, a Design-Builder warrants and acknowledges that it has, in conjunction with its identified Design Consultant, undertaken a prebid review, investigation and validation of the DCA-released documents, sufficient to permit the Design-Builder to warrant and acknowledge that, if selected for award, it shall, in conjunction with its proposed Design Consultant, assume responsibility for the project design in conformance with the DCA-released documents, conducting any further post-award reviews it deems appropriate, and making any and all modifications necessary, to achieve the construction of the Project

consistent with the design expressed in the DCA-released documents.” (RFP, Section 1.1B.)

Accordingly, in light of this assumption of responsibility for the existing design and any necessary modifications or corrections thereto, assuming the Design-Builder determines that the existing DCA-Released Documents are valid, appropriate for construction, and not subject to errors, the Design-Builder may, after submission of UCC-required Subcode Technical Sections identifying the Design-Builder as the general contractor and identifying the subcontractors on the Design-Build Team in response to the UCC Subcode requirements, and after securing any release by NJDCA, proceed with construction per the DCA released plans and specifications dated 6/30/2009.

- 3.21 Question:** If this is the case, since these original documents have been released for construction, the liability for the current design lies with the original design team. How will the NJSDA and/or D/B Contractor recoup any additional costs for any errors or omissions from the original designers? The Contractor does not have any contractual relationship with the original designers and therefore does not have the ability to obtain any certificate of insurance that will name them as additional insured.

Answer: The underlying assumption in this question, i.e., that the Design Builder and Design-Builder’s Design Consultant are not liable and responsible for the existing design if the Design-Builder, and the Design-Build Team determines to proceed to construction based on the DCA-Released Documents, is erroneous. As indicated above in the response to Item 3.20, according to the terms of the RFP, by submitting a response to this procurement, the Design-Builder, acknowledges that, in conjunction with its Design Consultant, the Design-Builder has reviewed and validated the existing design, or will, subsequent to award, undertake all investigations and analysis necessary to do so, and thus assumes all responsibility for the existing design and agrees to make all modifications necessary or advisable to act as Architect of Record for the Project and achieve construction of the Project.

- 3.22 Question:** It is our understanding that the NJ Licensing Board requires that in order for any changes, revisions, or modifications to be made to these DCA Approved documents, then the original Designer of Record must give written authorization to the “new” Designer of Record in order for any changes to be allowed to the documents. Does the NJSDA have written authorization from the various original designers that will be transferable to the “new” designers that states that the original designers will allow modifications to their original documents by the chosen D/B Team? Regardless of whether the NJSDA has “Ownership” of the original documents, the “new” designers are not legally allowed to modify these documents in any way without written permission from the original designers.

Answer: The Authority respectfully disagrees with the premise of this question, which is that modification of design documents can only be permitted upon a written authorization of the original Design Consultant. As noted in Addendum #2, response to Item 2.2, the Agreement between the Authority and the original Design Consultant contained termination provisions that, upon termination of the original Design Consultant for cause, operate to create an automatic license under copyright law, which permits the Authority to utilize all Work Product (which includes all copyrighted material and intellectual property) generated under that Agreement, to advance and complete the Project by whatever methods the Authority deems appropriate, including the engagement of replacement Design Consultants to modify and

complete the Project. Because the original Design Consultant engagement was terminated, and the termination provisions of the original Design Consultant Agreement operate as an automatic license under copyright, a written authorization from the original Design Consultant permitting use and modification of the original intellectual property and Work Product is not required in order for the Authority (and its contractual partners) to utilize or modify the design and intellectual property embodied in the original design documents.

- 3.23 Question:** If we are proceeding to construction with the current documents and assuming that the D/B Contractor has received written permission from the original Designer of Record, then the professional liability for the design lies back to the original Designer of Record. The “new” designer of record would only be responsible for the revisions or modifications that have been made by the D/B Team. Is this correct?

Answer: No. As indicated in the responses above to Items 3.21, 3.22 and 3.23, the terms of the RFP for this procurement require the Design Builder, in conjunction with its engaged Design-Builder’s Design Consultant, to assume responsibility for the existing design as embodied in the DCA-Released Documents, and/or to make whatever design modifications or corrections are necessary to achieve construction of the Project. Under those terms, the Authority will consider the awardee Design-Builder (and its engaged Design Consultant) responsible for the entirety of the design, and not merely responsible for any modifications made to the original design documents.

- 3.24 Question:** In Addendum 2, the response to Question 2.4, states that “If the Design-Builder elects to revise or modify the design embodied in the DCA-Released Documents”, the D/B Contractor would be responsible for seeking approvals from the NJSDA and DCA. What is the extent of the changes that the NJSDA will allow to these documents? Will the NJSDA entertain a complete or partial redesign of the building layout, the site layout, the MEP systems, building finishes, etc. as long as the program elements (number and size of classrooms, administration offices, gymnasium, and other associated areas) remain the same? It is understood that the D/B Contractor will have to comply with all agency approvals and current project schedule requirements.

Answer: The Authority is not averse to entertaining proposals for redesign of project aspects, assuming all necessary agency approvals and all other applicable provisions of the Design-Build Agreement are met.

- 3.25 Question:** We understand that when the construction contract was previously awarded, there were a number of RFIs and Change Order Requests that generated prior to the construction work on the contract being terminated. Please provide this information.

Answer: The Requests For Information received from the contractor under the original construction contract will be made available to the successful bidder after the Initial NTP is issued to the selected Design-Builder under this procurement.

3.26 **Question:** In reviewing the Contract Documents, it is unclear if the design for the project must comply with the current code requirements. We have noted a number of items on the original design documents that would need to be modified in order to meet current standards.

Answer: Per the Permit Extension Act P.L.2008, c.78 as amended P.L. 2009, c. 336 and P.L. 2012 C.48 the existing Permit approval (PS-05-004) secured in December 2010 is still valid for this project, and if the project is constructed per the DCA-Released Documents, the design need not be modified to comply with changes in code standards since the original permit application was approved.

D. REMEDIAL ACTION WORK PLAN

3.27 See attachment **A** to this Addendum No. 3 for the Remedial Action Work Plan (RAWP) Dated November 30, 2012.

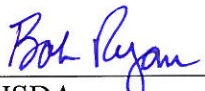
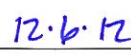
E. REVISED SPECIFICATION SECTION 01600

3.28 See attachment **B** to this Addendum No.3 for the revised Specification Section 01600

F. REVISED PRICE PROPOSAL FORM

3.29 See attachment **C** to this Addendum No. 3 for the revised Price Proposal form.

End of Addendum No. #3

	
NJSDA	Date
Robert Ryan	

<Addendum #3>

NJSDA
1 West State Street
Trenton, NJ 08625
Phone: 609-341-5980
Fax: 609-656-4608

Date: December 6, 2012

PROJECT #: NT-0019-B01

DESCRIPTION: New Henry Street Elementary School

Addendum No. 3

Acknowledgement of Receipt of Addendum

Contractor must acknowledge the receipt of the Addendum by signing in the space provided below and returning via fax to 609-656-4608 or via E-mail attachment to jmcelhenny@njsda.gov. **Signed acknowledgement must be received prior to the Bid Due Date. Acknowledgement of the Addendum must be made in Section E.6 of the Price Proposal Submission.**

Signature

Print Name

Company Name

Date